Regulatory Affairs Committee

Wednesday, April 1, 2015
8:00 AM
Sumner Hall (404 HOB)

MEETING PACKET

Steve Crisafulli
Speaker

Jose Diaz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Affairs Committee

Start Date and Time:	Wednesday, April 01, 2015 08:00 am
End Date and Time:	Wednesday, April 01, 2015 10:30 am
Location:	Sumner Hall (404 HOB)
Duration:	2.50 hrs

Consideration of the following bill(s):

CS/HB 263 Craft Distilleries by Business & Professions Subcommittee, Renuart
CS/HB 307 Mobile Homes by Civil Justice Subcommittee, Latvala
HB 325 Labor Pools by Tobia
CS/HB 373 Public Accountancy by Government Operations Appropriations Subcommittee, Raulerson
CS/HB 401 Public Lodging & Public Food Service Establishments by Business & Professions Subcommittee, Magar
CS/HB 557 Florida Insurance Guaranty Association by Insurance & Banking Subcommittee, Raburn
HB 641 Amusement Games or Machines by Trumbull
HB 677 Reciprocal Insurers by Santiago
CS/HB 703 Regulation of Financial Institutions by Insurance & Banking Subcommittee, Broxson
CS/HB 707 Real Estate Brokers and Appraisers by Business & Professions Subcommittee, Burton
CS/HB 715 Eligibility for Coverage by Citizens Property Insurance Corporation by Insurance & Banking Subcommittee, Raschein
CS/HB 825 Family Trust Companies by Insurance & Banking Subcommittee, Roberson, K.
HB 851 Manatee County by Boyd
CS/HB 927 Title Insurance by Insurance & Banking Subcommittee, Hager
HM 949 Regulation of Carbon Dioxide Emissions from Fossil Fuel-Fired Electric Generating Units by Rodrigues, R.
CS/HB 1053 Motor Vehicle Insurance by Insurance & Banking Subcommittee, Fant
CS/HB 1087 Operations of the Citizens Property Insurance Corporation by Insurance & Banking Subcommittee, Bileca
CS/HB 1133 Division of Insurance Agent and Agency Services by Insurance & Banking Subcommittee, Fant
CS/HB 1151 Residential Master Building Permit Programs by Business & Professions Subcommittee, Ingoglia

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Tuesday, March 31 2015.

By request of the Chair, all Regulatory Affairs Committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, March 31, 2015.

NOTICE FINALIZED on 03/30/2015 16:13 by Ellinor.Martha

The Florida House of Representatives

Regulatory Affairs Committee

Steve Crisafulli
Speaker

Jose Diaz
Chair

AGENDA

April 1, 2015
404 HOB
8:00 AM – 10:30 AM

I. Call to Order and Roll Call

II. CS/HB 263 by *Business & Professions Subcommittee; Rep. Renuart and others*
Craft Distilleries

III. CS/HB 307 by *Civil Justice Subcommittee; Rep. Latvala*
Mobile Homes

IV. HB 325 by *Rep. Tobia*
Labor Pools

V. CS/HB 373 by *Government Operations Appropriations Subcommittee; Rep. Raulerson*
Public Accountancy

VI. CS/HB 401 by *Business & Professions Subcommittee; Rep. Magar*
Public Lodging & Public Food Service Establishments

VII. CS/HB 557 by *Insurance & Banking Subcommittee; Rep. Raburn*
Florida Insurance Guaranty Association

VIII. HB 641 by *Rep. Trumbull and others*
Amusement Games or Machines

303 House Office Building, 402 South Monroe Street , Tallahassee, FL 32399-1300
(850) 717-4870

IX. HB 677 by *Rep. Santiago*
Reciprocal Insurers

X. CS/HB 703 by *Insurance & Banking Subcommittee; Rep. Broxson*
Regulation of Financial Institutions

XI. CS/HB 707 by *Business & Professions Subcommittee; Rep. Burton*
Real Estate Brokers and Appraisers

XII. CS/HB 715 by *Insurance & Banking Subcommittee; Rep. Raschein*
Eligibility for Coverage by Citizens Property Insurance Corporation

XIII. CS/HB 825 by *Insurance & Banking Subcommittee; Rep. K. Roberson*
Family Trust Companies

XIV. HB 851 by *Rep. Boyd*
Manatee County

XV. CS/HB 927 by *Insurance & Banking Subcommittee; Rep. Hager*
Title Insurance

XVI. HM 949 by *Rep. R. Rodrigues and others*
Regulation of Carbon Dioxide Emissions from Fossil Fuel-Fired Electric Generating Units

XVII. CS/HB 1053 by *Insurance & Banking Subcommittee; Rep. Fant*
Motor Vehicle Insurance

XVIII. CS/HB 1087 by *Insurance & Banking Subcommittee; Rep. Bileca*
Operations of the Citizens Property Insurance Corporation

XIX. CS/HB 1133 by *Insurance & Banking Subcommittee; Rep. Fant*
Division of Insurance Agent and Agency Services

XX. CS/HB 1151 by *Business & Professions Subcommittee; Rep. Ingoglia*
Residential Master Building Permit Programs

XXI. ADJOURNMENT

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 263 Craft Distilleries
SPONSOR(S): Business & Professions Subcommittee; Renuart and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 596

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Brown-Blake	Luczynski
2) Regulatory Affairs Committee		Brown-Blake	Hamon

SUMMARY ANALYSIS

Florida's Beverage Law provides for a structured three-tier distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor makes the sale to the consumer.

In 2013, the legislature passed a limited exemption to the three tier system by creating a "craft distillery" designation and permitting a liquor manufacturer that meets the requirements of a craft distillery to sell two sealed containers per year of the distilled spirits it produces on its premises directly to a consumer for personal use. Such sales of the spirits must be made at the distillery souvenir gift shop.

The bill defines the term "branded product" to mean "any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or regulations."

Additionally, the bill expands the limit on direct sales by a craft distillery to consumers from two individual containers per person, per calendar year, to two individual containers of each branded product per person, per calendar year.

The bill clarifies that a craft distillery may not ship or arrange to ship any of its distilled spirits to consumers and may only sell and deliver to consumers within the state in a face-to-face transaction at the distillery property.

Finally, the bill clarifies that a craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on each of its premises in this state or in another state, territory, or country.

The bill is expected to have a minimal fiscal impact on the Department of Business and Professional Regulation which can be absorbed with existing resources and no fiscal impact on local government.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.[1]

In general, Florida's Beverage Law provides for a structured three-tier distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer. In the three-tier system, alcoholic beverage excise taxes generally are collected at the distribution level based on inventory depletions and the state sales tax is collected at the retail level.

The three-tier system is deeply rooted in the concept of the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or where the manufacturer exercises undue influence over the retail vendor.[2] Because of the perceived evils, manufacturers and distributors are not permitted to have a financial interest in vendors. The following are some limited exceptions to the three-tier regulatory system:

- A manufacturer of malt beverages may obtain a vendor's license for the sale of alcoholic beverages on property that includes a brewery and promotes tourism;[3]
- A vendor may obtain a manufacturer's license to manufacture malt beverages if the vendor brews malt beverages at a single location in an amount of no more than 10,000 kegs per year and sells the beverages to consumers for consumption on the premises or consumption on contiguous licensed premises owned by the vendor;[4]
- A licensed winery may obtain up to three vendor's licenses for the sale of alcoholic beverages on a property;[5] and
- Individuals may bring small quantities of alcohol back from trips out-of-state without being held to distributor requirements.[6]

In 2013, s. 565.03, F.S., was amended to create another exception to the three-tier regulatory system regarding the manufacture and sale of distilled spirits. "Distillery" is defined as "a manufacturer of distilled spirits." "Craft distillery" is defined as a licensed distillery that produces 75,000 or fewer gallons of distilled spirits on its premises and notifies the Division of the desire to operate as a craft distillery. A craft distillery is permitted to sell the distilled spirits it produces to consumers for off-premise consumption. Sales of the spirits must be made on "private property" contiguous to the distillery premises at a souvenir gift shop operated by the distillery. Once a craft distillery's production limitations have been surpassed (75,000 gallons), the craft distillery is required to notify the Division within five days and immediately cease sales to consumers.

---

[1] Section 561.02, F.S.

[2] Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board,* a copy can be found at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (Last visited January 20, 2015).

[3] s. 561.221(2), F.S.

[4] s. 561.221(3), F.S.

[5] s. 561.221(1), F.S.

[6] s. 562.16, F.S.

The 2013 amendment prohibits craft distilleries from selling distilled spirits except in face-to-face transactions with consumers making the purchases for personal use and caps the total sales to each consumer at two or less containers per customer per calendar year. In addition, the craft distilleries are prohibited from shipping their distilled spirits to consumers.

The United States Department of Treasury houses the Alcohol and Tobacco Tax and Trade Bureau (TTB), which sets forth labeling and brand registration requirements for alcoholic beverages sold in the United States.[7] Distillers are not permitted to sell, ship, or deliver for sale or shipment or otherwise introduce into interstate or foreign commerce any distilled spirits in bottles unless the bottles are marked, branded, labeled, or packaged in conformity with ss. 27 C.F.R. 5.31 through 27 C.F.R. 5.42.[8] Those sections set forth what distillers are required to place on the labels, including manufacturer name, brand name, alcohol content, net contents, class and type of alcohol, and other labeling requirements. Distilled spirits and their labels are required to be "approved" by the TTB prior to being bottled or removed from the manufacturing site.[9] When the TTB approves the distilled spirit, they provide a Certificate of Label Approval, which includes a copy of the brand name as provided on the application for approval.

Alcoholic beverages cannot be sold or offered for sale in Florida, or moved within or into Florida without the brand/label first being registered with the Division.[10] A brand or label, as referred to in ch. 565, F.S., is a liquor product that is uniquely identified by label registered according to state and federal law.

Effect of the Bill

The bill defines the term "branded product" to mean "any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or regulations." The bill provides that a craft distillery may sell spirits distilled on its premises to consumers at its souvenir gift shop, and expands the limit on direct sales to consumers from two individual containers per person, per calendar year, to two individual containers of each branded product per person, per calendar year.

The bill clarifies that a craft distillery may not ship or arrange to ship any of its distilled spirits to consumers and may only sell and deliver to consumers within the state in a face-to-face transaction at the distillery property.

Finally, the bill clarifies that a craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on each of its premises in this state or in another state, territory, or country.

B. SECTION DIRECTORY:

Section 1 amends s. 565.03. F.S., revising the limitation on containers that may be sold by craft distilleries directly to consumers, to include two individual containers of each branded product.

Section 2 provides an effective date of July 1, 2015.

[7] *What You Should Know About Distilled Spirits Labels* brochure, Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, http://ttb.gov/pdf/brochures/p51902.pdf.
[8] 27 C.F.R. § 5.31 (2014).
[9] 27 C.F.R. § 5.55 (2014).
[10] Department of Business and Professional Regulation website, Alcohol Brand/Label Registration online application, available at https://myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=4011&XACT_DEFN_ID=7172.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There does not appear to be a decrease or increase in revenues to state governments.

2. Expenditures:

   There does not appear to be a decrease or increase in expenditures to state governments. Monitoring of compliance by the state government is complaint driven. The Division can likely handle any increase in complaints with existing staff and equipment.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   There does not appear to be a decrease or increase in revenues to local governments.

2. Expenditures:

   There does not appear to be a decrease or increase in expenditures to local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may cause a minor increase in costs for craft distillers by requiring more complex record keeping, as they will be required to track purchases to consumers to ensure that no consumer purchases more than two containers of each branded product per calendar year. This cost will likely be offset by the increased revenue due to an increase in sales of distilled spirits directly to consumers.

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

On March 24, 2015, the Business & Professions Subcommittee considered and adopted a strike-all amendment. The amendment:

- Amended the definition of "branded product" to mean "any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or regulations";
- Clarified that a craft distillery may not ship or arrange to ship any of its distilled spirits to consumers and may only sell and deliver to consumers within the state in a face-to-face transaction at the distillery property;
- Clarified that a craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on each of its premises in this state or in another state, territory, or country.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to craft distilleries; amending s. 565.03, F.S.; defining the term "branded product"; revising the limitation on the number of containers that may be sold to consumers by craft distilleries; applying such limitation to individual containers for each branded product; prohibiting a craft distillery from shipping or arranging to ship any of its distilled spirits to consumers; limiting sale and delivery of distilled spirits; revising a restriction on certain craft distillery ownership; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (1) of section 565.03, Florida Statutes, are redesignated as paragraphs (b) and (c), respectively, a new paragraph (a) is added to that subsection, and paragraph (c) of subsection (2) of that section is amended, to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; craft distilleries.—

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

(a) "Branded product" means any distilled spirits product manufactured on site which requires a federal certificate and

CODING: Words stricken are deletions; words underlined are additions.

label approval by the Federal Alcohol Administration Act or federal regulations.

(2)

(c) A craft distillery licensed under this section may sell to consumers, at its souvenir gift shop, branded products ~~spirits~~ distilled on its premises in this state in factory-sealed containers that are filled at the distillery for off-premises consumption. Such sales are authorized only on private property contiguous to the licensed distillery premises in this state and included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery shall require the division's approval verifying that the souvenir gift shop location operated by the licensed distillery is owned or leased by the distillery and on property contiguous to the distillery's production building in this state. A craft distillery ~~or licensed distillery~~ may not sell any factory-sealed individual containers of spirits except in face-to-face sales transactions with consumers who are making a purchase of two or fewer individual containers of each branded product, which ~~that~~ comply with the container limits in s. 565.10, per calendar year for the consumer's personal use and not for resale and who are present at the distillery's licensed premises in this state.

1. A craft distillery must report to the division within 5 days after it reaches the production limitations provided in

paragraph (1)(b) ~~(1)(a)~~. Any retail sales to consumers at the craft distillery's licensed premises are prohibited beginning the day after it reaches the production limitation.

2. A craft distillery may not ~~only~~ ship or~~,~~ arrange to ship~~, or deliver~~ any of its distilled spirits to consumers and may sell and deliver only to consumers within the state in a face-to-face transaction at the distillery property. However, a craft distiller licensed under this section may ship, arrange to ship, or deliver such spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.

3. Except as provided in subparagraph 4., it is unlawful to transfer a distillery license for a distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or any ownership interest in such license to an individual or entity that has a direct or indirect ownership interest in any distillery licensed in this state; another state, territory, or country; or by the United States government to manufacture, blend, or rectify distilled spirits for beverage purposes.

4. A craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on each of its premises in this state or in another state, territory, or country.

Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 307 Mobile Homes
SPONSOR(S): Civil Justice Subcommittee; Latvala
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 662

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Malcolm	Bond
2) Regulatory Affairs Committee		Whittier	Hamon

SUMMARY ANALYSIS

The Florida Mobile Home Act (Act) regulates residential tenancies in which a mobile home is placed on a rented or leased lot in a mobile home park with 10 or more lots. The Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation (division) enforces the act. The bill incorporates some provisions of the Condominium Act and the Cooperative Act into the Florida Mobile Home Act and makes changes to the Mobile Home Act to address the unique tenancy aspects of mobile home ownership.

Specifically, the bill makes the following changes to the Act:

- The division is required to provide training and educational programs for board members of mobile homeowners' associations and mobile home owners;
- A mobile homeowner must comply with all building permit and construction requirements and is responsible for fines imposed for violating any local codes;
- A mobile homeowner's right to notice of a lot rental increase or reduction in services or utilities may not be waived;
- A homeowners' committee must make a written request for a meeting with the park owner to discuss a proposed lot rental increase or decrease in services or utilities or rule changes;
- A homeowner's spouse may assume an automatically renewable lease; however, this right of assumption may only be exercised once during the term of the lease;
- A member of the board of directors of the Florida Mobile Home Relocation Corporation must be removed immediately upon written request for removal from the association that originally nominated that member;
- Bylaws of a homeowners' association must include specific provisions related to meetings, voting requirements, proxies, amending the articles of incorporation and bylaws, duties of officers and directors, vacancies on the board, and recall of members on the board of directors;
- A board member must either certify that they have read the homeowners' association's organizing documents, rules, and regulations and that they will faithfully discharge their fiduciary responsibility, or complete the division's educational program within one year of taking office; and
- A homeowners' association is required to retain and make available certain specified official records.

The Department of Business and Professional Regulation estimates a fiscal impact of $176,071 in FY 2015-16 to implement the bill. However, the department can absorb these costs within existing resources. See *Fiscal Impact on State Government* section.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Training and Educational Programs for Mobile Home Owners' Association Board Members and Mobile Home Owners

Present Situation

The statutes define a "mobile home" as "a residential structure, transportable in one or more sections, which is 8 body feet or more in width, over 35 body feet in length with the hitch, built on an integral chassis, designed to be used as a dwelling when connected to the required utilities, and not originally sold as a recreational vehicle, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein."[1] Although mobile home ownership is similar in some ways to condominium or cooperative ownership, mobile home ownership differs significantly in that the mobile homeowner does not own the underlying lot on which the home is located. Instead, the homeowner rents or leases the lot from the park owner.

Chapter 723, F.S., the Florida Mobile Home Act, regulates residential tenancies in which a mobile home is placed on a rented or leased lot in a mobile home park with 10 or more lots.[2] The Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation (division) has the authority to promulgate rules under the Mobile Home Act, the Condominium Act, and the Cooperative Act, and to investigate, enforce, and ensure compliance with those rules and the provisions of those acts.[3]

The division is required under the Condominium Act and the Cooperative Act to provide training and educational programs for association board members and owners.[4] The division may also approve education and training programs and maintain a list of approved programs and providers. No similar provisions exist in the Mobile Home Act.

Effect of Proposed Changes

The bill amends s. 723.006, F.S., to require the division to provide training and educational provider lists for board members of mobile homeowners' associations and mobile home owners. The cost of the training and educational programs must be borne by the providers of the programs and the division must establish a fee structure for the training programs sufficient to recover any costs it incurs.

The bill also provides that the required information provided to board members and home owners must include the provider of the training programs, price, location, dates, and curriculum for the programs. The curriculum must provide information about statutory and regulatory matters relating to the board of directors of the homeowners' association and their responsibilities. The educational programs may not contain editorial comments.

---

[1] s. 723.003(3), F.S.

[2] Section 723.002(1), F.S., provides that the Act does not apply "to any other tenancy, including a tenancy in which both a mobile home and a mobile home lot are rented or leased by the mobile home resident or a tenancy in which a rental space is offered for occupancy by recreational-vehicle-type units which are primarily designed as temporary living quarters for recreational camping or travel use and which either have their own motor power or are mounted on or drawn by another vehicle."

[3] ss. 723.005, 723.006, 718.501(1), and 719.501(1), F.S.

[4] ss. 718.501(1)(j), and 719.501(1)(k), F.S.

Mobile Home Owner's General Obligations

Present Situation

Currently, s. 723.023, F.S., requires a mobile home owner to comply with all building, housing, and health codes; to keep the mobile home lot clean and sanitary; to comply with park rules and regulations and require others on the premises to comply with such regulations; and to conduct themselves in a manner that does not unreasonably disturb other residents of the park.

Effect of Proposed Changes

The bill provides additional requirements for mobile home owners. They must comply with all building permit and construction requirements and keep the mobile home lot neat and maintained in compliance with all local codes. The owner is responsible for all fines imposed for noncompliance with any local codes.

Lot Rental Increases and Homeowners' Committee Negotiations

Present Situation

Section 723.037, F.S., requires mobile home park owners to give written notice to mobile home owners and the board of directors of the homeowners' association at least 90 days prior to any increase in lot rental or reduction in services or utilities provided by the park owner or change in rules and regulations.

A committee of up to five people, designated by a majority of the owners or by the board of directors, and the park owner must meet within 30 days of the notice of change to discuss the reasons for the changes. If the meeting does not resolve the issue, then additional meetings may be requested. If subsequent meetings are unsuccessful, either party may petition the division to initiate mediation. If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court.[5]

Effect of Proposed Changes

The bill amends s. 723.037, F.S., to provide that a mobile home owner's right to the 90-day notice may not be waived or precluded by an agreement with the park owner. Additionally, the bill provides that the homeowners' committee and the park owner must meet no later than 60 days before the effective date of the change rather than within 30 days after receipt of the notice of change as currently required. The homeowners' committee must make a written request for a meeting with the park owner to discuss the matters in the 90-day notice and may include in the request a list of any other issue the committee intends to discuss at the meeting.

The bill defines the term "mediation" as a process whereby a mediator appointed by the division, or mutually selected by the parties, acts to encourage and facilitate the resolution of a dispute in an informal, nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable agreement. The term "parties" for the purposes of mediation pursuant to ss. 723.037 and 723.038, F.S., is defined to mean a park owner and a homeowners' committee. The bill also defines the term "homeowners' committee" in s. 723.003, F.S., in a manner that is consistent with how the term is currently used and applied in s. 723.037, F.S.

Rights of Purchasers - Assumption of the Lease

Present Situation

[5] s. 723.0381, F.S.

Section 723.059(5), F.S., provides that lifetime leases to mobile home lots entered into after July 1, 1986, are not assumable unless allowed by the lot rental agreement or unless the transferee is the homeowner's spouse. Additionally, automatically renewable leases are not assumable unless provided for in the lease agreement.

Effect of Proposed Changes

The bill amends s. 723.059(5), F.S., to provide that automatically renewable leases are assumable if the transferee is the homeowner's spouse; however, the right to assume the lease by a spouse may only be exercised once during the term of the lease.

Florida Mobile Home Relocation Corporation - Removal of Members

Present Situation

Section 723.0611, F.S., creates the Florida Mobile Home Relocation Corporation (corporation) to provide assistance to residents of mobile home parks who receive eviction notices due to a change in land use of the mobile home park to either relocate their mobile home or abandon it.[6] The corporation is administered by a board of directors made up of six members, three of whom are appointed by the Secretary of Business and Professional Regulation (DBPR) from a list of nominees submitted by the largest nonprofit association representing mobile home owners in this state and three of whom are appointed by the Secretary of DBPR from a list of nominees submitted by the largest nonprofit association representing the manufactured housing industry in this state.[7]

Effect of Proposed Changes

The bill amends s. 723.0611, F.S., to provide that a member of the board of directors must be removed by the Secretary of DBPR, with or without cause, immediately after a written request for removal from the association that originally nominated that board member. The nominating entity must include nominees for replacement with the request for removal and the Secretary of DBPR must immediately fill the vacancy created by the removal. The removal process may not occur more than once in a calendar year.

Homeowners' Association Bylaws

Required Bylaw Provisions

Present Situation

Section 723.071(1)(a), F.S., provides that If a mobile home park owner offers a mobile home park for sale, she or he shall notify the officers of the homeowners' association of the offer, stating the price and the terms and conditions of sale.

Section 723.078, F.S., provides that in order for a mobile homeowners' association to exercise its right to purchase a mobile home park pursuant to s. 723.071, F.S., the association's bylaws must contain a number of statutory provisions.

Effect of Proposed Changes

The bill amends s. 723.078, F.S., to remove the requirement that the bylaws contain the enumerated provisions for the association to exercise its right to purchase a mobile home park.

---

[6] *See* s. 723.0612, F.S.; Florida Mobile Home Relocation Corporation Website, http://www.fmhrc.org/ (last visited Mar. 2, 2015).

[7] s. 723.0611(1), F.S.

Administration

Present Situation

Section 723.078(2)(a), F.S., provides that the board of directors of a homeowners' association must have a president, secretary, and treasurer; however, it does not indicate how those positions are to be filled. This provision also provides that the board of directors may appoint and designate other officers. The Condominium Act and the Cooperative Act contain similarly worded provisions.[8]

Effect of Proposed Changes

The bill amends s. 723.078(2)(a), F.S., to provide that the board of directors must *elect* a president secretary, and treasurer, and that the board of directors may *elect* and designate other officers.

Quorum; Voting Requirements; and Proxies

Present Situation

Section 723.078(2)(b)1., F.S., currently provides that a majority of the association's members constitutes a quorum.

This section also provides that the association's bylaws must provide for the use of a proxy. Any proxy given must be effective only for the specific meeting for which originally given. A proxy may be valid for up to 120 days after the date of the first meeting for which it was given. Every proxy must also be revocable at any time.

Effect of Proposed Changes

The bill amends s. 723.078(2)(b)1., F.S., to provide that unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum.

The bill reduces the number of days a proxy may be valid from 120 days to 90 days. The bill also incorporates a number of proxy provisions found in the Condominium Act and the Cooperative Act.[9] Specifically, that:

- A member of the association may only vote by limited proxies that conform to a limited proxy form adopted by the division;
- Limited proxies and general proxies may be used to establish a quorum; and
- Limited proxies may be used for votes taken to amend the articles of incorporation or bylaws, and any other matters that ch. 723, F.S., requires or permits a vote of members, except that no proxy may be used in the election of board members.

The bill also provides that a member of the board of directors or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend.

Board of Directors and Committee Meetings

Present Situation

Section 723.078(2)(c), F.S., currently requires that meetings of the board of directors must be open to members and notice of meetings must be posted in a conspicuous place on park property at least 48

[8] ss. 718.112(2)(a)1. and 719.106(1)(a)1., F.S.
[9] *Id.*

hours in advance, except in an emergency. Notice of any meeting in which assessments are to be considered must contain a statement that assessments will be considered and the nature of such assessments.

Effect of Proposed Changes

The bill provides that the requirement that board and committee meetings be open to the members does not apply to meetings held for the purpose of discussing personnel matters or meetings with the association's attorney where the contents of the discussion would be governed by the attorney-client privilege.

The bill also provides that a board or committee member's participation in a meeting via telephone, videoconference, or similar communication counts toward a quorum, and he or she may vote as if physically present.

The bill provides that members of the board of directors may use e-mail as a means of communication but may not cast a vote via e-mail. The bill also incorporates a number of board of directors and committee meeting provisions found in the Condominium Act and the Cooperative Act.[10]

Additionally, the bill provides that the right to attend meetings of the board and its committees includes the right to speak at such meetings; however, the association may adopt reasonable written rules governing members' statements. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action must be noticed and ratified at the next regular meeting of the board. Any member may tape record or videotape meetings, and the division must adopt rules governing the tape recording and videotaping of meetings.

Vacancies on the Board of Directors

Present Situation

Currently, ch. 723, F.S., does not provide a procedure to fill vacancies on an association's board of directors.

Effect of Proposed Changes

The bill amends s. 723.078(2)(c), F.S., to provide a procedure to fill vacancies on the association's board of directors. It provides that except in cases of a recall vote,[11] a vacancy occurring on the board of directors may be filled by:

- The affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum;
- The sole remaining director;
- The members, if no director remains,; or,
- The circuit court of the county in which the registered office of the corporation is located.

The term of a director elected or appointed to fill a vacancy expires at the next annual meeting at which directors are elected. A directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors, but only for the term of office continuing until the next election of directors by the members. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

[10] ss. 718.112(2)(b) and (c) and 719.106(1)(c), F.S.
[11] *See* Recall of Board Members discussion below.

Officer and Director Duties

Present Situation

Section 723.078(2)(i), F.S., currently provides that the officers and directors of a mobile homeowners' association only have a fiduciary relationship to the members.

Effect of Proposed Changes

The bill amends s. 723.078(2), F.S., to expand the duties of officers and directors. The bill requires a director and committee member to discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the corporation.[12]

In discharging his or her duties, a director may rely on information, opinions, reports, or statements, if prepared by officers, employees, or any other professionals, such as legal counsel or accountants, who the director reasonably believes to be reliable and competent in the matters presented. However, a director is not acting in good faith if he or she has knowledge concerning the matter in question that makes such reliance unwarranted.

If a director has performed the duties of his or her office in compliance with this provision, he or she is not liable for any action taken as a director, or any failure to take any action.

Member Meetings

Present Situation

Section 723.078(2)(d), F.S., requires annual member meetings during which members of the board of the directors are elected. The association's bylaws may not restrict any member desiring to be a candidate for board membership from being nominated. Written notice of all meetings must be provided at least 14 days in advance of the meeting. Unless waived, the notice of the annual meeting must be sent by mail to each member.

Effect of Proposed Changes

The bill amends s. 723.078(2)(d), F.S., to provide that all nominations must be made at a meeting of the members held at least 30 days before the annual meeting. It also allows for notice of the annual meeting to be hand delivered or electronically transmitted, which is similarly allowed in the in the Condominium Act and the Cooperative Act.[13] The bill defines "electronic transmission" to mean:

> A form of communication, not directly involving the physical transmission or transfer of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient and that may be directly reproduced in a comprehensible and legible paper form by the recipient through an automated process, such as a printer or copy machine. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmission of images, and text that is sent via e-mail between computers. The term does not include oral communication by telephone.[14]

Minutes of Meetings

[12] The Condominium Act contains nearly identical language. *See* s. 718.111(1)(d), F.S.
[13] ss. 718.112(2)(c) and 719.106(1)(c), F.S.
[14] This definition is nearly identical to the definition provided in s. 617.01401(8), F.S. (Florida Not for Profit Corporation Act).

Present Situation

Section 723.078(2)(e), F.S., requires the minutes of all meetings of members and of the board of directors to be maintained, available for inspection, and retained for at least 7 years.

Effect of Proposed Changes

The bill requires that the minutes of all meetings of members of the association, the board of directors, and a committee must be maintained in written form and approved by the members, board, or committee, as applicable. It also requires that a vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes. A similar vote recording requirement is provided in the Condominium Act and the Cooperative Act.[15]

Amendment of Articles of Incorporation and Bylaws

Present Situation

Section 723.078(2)(h), F.S., currently requires an association's bylaws to provide a method to amend the bylaws. If the bylaws do not provide a method of amendment, they may be amended by the board of directors and approved by a majority of the membership.

Effect of Proposed Changes

The bill requires that the articles of incorporation as well as the bylaws must provide a method for their amendment. The bill also provides that if the bylaws do not provide a method of amendment, they may be amended by the board of directors and approved by a majority of members at a meeting at which a quorum is present rather than a majority of the membership as is currently required.

Additionally, notwithstanding any other provision of s. 723.078, F.S., if an amendment to the articles of incorporation or the bylaws is required by any federal, state, or local governmental authority or agency, or any law, ordinance, or rule, the board of directors may, by a majority vote, amend the articles of incorporation or bylaws without a vote of the membership.

Recall of Board Members

Present Situation

Currently, s. 723.078(2)(j), F.S., provides a limited procedure for the recall of members of a mobile homeowners' association board of directors. Any member of the board of directors may be recalled and removed from office by the vote or written agreement of a majority of all members.

Effect of Proposed Changes

The bill amends s. 723.078(2), F.S., by incorporating extensive recall provisions similar to those in the Condominium Act and the Cooperative Act.[16] Pursuant to these provisions, a recall may be approved by a majority vote of all members at a meeting or by a written agreement by a majority of all members. If a recall is approved by the members, the board must hold a board meeting to determine whether to certify the recall. If the board does not certify a recall, the members may file a petition for binding arbitration with the division.

A board member who has been recalled must return all records and property of the association in his or her possession within 5 business days. A board member who has been recalled may file a petition for

[15] ss. 718.111(1)(b) and 719.104(8)(b), F.S.
[16] ss. 718.112(2)(j) and 719.106(1)(f), F.S.

binding arbitration with the division[17] challenging the validity of the recall. The petition must be filed within 60 days after the recall.

A vacancy on a board due to a recall may be filled by a vote of a majority of the remaining directors. If a vacancy occurs on a board due to a recall and a majority of the board members are removed, the vacancies will be filled in accordance with rules to be adopted by the division.

The bill also creates s. 723.1255, F.S., which requires the division to adopt rules of procedure that will govern binding recall arbitration proceedings.

Board Member Training Programs

Present Situation

Currently, ch. 723, F.S., does not require board members to attend training related to the association's organizing documents, rules, and statutes.

Effect of Proposed Changes

The bill creates s. 723.0781, F.S., to require board members to sign an affidavit certifying that they have read the association's organizing documents, rules, and regulations; that they will uphold such documents and policies to the best of their ability; and that they will faithfully discharge their fiduciary duty. In lieu of this, board members may complete the division's educational program within one year of taking office. Failure to comply with either requirement would result in a suspension from the board until either requirement is met.

Maintenance of Records

Present Situation

Section 723.079(4), F.S., currently only requires mobile homeowners' associations to maintain and make available for inspection basic accounting records, such as records of all receipts and expenditures and records of assessments and payments by each member.

Effect of Proposed Changes

The bill amends s. 723.079(4), F.S., to require an association to retain and make available an extensive list of official records similar to those currently required in the Condominium Act and the Cooperative Act.[18] The records that must be retained include articles of incorporation, bylaws, meeting minutes, insurance policies, contracts, tax documents, and financial statements. The records must be retained for at least seven years and available for inspection. Failure to provide a member the opportunity to inspect the records may result in damages starting at $10 per day. The association may develop reasonable rules related to the inspection of documents, including charging fees for copies, and may not allow inspection of documents that are protected by lawyer-client privilege or that would reveal personal identifying information other than a person's name and address.

Other Effects of Proposed Changes

The bill defines "mobile home lot" to mean "a lot described by a park owner pursuant to the requirements of s 723.012, F.S., or in a disclosure statement pursuant to s. 723.013, F.S., as a lot intended for the placement of a mobile home."

[17] *Id.*
[18] ss. 718.111(12) and 719.104(2), F.S.

The bill defines "homeowners' association" for the purposes of ch. 723, F.S., as "A corporation for profit or not for profit, which is formed and operates in compliance with ss. 723.075-723.079; or, in a subdivision the homeowners' association authorized in the subdivision documents in which all home owners must be members as a condition of ownership."

The bill defines "offering circular" to have the same meaning as the term "prospectus."

The bill defines "mobile home owner" to include "mobile homeowner" and "homeowner."

The bill updates cross-references to the changes in ch. 723, F.S., made by the bill.

B. SECTION DIRECTORY:

Section 1. Amends s. 73.072, F.S., relating to compensation for permanent improvements by mobile home owners.

Section 2. Amends s. 723.003, F.S., relating to definitions.

Section 3. Amends s. 723.006, F.S., relating to powers and duties of the division.

Section 4. Amends s. 723.023, F.S., relating to mobile home owner's general obligations.

Section 5. Amends s. 723.031, F.S., relating to mobile home lot rental agreements.

Section 6. Amends s. 723.037, F.S., relating to lot rental increases; reduction in services or utilities; change in rules and regulations; mediation.

Section 7. Amends s. 723.059, F.S., relating to rights of purchasers.

Section 8. Amends s. 723.0611, F.S., relating to the Florida Mobile Home Relocation Corporation.

Section 9. Amends s. 723.078, F.S., relating to bylaws of homeowners' associations.

Section 10. Creates s. 723.1255, F.S., relating to alternative resolution of recall disputes.

Section 11. Creates s. 723.0781, F.S., relating to board member training programs.

Section 12. Amends s. 723.079, F.S., relating to the powers and duties of homeowners' associations.

Section 13. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The Department of Business and Professional Regulation estimates a fiscal impact of $176,071 in FY 2015-16; $165,301 in FY 2016-17; and $165,301 in FY 2017-18 to implement the bill. However, the department can absorb these costs within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Members of a board of directors of a mobile home owners' association who choose to complete the required educational training in lieu of certifying that they have read the association's organizing documents, rules, and regulations may incur costs for such training. The cost for similar educational requirements in the Condominium Act and Cooperative Act range in price from no fee to $200.[19]

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:

The bill requires the division to adopt rules related to vacancies on a homeowners' association board of directors due to a recall, including rules of procedure for recall arbitration proceedings.

C. DRAFTING ISSUES OR OTHER COMMENTS:

An incorrect cross-reference on line 165 should be changed from (16) to (17).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 10, 2015, the Civil Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Removed unnecessary language in the bill's title;
- Defined the term "mediation" as a process in which a mediator appointed by the division facilitates the resolution of a dispute in an informal, nonadversarial process; and
- Updated the definition of "mobile home owner" to include "mobile homeowner" and "homeowner."

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

[19] List of division approved educational curriculums, Division of Florida Condominiums, Timeshares, and Mobile Homes, Florida Department of Business and Professional Regulation (April 25, 2014) (available at http://www.myfloridalicense.com/dbpr/lsc/documents/CondoListofProviders_000.pdf) (last visited Feb. 25, 2015).

A bill to be entitled

An act relating to mobile homes; amending s. 73.072, F.S.; conforming a cross-reference; amending s. 723.003, F.S.; providing definitions; amending s. 723.006, F.S.; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes to approve training and educational programs for board members of mobile home owners' associations; providing duties of the division; providing requirements for education curriculum information for board member and mobile home owner training; amending s. 723.023, F.S.; revising mobile home owner's general obligations; amending s. 723.031, F.S.; conforming a cross-reference; amending s. 723.037, F.S.; providing and revising requirements for lot rental increases; amending s. 723.059, F.S.; revising provisions relating to rights of purchasers of lifetime leases; amending s. 723.0611, F.S.; providing for the removal of a member of the board of directors under certain conditions; amending s. 723.078, F.S.; revising provisions with respect to the bylaws of homeowners' associations; revising quorum and voting requirements; revising provisions relating to board of directors, committee, and member meetings; providing requirements for meeting minutes; revising requirements for the amendment of articles of incorporation and bylaws;

revising requirements for the recall of board members; creating s. 723.1255, F.S.; providing requirements for the alternative resolution of recall disputes; creating s. 723.0781, F.S.; specifying certification or educational requirements for a newly elected or appointed board member; amending s. 723.079, F.S.; revising and providing requirements relating to the official records of the association; providing an effective date.

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

Section 1. Subsection (1) of section 73.072, Florida Statutes, is amended to read:

73.072 Mobile home parks; compensation for permanent improvements by mobile home owners.—

(1) When all or a portion of a mobile home park as defined in s. 723.003 ~~723.003(6)~~ is appropriated under this chapter, the condemning authority shall separately determine the compensation for any permanent improvements made to each site. This compensation shall be awarded to the mobile home owner leasing the site if:

(a) The effect of the taking includes a requirement that the mobile home owner remove or relocate his or her mobile home from the site;

(b) The mobile home owner currently leasing the site has

paid for the permanent improvements to the site; and

(c) The value of the permanent improvements on the site exceeds $1,000 as of the date of taking.

Section 2. Section 723.003, Florida Statutes, is amended to read:

723.003 Definitions.—As used in this chapter, the term ~~following words and terms have the following meanings unless clearly indicated otherwise~~:

(1)~~(14) The term~~ "Discrimination" or "discriminatory" means that a homeowner is being treated differently as to the rent charged, the services rendered, or an action for possession or other civil action being taken by the park owner, without a reasonable basis for the different treatment.

(2)~~(1) The term~~ "Division" means the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.

(3) "Electronic transmission" means a form of communication, not directly involving the physical transmission or transfer of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient and that may be directly reproduced in a comprehensible and legible paper form by the recipient through an automated process, such as a printer or copy machine. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmission of images, and text that is sent via e-mail between computers. Electronic transmission does not include oral communication by

telephone.

(4) "Homeowners' association" means a corporation for profit or not for profit, which is formed and operates in compliance with ss. 723.075-723.079; or, in a subdivision the homeowners' association authorized in the subdivision documents in which all home owners must be members as a condition of ownership.

(5) "Homeowners' committee" means a committee, not to exceed five persons in number, designated by a majority of the affected homeowners in a mobile home park or a subdivision; or, if a homeowners' association has been formed, designated by the board of directors of the association. The homeowners' committee is designated for the purpose of meeting with the park owner or park developer to discuss lot rental increases, reduction in services or utilities, or changes in rules and regulations and any other matter authorized by the homeowners' association, or the majority of the affected home owners, and who are authorized to enter into a binding agreement with the park owner or subdivision developer, or a binding mediation agreement, on behalf of the association, its members, and all other mobile home owners in the mobile home park.

(6)~~(2) The term~~ "Lot rental amount" means all financial obligations, except user fees, which are required as a condition of the tenancy.

(7)(a) "Mediation" means a process whereby a mediator appointed by the Division of Florida Condominiums, Timeshares,

and Mobile Homes, or mutually selected by the parties, acts to encourage and facilitate the resolution of a dispute. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable agreement.

(b) For purposes of mediation under ss. 723.037 and 723.038, the term "parties" means a park owner as defined in subsection (13) and a homeowners' committee selected pursuant to s. 723.037.

(8) ~~(3) The term~~ "Mobile home" means a residential structure, transportable in one or more sections, which is 8 body feet or more in width, over 35 body feet in length with the hitch, built on an integral chassis, designed to be used as a dwelling when connected to the required utilities, and not originally sold as a recreational vehicle, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

(9) "Mobile home lot" means a lot described by a park owner pursuant to the requirements of s 723.012, or in a disclosure statement pursuant to s. 723.013, as a lot intended for the placement of a mobile home.

(10) ~~(4) The term~~ "Mobile home lot rental agreement" or "rental agreement" means any mutual understanding or lease, whether oral or written, between a mobile home owner and a mobile home park owner in which the mobile home owner is entitled to place his or her mobile home on a mobile home lot

for either direct or indirect remuneration of the mobile home park owner.

(11) ~~(5) The term~~ "Mobile home owner," "mobile homeowner," ~~or~~ "home owner," or "homeowner" means a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use.

(12) ~~(6) The term~~ "Mobile home park" or "park" means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.

(13) ~~(7) The term~~ "Mobile home park owner" or "park owner" means an owner or operator of a mobile home park.

(14) ~~(8) The term~~ "Mobile home subdivision" means a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.

(15) "Offering circular" has the same meaning as the term "prospectus" as it is used in this chapter.

(16) ~~(9) The term~~ "Operator of a mobile home park" means either a person who establishes a mobile home park on land that ~~which~~ is leased from another person or a person who has been delegated the authority to act as the park owner in matters relating to the administration and management of the mobile home park, including, but not limited to, authority to make decisions relating to the mobile home park.

(17) ~~(10) The term~~ "Pass-through charge" means the mobile home owner's proportionate share of the necessary and actual direct costs and impact or hookup fees for a governmentally mandated capital improvement, which may include the necessary and actual direct costs and impact or hookup fees incurred for capital improvements required for public or private regulated utilities.

(18) ~~(11) The term~~ "Proportionate share" as used in subsection (16) ~~(10)~~ means an amount calculated by dividing equally among the affected developed lots in the park the total costs for the necessary and actual direct costs and impact or hookup fees incurred for governmentally mandated capital improvements serving the recreational and common areas and all affected developed lots in the park.

(19) ~~(15) The term~~ "Resale agreement" means a contract in which a mobile home owner authorizes the mobile home park owner, or the park owner's designee, to act as exclusive agent for the sale of the homeowner's mobile home for a commission or fee.

(20) ~~(12) The term~~ "Unreasonable" means arbitrary, capricious, or inconsistent with this chapter.

(21) ~~(13) The term~~ "User fees" means those amounts charged in addition to the lot rental amount for nonessential optional services provided by or through the park owner to the mobile home owner under a separate written agreement between the mobile home owner and the person furnishing the optional service or services.

Section 3. Subsections (12), (13), and (14) are added to section 723.006, Florida Statutes, to read:

723.006 Powers and duties of division.—In performing its duties, the division has the following powers and duties:

(12) The division shall approve training and educational programs for board members of mobile home owners' associations formed and operated pursuant to s. 723.075(1) and mobile home owners. The training may, at the division's discretion, include web-based electronic media and live training and seminars in various locations throughout the state.

(13) The division may review and approve educational curriculums and training programs for board members and mobile home owners to be offered by providers and shall maintain a current list of approved programs and providers, and make such lists available to board members in a reasonable and cost-effective manner. The cost of such programs shall be borne by the providers of the programs. The division shall establish a fee structure for the approved training programs sufficient to recover any cost incurred by the division in operating this program.

(14) Required education curriculum information for board member and mobile home owner training shall include:

(a) The provider of the training programs, which shall include the following information regarding its training and educational programs:

1. A price list, if any, for the programs and copies of

all materials.

2. The physical location where programs will be available, if not web-based.

3. Dates when programs will be offered.

4. The curriculum of the program to be offered.

(b) The programs shall provide information about statutory and regulatory matters relating to the board of directors of the homeowners' association and their responsibilities to the association and to the mobile home owners in the mobile home park.

(c) Programs and materials may not contain editorial comments.

(d) The division has the right to approve and require changes to such education and training programs.

Section 4. Section 723.023, Florida Statutes, is amended to read:

723.023 Mobile home owner's general obligations.—A mobile home owner shall at all times:

(1) Comply with all obligations imposed on mobile home owners by applicable provisions of building, housing, and health codes, including compliance with all building permits and construction requirements for construction on the mobile home and lot. The home owner is responsible for all fines imposed by the local government for noncompliance with any local codes.

(2) Keep the mobile home lot which he or she occupies clean, neat, and sanitary, and maintained in compliance with all

local codes.

(3) Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply with such rules ~~therewith~~ and to conduct themselves, and other persons on the premises with his or her consent, in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

Section 5. Paragraph (b) of subsection (5) of section 723.031, Florida Statutes, is amended to read:

723.031 Mobile home lot rental agreements.—

(5) The rental agreement shall contain the lot rental amount and services included. An increase in lot rental amount upon expiration of the term of the lot rental agreement shall be in accordance with ss. 723.033 and 723.037 or s. 723.059(4), whichever is applicable, provided that, pursuant to s. 723.059(4), the amount of the lot rental increase is disclosed and agreed to by the purchaser, in writing. An increase in lot rental amount shall not be arbitrary or discriminatory between similarly situated tenants in the park. No lot rental amount may be increased during the term of the lot rental agreement, except:

(b) For pass-through charges as defined in s. 723.003 ~~723.003(10)~~.

Section 6. Subsection (1) and paragraph (a) of subsection (4) of section 723.037, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

723.037 Lot rental increases; reduction in services or utilities; change in rules and regulations; mediation.—

(1) A park owner shall give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days before ~~prior to~~ any increase in lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations. The notice shall identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner shall make the names and addresses available upon request. The home owner's right to the 90-day notice may not be waived or precluded by a home owner, or the homeowners' committee, in an agreement with the park owner. Rules adopted as a result of restrictions imposed by governmental entities and required to protect the public health, safety, and welfare may be enforced prior to the expiration of the 90-day period but are not otherwise exempt from the requirements of this chapter. Pass-through charges must be separately listed as to the amount of the charge, the name of the governmental entity mandating the capital improvement, and the nature or type of the pass-through charge being levied. Notices of increase in the lot rental amount due to a pass-through charge shall state the additional payment and starting and ending dates of each pass-through charge. The homeowners' association shall have no standing to challenge the increase in

lot rental amount, reduction in services or utilities, or change of rules and regulations unless a majority of the affected homeowners agree, in writing, to such representation.

(4)(a) A committee, not to exceed five in number, designated by a majority of the affected mobile home owners or by the board of directors of the homeowners' association, if applicable, and the park owner shall meet, at a mutually convenient time and place no later than 60 days before the effective date of the change ~~within 30 days after receipt by the homeowners of the notice of change,~~ to discuss the reasons for the increase in lot rental amount, reduction in services or utilities, or change in rules and regulations. The negotiating committee shall make a written request for a meeting with the park owner or subdivision developer to discuss those matters addressed in the 90-day notice, and may include in the request a listing of any other issue, with supporting documentation, that the committee intends to raise and discuss at the meeting.

This subsection is not intended to be enforced by civil or administrative action. Rather, the meetings and discussions are intended to be in the nature of settlement discussions prior to the parties proceeding to mediation of any dispute.

(7) The term "parties," for purposes of mediation under this section and s. 723.038, means a park owner and a homeowners' committee selected pursuant to this section.

Section 7. Subsection (5) of section 723.059, Florida

Statutes, is amended to read:

723.059 Rights of purchaser.—

(5) Lifetime leases and the renewal provisions in automatically renewable leases, both those existing and those entered into after July 1, 1986, are not assumable ~~shall be nonassumable~~ unless otherwise provided in the mobile home lot rental agreement or unless the transferee is the home owner's spouse. The right to an assumption of the lease by a spouse may be exercised only one time during the term of that lease. ~~The renewal provisions in automatically renewable leases, both those existing and those entered into after July 1, 1986, are not assumable unless otherwise provided in the lease agreement.~~

Section 8. Subsection (1) of section 723.0611, Florida Statutes, is amended to read:

723.0611 Florida Mobile Home Relocation Corporation.—

(1)(a) There is created the Florida Mobile Home Relocation Corporation. The corporation shall be administered by a board of directors made up of six members, three of whom shall be appointed by the Secretary of Business and Professional Regulation from a list of nominees submitted by the largest nonprofit association representing mobile home owners in this state, and three of whom shall be appointed by the Secretary of Business and Professional Regulation from a list of nominees submitted by the largest nonprofit association representing the manufactured housing industry in this state. All members of the board of directors, including the chair, shall be appointed to

serve for staggered 3-year terms.

(b) A member of the board of directors shall be removed from the board by the Secretary of Business and Professional Regulation, with or without cause, immediately after the written request for removal from the association in paragraph (a) that originally nominated that board member. The nominating entity must include nominees for replacement with the request for removal and the secretary must immediately fill the vacancy created by the removal. The removal process may not occur more than once in a calendar year.

Section 9. Section 723.078, Florida Statutes, is amended to read:

723.078 Bylaws of homeowners' associations.~~—In order for a homeowners' association to exercise the rights provided in s. 723.071, the bylaws of the association shall provide for the following:~~

(1) The directors of the association and the operation shall be governed by the bylaws.

(2) The bylaws shall provide and, if they do not, shall be deemed to include, the following provisions:

(a) Administration.—The form of administration of the association shall be described, providing for the titles of the officers and for a board of directors and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and board members. Unless otherwise provided in the bylaws, the board of directors shall be composed of five

members. The board of directors shall elect ~~have~~ a president, secretary, and treasurer who shall perform the duties of those offices customarily performed by officers of corporations, and these officers shall serve without compensation and at the pleasure of the board of directors. The board of directors may elect ~~appoint~~ and designate other officers and grant them those duties it deems appropriate.

(b) Quorum; voting requirements; proxies.—

1. Unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum. ~~A majority of the members shall constitute a quorum.~~ Decisions shall be made by a majority of members represented at a meeting at which a quorum is present. ~~In addition, provision shall be made in the bylaws for definition and use of proxy. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 120 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the member executing it.~~

2. A member may not vote by general proxy but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies may be used for votes taken to amend the articles of incorporation or bylaws pursuant to this section, and any other matters for which this

chapter requires or permits a vote of members, except that no proxy, limited or general, may be used in the election of board members. Notwithstanding the provisions of this section, members may vote in person at member meetings.

3. A proxy is effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the member executing it.

4. A member of the board of directors or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum.

(c) Board of directors' and committee meetings.—

1. Meetings of the board of directors and meetings of its committees at which a quorum is present shall be open to all members. Notwithstanding any other provision of law, the requirement that board meetings and committee meetings be open to the members does not apply to board or committee meetings held for the purpose of discussing personnel matters or meetings between the board or a committee and the association's attorney, with respect to potential or pending litigation, where the meeting is held for the purpose of seeking or rendering legal

advice, and where the contents of the discussion would otherwise be governed by the attorney-client privilege.~~, and~~ Notice of meetings shall be posted in a conspicuous place upon the park property at least 48 hours in advance, except in an emergency. Notice of any meeting in which assessments against members are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of such assessments.

2. A board or committee member's participation in a meeting via telephone, real-time videoconferencing, or similar real-time telephonic, electronic, or video communication counts toward a quorum, and such member may vote as if physically present. A speaker shall be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person, as well as by members present at a meeting.

3. Members of the board of directors may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.

4. The right to attend meetings of the board of directors and its committees includes the right to speak at such meetings with reference to all designated agenda items. The association may adopt reasonable written rules governing the frequency, duration, and manner of members' statements. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such

emergency action shall be noticed and ratified at the next regular meeting of the board. Any member may tape record or videotape meetings of the board of directors and its committees. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting.

5. Except as provided in s. 723.078(2)(i), a vacancy occurring on the board of directors may be filled by the affirmative vote of the majority of the remaining directors, even though the remaining directors constitute less than a quorum; by the sole remaining director; if the vacancy is not so filled or if no director remains, by the members; or, on the application of any person, by the circuit court of the county in which the registered office of the corporation is located.

6. The term of a director elected or appointed to fill a vacancy expires at the next annual meeting at which directors are elected. A directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors, but only for the term of office continuing until the next election of directors by the members

7. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

8.a. The officers and directors of the association have a fiduciary relationship to the members.

b. A director and committee member shall discharge his or

her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the corporation.

9. In discharging his or her duties, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

a. One or more officers or employees of the corporation who the director reasonably believes to be reliable and competent in the matters presented;

b. Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the persons' professional or expert competence; or

c. A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

10. A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subparagraph 9. unwarranted.

11. A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

(d) Member meetings.—

1. Members shall meet at least once each calendar year,

and the meeting shall be the annual meeting. All members of the board of directors shall be elected at the annual meeting unless the bylaws provide for staggered election terms or for their election at another meeting. The bylaws shall not restrict any member desiring to be a candidate for board membership from being nominated from the floor. All nominations from the floor must be made at a duly noticed meeting of the members held at least 30 days before the annual meeting. The bylaws shall provide the method for calling the meetings of the members, including annual meetings. The method shall provide at least 14 days' written notice to each member in advance of the meeting and require the posting in a conspicuous place on the park property of a notice of the meeting at least 14 days prior to the meeting. The right to receive written notice of membership meetings may be waived in writing by a member. Unless waived, the notice of the annual meeting shall be mailed, hand delivered, or electronically transmitted ~~sent by mail~~ to each member, and shall constitute ~~the mailing constitutes~~ notice. An officer of the association shall provide an affidavit affirming that the notices were mailed or hand delivered in accordance with the provisions of this section to each member at the address last furnished to the corporation. These meeting requirements do not prevent members from waiving notice of meetings or from acting by written agreement without meetings, if allowed by the bylaws.

(e) Minutes of meetings.—

1. Minutes of all meetings of members of an association, the board of directors, and a committee must be maintained in written form and approved by the members, board, or committee, as applicable. A vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes.

2. All approved minutes of ~~all~~ meetings of members, committees, and ~~of~~ the board of directors shall be kept in a businesslike manner and shall be available for inspection by members, or their authorized representatives, and board members at reasonable times. The association shall retain these minutes for a period of at least ~~not less than~~ 7 years.

(f) Manner of sharing assessments.—The share or percentage of, and manner of sharing, assessments and expenses for each member shall be stated.

(g) Annual budget.—If the bylaws provide for adoption of an annual budget by the members, the board of directors shall mail a meeting notice and copies of the proposed annual budget of expenses to the members at least ~~not less than~~ 30 days before ~~prior to~~ the meeting at which the budget will be considered. If the bylaws provide that the budget may be adopted by the board of directors, the members shall be given written notice of the time and place at which the meeting of the board of directors to consider the budget will be held. The meeting shall be open to the members. If the bylaws do not provide for adoption of an annual budget, this paragraph shall not apply.

(h) Amendment of articles of incorporation and bylaws.—

1. The method by which the articles of incorporation and bylaws may be amended consistent with the provisions of this chapter shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended by the board of directors and approved by a majority of members at a meeting at which a quorum is present ~~of the membership~~. No bylaw shall be revised or amended by reference to its title or number only.

2. Notwithstanding any other provision of this section, if an amendment to the articles of incorporation or the bylaws is required by any action of any federal, state, or local governmental authority or agency, or any law, ordinance, or rule thereof, the board of directors may, by a majority vote of the board, at a duly noticed meeting of the board, amend the articles of incorporation or bylaws without a vote of the membership.

(i) ~~The officers and directors of the association have a fiduciary relationship to the members.~~

~~(j)~~ Recall of board members.—Any member of the board of directors may be recalled and removed from office with or without cause by the vote of or agreement in writing by a majority of all members. A special meeting of the members to recall a member or members of the board of directors may be called by 10 percent of the members giving notice of the meeting as required for a meeting of members, and the notice shall state the purpose of the meeting. Electronic transmission may not be

used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all members by a vote at a meeting, the recall is effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the member meeting to recall one or more board members. At the meeting, the board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or shall proceed under subparagraph 3.

2. If the proposed recall is by an agreement in writing by a majority of all members, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of directors shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the written agreement to recall members of the board, in which case such members shall be recalled effective immediately and shall turn over to the board, within 5 full business days, any and all records and property of the association in their possession, or shall proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the board meeting, file with the division a petition for binding arbitration pursuant to the procedures of s. 723.1255. For purposes of this paragraph, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall of a member of the board, the recall shall be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action under s. 723.006. A member so recalled shall deliver to the board any and all records and property of the association in the member's possession within 5 full business days after the effective date of the recall.

4. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the members' recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the board all records and property of the association.

5. If the board fails to duly notice and hold the required meeting or fails to file the required petition, the member's representative may file a petition pursuant to s. 723.1255

challenging the board's failure to act. The petition must be filed within 60 days after expiration of the applicable 5-full-business-day period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

6. If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any other provision of this chapter. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this chapter. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

7. A board member who has been recalled may file a petition pursuant to s. 723.1255 challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified. The association and the member's representative shall be named as the respondents.

8. The division may not accept for filing a recall petition, whether or not filed pursuant to this subsection, and regardless of whether the recall was certified, when there are

60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

(3) The bylaws may provide the following:

(a) A method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the park property.

(b) Restrictions on, and requirements respecting, the use and maintenance of mobile homes located within the park, and the use of the park property, which restrictions and requirements are not inconsistent with the articles of incorporation.

(c) Other provisions not inconsistent with this chapter or with other documents governing the park property or mobile homes located therein.

(d) The board of directors may, in any event, propose a budget to the members at a meeting of members or in writing, and, if the budget or proposed budget is approved by the members at the meeting or by a majority of their whole number in writing, that budget shall be adopted.

(e) The manner of collecting from the members their shares of the expenses for maintenance of the park property shall be stated. Assessments shall be made against members not less frequently than quarterly, in amounts no less than are required to provide funds in advance for payments of all of the anticipated current operating expenses and for all of the unpaid

operating expense previously incurred.

(4) No amendment may change the proportion or percentage by which members share in the assessments and expenses as initially established unless all the members affected by such change approve the amendment.

(5) Upon purchase of the mobile home park, the association organized under this chapter may convert to a condominium, cooperative, or subdivision. The directors shall have the authority to amend and restate the articles of incorporation and bylaws in order to comply with the requirements of chapter 718, chapter 719, or other applicable sections of the Florida Statutes.

(6) Notwithstanding the provisions of s. 723.075(1), upon purchase of the park by the association, and conversion of the association to a condominium, cooperative, or subdivision, the mobile home owners who were members of the association prior to the conversion and who no longer meet the requirements for membership, as established by the amended or restated articles of incorporation and bylaws, shall no longer be members of the converted association. Mobile home owners, as defined in this chapter, who no longer are eligible for membership in the converted association may form an association pursuant to s. 723.075.

Section 10. Section 723.1255, Florida Statutes, is created to read:

723.1255 Alternative resolution of recall disputes.—The

Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall adopt rules of procedure to govern binding recall arbitration proceedings.

Section 11. Section 723.0781, Florida Statutes, is created to read:

723.0781 Board member training programs.—Within 90 days after being elected or appointed to the board, a newly elected or appointed director shall certify by an affidavit in writing to the secretary of the association that he or she has read the association's current articles of incorporation, bylaws, and the mobile home park's prospectus, rental agreement, rules, regulations, and written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum approved by the division within 1 year before or 90 days after the date of election or appointment. The educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director who fails to timely file the written certification or educational certificate is suspended from service on the board until he or

she complies with this section. The board may temporarily fill the vacancy during the period of suspension. The secretary of the association shall retain a director's written certification or educational certificate for inspection by the members for 5 years after the director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

Section 12. Section 723.079, Florida Statutes, is amended to read:

723.079 Powers and duties of homeowners' association.—

(1) An association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the park property.

(2) The powers and duties of an association include those set forth in this section and ss. 723.075 and 723.077 and those set forth in the articles of incorporation and bylaws and any recorded declarations or restrictions encumbering the park property, if not inconsistent with this chapter.

(3) An association has the power to make, levy, and collect assessments and to lease, maintain, repair, and replace the common areas upon purchase of the mobile home park.

(4) The association shall maintain the following items, when applicable, which constitute the official records of the

association:

(a) A copy of the association's articles of incorporation and each amendment to the articles of incorporation.

(b) A copy of the bylaws of the association and each amendment to the bylaws.

(c) A copy of the written rules or policies of the association and each amendment to the written rules or policies.

(d) The approved minutes of all meetings of the members, the board of directors, and committees of the board, which minutes must be retained within the state for at least 7 years.

(e) A current roster of all members and their mailing addresses and lot identifications. The association shall also maintain the e-mail addresses and the numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. The e-mail addresses and numbers provided by members to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the e-mail address or the number for receiving electronic transmission of notices.

(f) All of the association's insurance policies or copies thereof, which must be retained for at least 7 years.

(g) A copy of all contracts or agreements to which the association is a party, including, without limitation, any written agreements with the park owner, lease, or other

agreements or contracts under which the association or its members has any obligation or responsibility, which must be retained for at least 7 years.

(h) The financial and accounting records of the association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:

1. Accurate, itemized, and detailed records of all receipts and expenditures.

2. A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay dues or assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.

3. All tax returns, financial statements, and financial reports of the association.

4. Any other records that identify, measure, record, or communicate financial information.

(i) All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(5) The official records shall be maintained within the state for at least 7 years and shall be made available to a member for inspection or photocopying within 10 business days

after receipt by the board or its designee of a written request submitted by certified mail, return receipt requested. The requirements of this subsection are satisfied by having a copy of the official records available for inspection or copying in the park or, at the option of the association, by making the records available to a member electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide a member with copies on request during the inspection if the entire request is no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

(a) The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this subsection.

(b) A member who is denied access to official records is

entitled to the actual damages or minimum damages for the association's willful failure to comply with this subsection. The minimum damages are to be $10 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request, submitted by certified mail, return receipt requested.

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a member to demonstrate a proper purpose for the inspection, state a reason for the inspection, or limit a member's right to inspect records to less than 1 business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds 30 minutes and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an

adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or home owners:

1. A record protected by the lawyer-client privilege as described in s. 90.502 and a record protected by the work-product privilege, including, but not limited to, a record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation, for adversarial administrative proceedings, or in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. E-mail addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a home owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, lot designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to home owners a directory containing the name, park address, and telephone number of each home owner. However, a home owner may exclude his or her telephone number from the directory by so requesting in writing to the association. The association is not

liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by a home owner and not requested by the association.

3. A electronic security measure that is used by the association to safeguard data, including passwords.

4. The software and operating system used by the association which allows the manipulation of data, even if the home owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(6) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election or removal. ~~An association shall maintain accounting records in the county where the property is located, according to good accounting practices. The records shall be open to inspection by association members or their authorized representatives at reasonable times, and written summaries of such records shall be supplied at least annually to such members or their authorized representatives. The failure of the association to permit inspection of its accounting records by members or their authorized representatives entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the books and records who, directly or indirectly,~~

~~knowingly denied access to the books and records for inspection. The records shall include, but shall not be limited to:~~

~~(a) A record of all receipts and expenditures.~~

~~(b) An account for each member, designating the name and current mailing address of the member, the amount of each assessment, the dates on which and amounts in which the assessments come due, the amount paid upon the account, and the balance due.~~

(7) ~~(5)~~ An association has the power to purchase lots in the park and to acquire, hold, lease, mortgage, and convey them.

(8) ~~(6)~~ An association shall use its best efforts to obtain and maintain adequate insurance to protect the association and the park property upon purchase of the mobile home park. A copy of each policy of insurance in effect shall be made available for inspection by owners at reasonable times.

(9) ~~(7)~~ An association has the authority, without the joinder of any home owner, to modify, move, or create any easement for ingress and egress or for the purpose of utilities if the easement constitutes part of or crosses the park property upon purchase of the mobile home park. This subsection does not authorize the association to modify or move any easement created in whole or in part for the use or benefit of anyone other than the members, or crossing the property of anyone other than the members, without his or her consent or approval as required by law or the instrument creating the easement. Nothing in this subsection affects the rights of ingress or egress of any member

of the association.

(10)~~(8)~~ Any mobile home owners' association or group of residents of a mobile home park as defined in this chapter may conduct bingo games as provided in s. 849.0931.

(11)~~(9)~~ An association organized under this chapter may offer subscriptions, for the purpose of raising the necessary funds to purchase, acquire, and operate the mobile home park, to its members or other owners of mobile homes within the park. Subscription funds collected for the purpose of purchasing the park shall be placed in an association or other escrow account prior to purchase, which funds shall be held according to the terms of the subscription agreement. The directors shall maintain accounting records according to generally accepted accounting practices and shall, upon written request by a subscriber, furnish an accounting of the subscription fund escrow account within 60 days of the purchase of the park or the ending date as provided in the subscription agreement, whichever occurs first.

(12)~~(10)~~ For a period of 180 days after the date of a purchase of a mobile home park by the association, the association shall not be required to comply with the provisions of part V of chapter 718, ~~or~~ part V of chapter 719, or part II of chapter 720, as to mobile home owners or persons who have executed contracts to purchase mobile homes in the park.

(13)~~(11)~~ The provisions of subsections ~~subsection~~ (4) and (7) shall not apply to records relating to subscription funds

collected pursuant to subsection (11) ~~(9)~~.

Section 13. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 325 Labor Pools
SPONSOR(S): Tobia
TIED BILLS: **IDEN./SIM. BILLS:** SB 456

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N	Butler	Luczynski
2) Economic Development & Tourism Subcommittee	13 Y, 0 N	Collins	Duncan
3) Regulatory Affairs Committee		Butler JBSB	Hamon K.W.H.

SUMMARY ANALYSIS

The Labor Pool Act (the Act) protects the health, safety and well-being of day laborers throughout Florida by outlining uniform standards of conduct and practices by labor pools. The Act provides that the wages of day laborers may only be paid in either cash or through a negotiable instrument, generally a check or money order.

The bill amends the Act to authorize labor pools to pay the wages of day laborers by payroll debit card or electronic fund transfer to a financial institution designated by the day laborer, in addition to cash or negotiable instrument. The day laborer must be given the option to elect to be paid in cash or negotiable instrument. The labor pool is subject to certain limitations and notice requirements.

The bill has no impact on state or local funds.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Part II of ch. 448, F.S., also known as the Labor Pool Act[1] (the Act), was enacted in 1995 to protect the health, safety and well-being of day laborers throughout Florida. The Act outlines uniform standards of conduct and practices for labor pools. Section 448.22(1), F.S., defines a labor pool as a business entity that operates a labor hall by one or more of the following methods:

- Contracting with third-party users to supply day laborers to them on a temporary basis;
- Hiring, employing, recruiting, or contracting with workers to fulfill these temporary labor contracts for day labor; or
- Fulfilling any contracts for day labor in accordance with this subsection, even if the entity also conducts other business.

Labor pools are limited in the methods that they may use to pay the wages of a day laborer by s. 448.24, F.S. Under the Act, a labor pool shall compensate day laborers for work performed in the form of cash, or commonly accepted negotiable instruments that are payable in cash, on demand at a financial institution, and without discount.

Although not defined within the Act, a "negotiable instrument" is defined by s. 673.1041(1), F.S., part of the Florida Uniform Commercial Code, to mean:

> [A]n unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
> (a) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
> (b) Is payable on demand or at a definite time; and
> (c) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain . . . .

There are several types of negotiable instruments; the most common is a "check," which is defined by s. 673.1041(6), F.S., as:

> [A] draft, other than a documentary draft, payable on demand and drawn on a bank or a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

Payroll debit cards are also regulated at the Federal level by the Electronic Fund Transfer Act.[2] According to the Consumer Financial Protection Bureau, an employer may not mandate that an employee receive wages only on a payroll debit card.[3] An employer may require direct deposit through electronic means; however, the employee must be able to choose the institution that will receive the direct deposit.

Further, while a payroll debit card must be payable in cash, on demand, without discount by s. 532.01, F.S., for at least the initial withdrawal of each pay period, the institution "cashing" the payroll debit card may charge a fee for doing so, so long as it is not the institution that issued the payroll debit card.

---

[1] ss. 448.20-448.26, F.S.
[2] *See generally,* 15 U.S.C. 1693 (2012).
[3] CFPB Bulletin 2013-10 (Sept. 12, 2013).

After the first withdrawal following a pay period, the institution who issued the payroll debit card may charge a fee for each subsequent transaction.

Effect of the Bill

The bill amends s. 448.24, F.S., to allow labor pools to pay wages by payroll debit card or electronic fund transfer to a financial institution designated by the day laborer, in addition to by cash or negotiable instrument, subject to certain limitations and requirements.

The bill amends s. 448.24(2)(a), F.S., to authorize labor pools to pay wages in:

- Cash;
- Commonly accepted negotiable instruments that are payable in cash, on demand at a financial institution, and without discount;
- Payroll debit card; or
- Electronic funds transfer which must be made to a financial institution designated by the day laborer.

The bill creates s. 448.24(2)(b), F.S., to provide several limitations and requirements for labor pools in regards to the selection of payroll method.

The bill requires a labor pool, prior to the first pay period, to provide notice of the method the labor pool intends to use for payroll and the employee's options with regards to electing their payment method.

The bill also requires a labor pool to allow an employee to elect to not receive their wages by either payroll debit card or electronic fund transfer.

If the labor pool and employee both elect to transfer wages through payroll debit card, the bill requires the labor pool to provide an employee with:

- The option to receive their wage through electronic fund transfer to a financial institution designated by the day laborer.
- A list of each location and address of each business within close proximity to the labor pool that provides the ability to withdraw the contents of the payroll debit card without fee.

Finally, the bill allows a labor pool to deliver a written itemized statement showing in detail each deduction made from payment of wages electronically upon written request from the day laborer.

B. SECTION DIRECTORY:

Section 1 amends s. 448.24, F.S., revising methods by which a labor pool may compensate day laborers; requiring labor pools to offer payment by electronic fund transfer in certain circumstances; providing employee protections should a labor pool elect payroll debit or electronic fund transfer cards to pay wages; allowing a labor pool to deliver an electronic wage statement upon employee request.

Section 2 provides an effective date of July 1, 2015.

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

A bill to be entitled

An act relating to labor pools; amending s. 448.24, F.S.; revising methods by which a labor pool is required to compensate day laborers; requiring a labor pool to provide certain notice before a day laborer's first pay period; specifying requirements for a labor pool that selects to compensate a day laborer by payroll debit card; authorizing a labor pool to deliver a wage statement electronically upon request by the day laborer; providing an effective date.

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

Section 1. Subsection (2) of section 448.24, Florida Statutes, is amended to read:

448.24 Duties and rights.—

(2) A labor pool shall:

(a) Select one of the following methods of payment to compensate a day laborer ~~laborers~~ for work performed: ~~in the form of~~

1. Cash.~~, or~~

2. Commonly accepted negotiable instruments that are payable in cash, on demand at a financial institution, and without discount.

3. Payroll debit card.

4. Electronic funds transfer, which must be made to a

financial institution designated by the day laborer.

(b) Before a day laborer's first pay period, provide notice to the day laborer of the method of payment that the labor pool intends to use for payroll and the day laborer's options to elect a different method of payment, and authorize the day laborer to elect not to be paid by payroll debit card or electronic funds transfer.

(c) If selecting to compensate a day laborer by payroll debit card:

1. Offer the day laborer the option to elect payment by electronic funds transfer; and

2. Before selecting payroll debit card, provide the day laborer with a list, including the address, of a business that is in close proximity to the labor pool and that does not charge a fee to withdraw the contents of the payroll debit card.

(d) ~~(b)~~ Compensate day laborers at or above the minimum wage, in conformance with ~~the provision of~~ s. 448.01. ~~In no event shall any~~ Deductions, other than those authorized ~~permitted~~ by federal or state law, may not bring the worker's pay below minimum wage for the hours worked.

(e) ~~(c)~~ Comply with all requirements of chapter 440.

(f) ~~(d)~~ Insure any motor vehicle owned or operated by the labor hall and used for the transportation of workers pursuant to Florida Statutes.

(g) ~~(e)~~ At the time of each payment of wages, furnish each worker a written itemized statement showing in detail each

deduction made from such wages. A labor pool may deliver this statement electronically upon written request of the day laborer.

(h) ~~(f)~~ Provide each worker with an annual earnings summary within a reasonable period of time after the end of the preceding calendar year, but no later than February 1.

Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 373 Public Accountancy
SPONSOR(S): Government Operations Appropriations Subcommittee; Raulerson
TIED BILLS: **IDEN./SIM. BILLS:** SB 636

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N	Butler	Luczynski
2) Government Operations Appropriations Subcommittee	10 Y, 0 N, As CS	White	Topp
3) Regulatory Affairs Committee		Butler 3SB	Hamon K.W.H.

SUMMARY ANALYSIS

Certified Public Accountants (CPA) and firms who perform accounting services are licensed in Florida and regulated by the Board of Accountancy within the Department of Business and Professional Regulation.

The bill amends the definition of licensed firm or public accounting firm to mean a sole proprietor, partnership, corporation, limited liability company, firm, or other legal entity licensed under s. 473.3101, F.S. The bill further clarifies the practice requirements for partnerships, corporations, limited liability companies, and other business entities practicing public accounting.

The bill amends s. 473.3101, F.S., to clarify who must hold a license under this section:

- Any firm with an office in this state which performs services as defined in s. 473.302(8)(a), F.S.
- Any firm with an office in this state which uses the title "CPA," "CPA firm," or any other title, designation, words, letters, abbreviations, or device tending to indicate that it is a CPA firm. The board shall define by rule what constitutes a CPA firm.
- Any firm that does not have an office in this state but performs the services described in s. 473.3141(4), F.S., for a client having its home office in this state. The board shall define by rule what constitutes an office.

The bill provides that an applicant for licensure under this section must file an application for licensure with the department and supply the information the board requires. An application must be made upon the affidavit of a sole proprietor, general partner, shareholder, or member who is a certified public accountant.

The bill also amends the definition of "quality review" to clearly reference and include a "peer review," which is defined in s. 473.3125, F.S.

The bill has an insignificant negative fiscal impact on the Board of Accountancy due to a potential decrease in revenues from the reduction of the number of firm licenses issued due to the clarification of the definition of "licensed firm and public accounting firm."

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Board of Accountancy (Board) within the Department of Business and Professional Regulation (Department) is the agency charged with regulating the practice of public accountancy. The Division of Certified Public Accounting (Division) performs for the Board all services concerning the enforcement of ch. 473, F.S., including, but not limited to, recordkeeping services, examination services, legal services, investigative services, and those services in ch. 455, F.S., necessary to perform the Board's duties under the chapter. The offices of the Division are located in Gainesville pursuant to statute.

Public Accounting Licensure

A certified public accountant (CPA) is defined as a person who offers to perform services that are described in s. 473.302(8)(a), F.S., which define the actual practice of public accounting to mean:

> Offering to perform or performing for the public one or more types of services involving the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or the expression of an opinion on the reliability of an assertion by one party for the use by a third party;

To engage in the practice of public accounting in Florida and offer to perform the above services, each individual, corporation, or firm in Florida must obtain a license, provided by s. 473.3101, F.S.

A firm must also obtain a license provided by s. 473.3101, F.S., if the firm uses a title such as "CPA" or "CPA Firm" or "any other title, designation, words, letters, abbreviations, or device tending to indicate that the firm practices public accounting."[1] Further, Florida law explicitly defines both a "licensed audit firm" and a "public accounting firm" as firms that are licensed under s. 473.3101, F.S.[2]

Quality Review

A quality review is defined by s. 473.316, F.S., as a:

> [S]tudy, appraisal, or review of one or more aspects of the professional work of an accountant in the practice of public accountancy which is conducted by a professional organization for the purpose of evaluating quality assurance required by professional standards, including a quality assurance or peer review.

Effect of the Bill

The bill clarifies that the definition of "licensed firm" or "public accounting firm" in s. 473.302, F.S., means a sole proprietor, partnership, corporation, limited liability company, firm, or other legal entity licensed under s. 473.3101, F.S.

[1] s. 473.3101(1)(b), F.S.
[2] s. 473.302(7), F.S.

The bill amends s. 473.309, F.S., relating to the practice requirements for partnerships, corporations, limited liability companies, and other business entities, specifying the criteria for such entities to engage in the practice of public accounting or use the title CPA firm or titles tending to indicate that it is a CPA firm.

The bill amends s. 473.3101, F.S., to clarify who must hold a license under this section:

- Any firm with an office in this state which performs services as defined in s. 473.302(8)(a), F.S.
- Any firm with an office in this state which uses the title "CPA," "CPA firm," or any other title, designation, words, letters, abbreviations, or device tending to indicate that it is a CPA firm. The board shall define by rule what constitutes a CPA firm.
- Any firm that does not have an office in this state but performs the services described in s. 473.3141(4), F.S., for a client having its home office in this state. The board shall define by rule what constitutes an office.

The bill provides that an applicant for licensure under this section must file an application for licensure with the Department and supply the information the board requires. An application must be made upon the affidavit of a sole proprietor, general partner, shareholder, or member who is a certified public accountant.

The bill amends s. 473.316, F.S., to clarify that the definition of "quality review" includes a "peer review," which is defined in s. 473.3125, F.S., as "the study, appraisal, or review by one or more independent certified public accountants of one or more aspects of the professional work of a licensee."

The bill amends s. 473.3125, F.S., to clarify the definition of a licensee as a licensed firm or public accounting firm as defined in s. 473.302(7), F.S., and engaged in the practice of public accounting as defined in s. 473.302(8)(a), F.S., that is required to be licensed under s. 473.3101, F.S.

The bill amends s. 473.322, F.S., to change references from "licensed audit firm" to "licensed firm."

B. SECTION DIRECTORY:

Section 1 amends s. 473.302, F.S., to clarify the definition of "licensed firm" and "public accounting firm."

Section 2 amends s. 473.309, F.S., to clarify practice requirements for partnerships, corporations, limited liability companies, and other business entities practicing public accounting.

Section 3 amends s. 473.3101, F.S., to clarify who must hold a license under this section.

Section 4 amends s. 473.316, F.S., to clarify that a "quality review" includes a "peer review."

Section 5 amends s. 473.3125, F.S., to clarify the definition of a licensee as a licensed firm or public accounting firm.

Section 6 amends s. 473.322, F.S., to change references from "licensed audit firm" to "licensed firm."

Section 7 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill has an insignificant negative fiscal impact on the Board of Accountancy within the Department of Business and Professional Regulation. The bill potentially reduces the number of accountancy firms subject to the licensing fee and those subject to fines imposed by the Board of Accountancy. The Department of Business and Professional Regulation estimates the projected revenue loss as a result of the bill between $36,127 and $47,094.[3]

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:

The bill directs the Board to define by rule what constitutes a CPA firm.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[3] Email from the Department of Business and Professional Regulation on file with the House Government Operation Appropriations Subcommittee (Mar. 6, 2015).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Government Operations Appropriations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Amends the definition of licensed firm or public accounting firm to mean a sole proprietor, partnership, corporation, limited liability company, firm, or other legal entity licensed under s. 473.3101, F.S.
- Clarifies when partnerships, corporations, limited liability companies, and other business entities may use the title "CPA Firm" or titles tending to indicate that it is a CPA firm.
- Amends s. 473.3101, F.S., to clarify who must hold a license under this section:
  - Any firm with an office in this state which performs services as defined in s. 473.302(8)(a), F.S.
  - Any firm with an office in this state which uses the title "CPA," "CPA firm," or any other title, designation, words, letters, abbreviations, or device tending to indicate that it is a CPA firm. The board shall define by rule what constitutes a CPA firm.
  - Any firm that does not have an office in this state but performs the services described in s. 473.3141(4), F.S., for a client having its home office in this state. The board shall define by rule what constitutes an office.
- Provides that an applicant for licensure under this section must file an application for licensure with the department and supply the information the board requires. An application must be made upon the affidavit of a sole proprietor, general partner, shareholder, or member who is a certified public accountant.
- Amends s. 473.3125, F.S., to clarify the definition of a licensee as a licensed firm or public accounting firm as defined in s. 473.302(7), F.S., and engaged in the practice of public accounting as defined in s. 473.302(8)(a), F.S., that is required to be licensed under s. 473.3101, F.S.
- Amends s. 473.322, F.S., to change references from "licensed audit firm" to "licensed firm."

This analysis is drafted to the committee substitute as passed by the Government Operations Appropriations Subcommittee.

A bill to be entitled

An act relating to public accountancy; amending s. 473.302, F.S.; revising the definition of the term "licensed audit firm"; amending s. 473.309, F.S.; revising practice requirements for partnerships, corporations, and limited liability companies; amending s. 473.3101, F.S.; revising provisions relating to the licensure of firms and public accounting firms; amending s. 473.316, F.S.; revising the definition of the term "quality review" to include a peer review; amending ss. 473.3125 and 473.322, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (7) of section 473.302, Florida Statutes, is amended to read:

473.302 Definitions.—As used in this chapter, the term:

(7) "Licensed ~~audit~~ firm" or "public accounting firm" means a sole proprietorship, partnership, corporation, limited liability company, firm, or any other legal entity ~~a firm~~ licensed under s. 473.3101.

However, these terms shall not include services provided by the American Institute of Certified Public Accountants or the

Florida Institute of Certified Public Accountants, or any full service association of certified public accounting firms whose plans of administration have been approved by the board, to their members or services performed by these entities in reviewing the services provided to the public by members of these entities.

Section 2. Section 473.309, Florida Statutes, is amended to read:

473.309 Practice requirements for partnerships, corporations, and limited liability companies; business entities practicing public accounting.—

(1) A partnership may not engage in the practice of public accounting, as defined in s. 473.302(8)(a), or meet the requirements of s. 473.3101(1)(b), unless:

(a) It is a form of partnership recognized by Florida law.

(b) Partners owning at least 51 percent of the financial interest and voting rights of the partnership are certified public accountants in some state. However, each partner who is a certified public accountant in another state and is domiciled in this state must be a certified public accountant of this state and hold an active license.

(c) At least one general partner is a certified public accountant of this state and holds an active license or, in the case of a firm that must have a license pursuant to s. 473.3101(1)(c) ~~473.3101(1)(a)2.~~, at least one general partner is a certified public accountant in some state and meets the

requirements of s. 473.3141(1) or (2) ~~473.3141(1)(a) or (b)~~.

(d) All partners who are not certified public accountants in any state are engaged in the business of the partnership as their principal occupation.

(e) It is in compliance with rules adopted by the board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance.

(f) It is currently licensed as required by s. 473.3101.

(2) A corporation may not engage in the practice of public accounting, as defined in s. 473.302(8)(a), or meet the requirements of s. 473.3101(1)(b), unless:

(a) It is a corporation duly organized in this or some other state.

(b) Shareholders of the corporation owning at least 51 percent of the financial interest and voting rights of the corporation are certified public accountants in some state and are principally engaged in the business of the corporation. However, each shareholder who is a certified public accountant in another state and is domiciled in this state must be a certified public accountant of this state and hold an active license.

(c) The principal officer of the corporation is a certified public accountant in some state.

(d) At least one shareholder of the corporation is a certified public accountant and holds an active license in this state or, in the case of a firm that must have a license

pursuant to s. 473.3101(1)(c) ~~473.3101(1)(a)2.~~, at least one shareholder is a certified public accountant in some state and meets the requirements of s. 473.3141(1) or (2) ~~473.3141(1)(a) or (b)~~.

(e) All shareholders who are not certified public accountants in any state are engaged in the business of the corporation as their principal occupation.

(f) It is in compliance with rules adopted by the board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance.

(g) It is currently licensed as required by s. 473.3101.

(3) A limited liability company may not engage in the practice of public accounting, as defined in s. 473.302(8)(a), or meet the requirements of s. 473.3101(1)(b), unless:

(a) It is a limited liability company duly organized in this or some other state.

(b) Members of the limited liability company owning at least 51 percent of the financial interest and voting rights of the company are certified public accountants in some state. However, each member who is a certified public accountant in some state and is domiciled in this state must be a certified public accountant of this state and hold an active license.

(c) At least one member of the limited liability company is a certified public accountant and holds an active license in this state or, in the case of a firm that must have a license pursuant to s. 473.3101(1)(c) ~~473.3101(1)(a)2.~~, at least one

member is a certified public accountant in some state and meets the requirements of s. 473.3141(1) or (2) ~~473.3141(1)(a) or (b)~~.

(d) All members who are not certified public accountants in any state are engaged in the business of the company as their principal occupation.

(e) It is in compliance with rules adopted by the board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance.

(f) It is currently licensed as required by s. 473.3101.

(4) A partnership, corporation, limited liability company, or any other firm is engaged in the practice of public accounting if its employees are engaged in the practice of public accounting. Notwithstanding any other provision of law, a licensed ~~audit~~ firm may own all or part of another licensed ~~audit~~ firm.

Section 3. Section 473.3101, Florida Statutes, is amended to read:

473.3101 Licensure of firms or public accounting firms ~~sole proprietors, partnerships, corporations, limited liability companies, and other legal entities~~.—

(1) The following must hold a license issued under this section: ~~Each sole proprietor, partnership, corporation, limited liability company, or any other firm seeking to engage in the practice of public accounting, as defined in s. 473.302(8)(a), in this state must file an application for licensure with the department and supply the information the board requires. An~~

~~application must be made upon the affidavit of a sole proprietor, general partner, shareholder, or member who is a certified public accountant.~~

(a) Any firm with an office in this state which performs services as defined in s. 473.302(8)(a); ~~The following must hold a license issued under this section:~~

(b)~~1.~~ Any firm with an office in this state which uses the title "CPA," "CPA firm," or any other title, designation, words, letters, abbreviations, or device tending to indicate that it is a CPA firm. The board shall define by rule what constitutes a CPA firm; or ~~the firm practices public accounting.~~

(c)~~2.~~ Any firm that does not have an office in this state but performs the services described in s. 473.3141(4) for a client having its home office in this state. The board shall define by rule what constitutes an office.

(2) An applicant for licensure under this section must file an application for licensure with the department and supply the information that the board requires. An application must be made upon the affidavit of a sole proprietor, general partner, shareholder, or member who is a certified public accountant.

(3)~~(b)~~ A firm that is not subject to the requirements of paragraph (1)(c) ~~subparagraph (a)2.~~ may perform other professional services while using the title "CPA," "CPA firm," or any other title, designation, words, letters, abbreviations, or device tending to indicate that the firm practices public accounting in this state without a license issued under this

section only if:

(a)~~1.~~ It performs such services through an individual with practice privileges granted under s. 473.3141; and

(b)~~2.~~ It can lawfully do so in the state where the individual with practice privileges has his or her principal place of business.

(4)~~(2)~~ The board shall determine whether the firm or public accounting ~~sole proprietor, partnership, corporation, limited liability company, or any other~~ firm meets the requirements for practice and, pending that determination, may certify to the department the firm or public accounting firm ~~partnership, corporation, or limited liability company~~ for provisional licensure.

(5)~~(3)~~ Each license must be renewed every 2 years. Each firm or public accounting ~~sole proprietor, partnership, corporation, limited liability company, or any other~~ firm licensed under this section must notify the department within 1 month after any change in the information contained in the application on which its license is based.

Section 4. Paragraph (d) of subsection (1) of section 473.316, Florida Statutes, is amended to read:

473.316 Communications between the accountant and client privileged.—

(1) For purposes of this section:

(d) A "quality review" is a study, appraisal, or review of one or more aspects of the professional work of an accountant in

the practice of public accountancy which is conducted by a professional organization for the purpose of evaluating quality assurance required by professional standards, including a quality assurance ~~or peer~~ review. The term includes a peer review as defined in s. 473.3125.

Section 5. Paragraph (a) of subsection (1) and subsection (4) of section 473.3125, Florida Statutes, are amended to read:

473.3125 Peer review.—

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

(a) "Licensee" means a licensed firm or public accounting ~~sole proprietor, partnership, corporation, limited liability company, or any other~~ firm as defined in s. 473.302(7) and engaged in the practice of public accounting as defined in s. 473.302(8)(a) that is required to be licensed under s. 473.3101.

(4) Effective January 1, 2015, a licensed firm or public accounting ~~sole proprietor, partnership, corporation, limited liability company, or other~~ firm as defined in s. 473.302(7) and licensed under s. 473.3101 and engaged in the practice of public accounting as defined in s. 473.302(8)(a), except for the performance of compilations and reviews as those terms are defined by the board, must be enrolled in a peer review program.

Section 6. Paragraph (c) of subsection (1) of section 473.322, Florida Statutes, is amended to read:

473.322 Prohibitions; penalties.—

(1) A person may not knowingly:

(c) Perform or offer to perform any services described in

s. 473.302(8)(a) unless such person holds an active license under this chapter and is a licensed ~~audit~~ firm, provides such services through a licensed ~~audit~~ firm, or complies with ss. 473.3101 and 473.3141. This paragraph does not prohibit the performance by persons other than certified public accountants of other services involving the use of accounting skills, including the preparation of tax returns and the preparation of financial statements without expression of opinion thereon;

Section 7. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 401 Public Lodging & Public Food Service Establishments
SPONSOR(S): Business & Professions Subcommittee; Magar
TIED BILLS: **IDEN./SIM. BILLS:** SB 558

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N, As CS	Gonzalez	Luczynski
2) Government Operations Appropriations Subcommittee	10 Y, 0 N	Topp	Topp
3) Regulatory Affairs Committee		Gonzalez	Hamon

SUMMARY ANALYSIS

The Division of Hotels and Restaurants ("Division") within the Department of Business and Professional Regulation ("Department"), enforces the provisions of chapter 509, F.S., and all other applicable laws relating to the license, inspection and regulation of public lodging establishments and public food service establishments.

Under current law, public food service establishments are inspected one to four times per year, based on a risk-based inspection frequency. Establishments' inspection frequency is determined annually. This bill enables the Division to reassess a public food service establishment's inspection frequency more than once annually.

Currently, the Department is required to provide each inspected establishment operator and event sponsor of proposed temporary food service events with the food-recovery brochure. The bill requires the Department only to notify the inspected establishment or temporary event sponsor of the food-recovery brochure.

Public food service establishments holding current licenses from the Division may operate at temporary food service events without obtaining a separate license only if the event is three days or less in duration. The bill allows public food service establishments holding current licenses to operate at all temporary food service events without a separate license, regardless of the duration of the event.

The bill allows the Division to deliver electronic copies of lodging and food service establishment inspection reports to operators. Also, the bill requires operators to make copies of inspection reports available to the Division at the time of inspection. Thus, according to the Department, the bill allows operators to maintain the inspection report in any format, including electronic, on the premises, so long as the inspection report can be readily retrieved upon public request or inspection by the Division.

The bill sets a flat rate delinquent license renewal fee of $50 for all license renewals within 60 days after expiration.

The bill has a negative fiscal impact to the State. The estimated reduction in annual revenue to the Department's Hotels and Restaurants Trust Fund (Trust Fund) is $461,420. However, the Department estimates that the fiscal year-end balance of the Trust Fund (including the impact of CS/HB 401) will maintain a surplus positive cash balance of: $13.9 million in FY 2015-16, $17.2 million in FY 2016-17, and $20.6 million in FY 2017-18.

This bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation - Public Food Service Establishment Inspections

The Division of Hotels and Restaurants ("Division") within the Department of Business and Professional Regulation ("Department"), is charged with enforcing the provisions of chapter 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. The Division licenses public food service establishments within the state, and is responsible for inspections and quality assurance.[1]

Public food service establishments do not include eating places maintained by schools for student and faculty use; eating places maintained by a church or religious organization, eating places on airplanes, trains, buses, or watercrafts; places certified or licensed by the Agency for Health Care Administration or the Department of Agriculture and Consumer Services; or movie theatre concession stands, and other places which serve beverages, popcorn, and other prepackaged food without additions or preparation.

The Division conducted 108,248 public food services inspections in fiscal year 2013-2014.[2]

In 2008, OPPAGA reviewed Florida's food safety programs and recommended that "the Legislature direct the agencies to adopt a consistent methodology for measuring performance and authorize DBPR to use a risk-based approach to target its resources to restaurants that pose the greatest threat to public health."[3] In a 2010 follow-up report, OPPAGA restated its recommendation and noted that "Risk-based inspection frequency models consider the risk posed by different types of facilities, and enable regulators to target limited resources to the highest risk facilities."[4]

Effective, January 1, 2013, the Division adopted provisions of the 2009 Food and Drug Administration ("FDA") Food Code, which establishes provisions for reducing risk factors known to cause or contribute to foodborne illness. The new risk designations for Food Code provisions establish a three-tiered system which replaces the designations of "critical" or "non-critical" violations. The new designations include "High Priority," "Intermediate," and "Basic."

Currently, public food service establishments are inspected between one to four times per year, based on a risk-based inspection frequency classification. Establishments' risk-based inspection frequency is determined annually based on the risk presented by the establishment's type of food and food preparation processes, type of service, and compliance history.

The classification guidelines for determining the minimum number of annual inspections are presented in the following table:[5]

---

[1] s. 509.032, F.S.
[2] Division of Hotels and Restaurants, Annual Report: FY 2013-2014, pg. 14.
[3] State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, OPPAGA Report No. 08-67, December 2008.
[4] State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, OPPAGA Report No. 10-44, December 2010.
[5] Rule 61C-1.002, F.A.C.

Classification	Public Food Service Establishment Classification Guidelines	Minimum Annual Inspections
Level 1	Establishments licensed as annual temporary public food service establishments or vending machines; or Establishments that: • Do not cook raw animal food; or • Cook raw animal food, but do not cool any cooked or heated foods.	1
Level 2	Establishments that: • Cook raw animal food and cool any cooked or heated foods; or • Conduct a special process as described in 3-502.11 or 3-502.12, Food Code, as adopted by reference in Rule 61C-1.001, F.A.C.; or • Serve a raw or undercooked animal food that requires a consumer advisory under 3-603.11, Food Code, as adopted by reference in Rule 61C-1.001, F.A.C. or Rule 61C-4.010, F.A.C.	2
Level 3	Establishments with a history of non-compliance resulting in three or more disciplinary Final Orders filed with the Agency Clerk within the previous two annual inspection cycles; or Establishments that serve a highly susceptible population as defined in the Food Code, as adopted by reference in Rule 61C-1.001, F.A.C.	3
Level 4	Establishments with a confirmed foodborne illness within the previous calendar year as reported by the Florida Department of Health.	4

Effect of the Bill

The bill enables the Division to reassess a public food service establishment's inspection frequency in real-time upon identifying a change in the risk level, rather than waiting for the next annual reassessment. Such risk-based frequency categories and minimum annual reassessment are designed to support the development of data to classify establishments within the correct frequency category in real-time based upon public health risk and to allow the Division to focus its resources on establishments that pose higher risks.

The bill does not change the Division's authority to perform inspections at such other times as the Division determines is necessary to ensure the public's health, safety, and welfare, as well as to investigate complaints.

Present Situation - Food-Recovery Brochure

The food-recovery brochure was developed pursuant to s. 595.420(7), F.S., for public information purposes. The brochure is required to be updated annually and details the need for food recovery programs, the benefit of food recovery programs, the manner in which organizations may become involved in food recovery programs, the protection afforded to such programs, and the food recovery entities or food banks that exist in the state.

In inspecting public food service establishments, the Department is required to provide each inspected establishment with the food-recovery brochure.[6] The Department is also required to provide the brochure along with other educational materials to event sponsors of proposed temporary food service events.[7]

[6] s. 509.032(2)(g), F.S.
[7] s. 509.032(3)(c)2., F.S.

The Florida Department of Agriculture and Consumer Services ("DACS") develops and prints the food-recovery brochure, but prints a limited number of copies and does not provide brochures to the Division for dissemination. The food-recovery brochure is available on the DACS website in a PDF format.

Effect of the Bill

The bill revises the duties with respect to distribution of the food-recovery brochure. Rather than requiring the Department to provide each inspected establishment or temporary food service event sponsor with the food-recovery brochure, the Department is only required to notify the inspected establishments and event sponsors of the brochure.

Present Situation - Temporary Food Service Events

The Division licenses and inspects public food service establishments and food vendors at temporary food service events, defined as "any event of 30 or fewer consecutive days in duration ... where food is prepared, served or sold to the general public."[8] In FY 2013-2014, the Division licensed and inspected 7,718 public food service establishments and food vendors at temporary food service events.

Public food service establishments and other food service vendors are required to obtain an individual or annual license from the Division for temporary food service events.[9] There are two types of individual event licenses for temporary food service events: 1-3 day event licenses at a cost of $91 and 4-30 day event licenses at a cost of $105, per event. A temporary food service event annual license, which entitles the licensee to participate in an unlimited number of food service events during the license period, can also be purchased for $456.[10]

Currently, public food service establishments holding current licenses from the Division may operate under the regulations of such a license at temporary food service events if the event is of three days or less in duration.[11] The licensees may operate at a temporary food service event without having to obtain a separate temporary food service event license, but are still subject to inspections at the event.

Effect of the Bill

The bill allows public food service establishments holding current licenses to operate at temporary food service events without a separate license, regardless of the duration of the temporary food service event. This bill does not change the definition of temporary food service event, which is limited to 30 days or fewer.

Present Situation - Public Food Service Establishment Inspection Reports

Notices served by the Division are required to be in writing and delivered personally to the operator of the public lodging establishment or public food service establishment.[12] If the operator of an establishment refuses to accept service or evades service or the agent is otherwise unable to effect service after due diligence, the Division may post such notice in a conspicuous place at the establishment.

[8] Rule 61C-1.001(31), F.A.C.
[9] s. 509.032(3), F.S
[10] Rule 61C-1.008, F.A.C.
[11] s. 509.032(3)(c)3.b., F.S.
[12] s. 509.091, F.S.

Division inspectors record inspection results electronically on personal digital assistants (PDAs) or manually on paper inspection forms. Inspection results are uploaded to DBPR's Single Licensing System and made available for public review on DBPR's website.

Public food service establishment and public lodging establishment operators are required to maintain the latest inspection report or a copy on the premises of the establishment.[13] Operators are required to make such reports or copies available to the public upon request.

Effect of the Bill

The bill provides the Division the option to deliver electronic inspection reports to licensees. The Division may continue to provide hard copies of inspection reports upon request of the licensee. The bill requires operators of establishments to make copies of inspection reports available to the Division at the time of inspection of the establishment.

Present Situation - Delinquent Fees for License Renewal of Public Lodging Establishments

Public food service establishments and public lodging establishments are required to renew their licenses annually.[14] If the license is not renewed by the expiration date, the licensee is assessed a delinquent fee.[15] The Division is required to adopt delinquent fees by rule. Statute prescribes a maximum late fee of $50 for licenses renewed within 30 days of the expiration date and a maximum of $100 for licenses renewed more than 30 days, but less than 60 days, after the expiration date.

Effect of the Bill

The bill reduces the license renewal fee for delinquent licenses by setting a flat rate of $50 instead of two separate rates. The maximum fee of $100 for licenses more than 30 days late is removed, and a flat rate of $50 is set for any late renewal from 1-60 days. Licensed expired more than 60 days will still be subject to an administrative complaint as prescribed in rule.

B. SECTION DIRECTORY:

Section 1: Amends s. 509.032, F.S., relating to inspections for licensed public food service establishments and the food-recovery brochure.

Section 2: Amends s. 509.091, F.S., relating to electronic lodging inspection reports and food service inspection reports.

Section 3: Amends s. 509.101, F.S., relating to copies of food service inspection reports to be maintained by operators of food service establishments.

Section 4: Amends s. 509.251, F.S., relating to delinquent fees for license renewal.

Section 5: Provides an effective date of July 1, 2015.

[13] s. 509.101, F.S.
[14] s. 509.241, F.S.
[15] s. 509.251, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will reduce the Department's annual revenue to the Hotels and Restaurants Trust Fund by approximately $461,420 per year. Section 1 reduces revenue by eliminating separate licenses for temporary food service events for licensed public food service establishments, which accounts for a reduction of $130,620. Section 4 reduces revenue by reducing the delinquent fee, from $100 to $50, for licenses expired 30-60 days, which accounts for a reduction of $330,880.

The Department's forecast of the Hotels and Restaurants Trust Fund with the revenue impact of HB 401 included for FY 2015-16 and thereafter:[16]

Hotels and Restaurants Trust Fund

	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
July 1 Beginning Fund Balance	10,006,359	13,202,787	13,983,727	17,277,993
Estimated Revenues	30,988,150	30,574,676	30,586,391	30,635,805
Estimated Expenditures	(27,791,722)	(29,793,737)	(27,292,124)	(27,293,528)
June 30 Year-End Balance	13,202,787	13,983,727	17,277,993	20,620,269

The Department estimates that the fiscal year-end balance of the Trust Fund (including the impact of CS/HB 401) will maintain a surplus positive cash balance of: $13.9 million in FY 2015-16, $17.2 million in FY 2016-17, and $20.6 million in FY 2017-18.

The reduction in revenue will reduce the Service Charge to General Revenue by approximately $36,914 annually.[17]

2. Expenditures:

Uncertain. The bill will reduce the Department's expenditures by reducing the amount of thermal paper used per year, by an unknown amount, as a result of electronic transmittal of inspection reports. A 1% reduction of thermal paper use would result in savings of $509.87, 5% reduction will lead to $2,549.34 in savings, 10% reduction will lead to $5,098.68 in savings, and 15% reduction will lead to $7,648.02 in savings.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

[16] Department of Business and Professional Regulation, Operating Account forecast of Hotels and Restaurants Trust Fund, emailed to staff of the Government Operations Appropriations Subcommittee, March 2, 2015.

[17] Department of Business and Professional Regulation, Operating Account forecast of Hotels and Restaurants Trust Fund, emailed to staff of the Government Operations Appropriations Subcommittee, March 2, 2015.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce expenditures for licensed public food service establishments that operate at temporary food service events by eliminating the cost of obtaining a separate license. Per establishment savings depend upon the type of license obtained, ranging from $105 per 4-30 day event to $456 for an annual license. Also, any establishment with a license expired more than 30 days would pay a reduced delinquent fee, saving $50 per establishment. Total private sector expenditure reductions would be equivalent to the Division's revenue reduction.

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:

The Division would be required to adopt procedures for electronic transmittal of the inspection reports and rules relating to how often the Division reassesses public food service establishment inspection frequencies. Also, the Division would need to amend the rules adopting the delinquent fee and disciplinary guidelines relating to operating on an expired license.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Performance Measures

Currently, the Division measures performance based on the percentage of statutorily required inspections completed each year. The Division may want to establish a performance measure that determines the effectiveness of the inspection process based on its ability to increase compliance with food service establishments.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2015, the Business & Professions Subcommittee adopted one amendment which amends the portion of the bill that removes the minimum and maximum inspections required per year. The bill preserves the current risk-based inspection frequency for public food service establishments requiring one to four inspections per establishment annually.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to public lodging and public food service establishments; amending s. 509.032, F.S.; revising the frequency at which the Division of Hotels and Restaurants of the Department of Business and Professional Regulation must reassess the inspection frequency of public food service establishments; revising the department's duties with respect to distribution of a specified food-recovery brochure; deleting a restriction on the length of time that a licensed public food service establishment may operate at a temporary food service event; amending s. 509.091, F.S.; authorizing the division to deliver lodging inspection reports and food service inspection reports electronically; amending s. 509.101, F.S.; requiring operators of public food service establishments to maintain copies of food service inspection reports and make them available to the division; amending s. 509.251, F.S.; revising certain delinquent fees for license renewal; providing an effective date.

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

Section 1. Paragraphs (a) and (g) of subsection (2) and paragraph (c) of subsection (3) of section 509.032, Florida

Statutes, are amended to read:

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

(a) The division has jurisdiction and is responsible for all inspections required by this chapter. The division is responsible for quality assurance. The division shall inspect each licensed public lodging establishment at least biannually, except for transient and nontransient apartments, which shall be inspected at least annually. Each establishment licensed by the division shall be inspected at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division shall~~, by no later than July 1, 2014,~~ adopt by rule a risk-based inspection frequency for each licensed public food service establishment. The rule must require at least one, but not more than four, routine inspections that must be performed annually, and may include guidelines that consider the inspection and compliance history of a public food service establishment, the type of food and food preparation, and the type of service. The division shall ~~annually~~ reassess the inspection frequency of all licensed public food service establishments at least annually. Public lodging units classified as vacation rentals or timeshare projects are not subject to this requirement but shall be made available to the division upon request. If, during the inspection of a public lodging establishment classified for renting to transient or nontransient tenants, an inspector

identifies vulnerable adults who appear to be victims of neglect, as defined in s. 415.102, or, in the case of a building that is not equipped with automatic sprinkler systems, tenants or clients who may be unable to self-preserve in an emergency, the division shall convene meetings with the following agencies as appropriate to the individual situation: the Department of Health, the Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants and clients, and other relevant organizations, to develop a plan that improves the prospects for safety of affected residents and, if necessary, identifies alternative living arrangements such as facilities licensed under part II of chapter 400 or under chapter 429.

(g) In inspecting public food service establishments, the department shall notify ~~provide~~ each inspected establishment of the availability of ~~with~~ the food-recovery brochure developed under s. 595.420.

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in

the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors and notify the event sponsors of the availability of~~, including~~ the food-recovery brochure developed under s. 595.420.

3.a. A public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of

such a license at temporary food service events ~~of 3 days or less in duration~~.

Section 2. Section 509.091, Florida Statutes, is amended to read:

509.091 Notices; form and service.—

(1) Each notice served by the division pursuant to this chapter must be in writing and must be delivered personally by an agent of the division or by registered letter to the operator of the public lodging establishment or public food service establishment. If the operator refuses to accept service or evades service or the agent is otherwise unable to effect service after due diligence, the division may post such notice in a conspicuous place at the establishment.

(2) Notwithstanding subsection (1), the division may deliver lodging inspection reports and food service inspection reports to the operator of the public lodging establishment or public food service establishment by electronic means.

Section 3. Subsection (1) of section 509.101, Florida Statutes, is amended to read:

509.101 Establishment rules; posting of notice; food service inspection report; maintenance of guest register; mobile food dispensing vehicle registry.—

(1) Any operator of a public lodging establishment or a public food service establishment may establish reasonable rules and regulations for the management of the establishment and its guests and employees; and each guest or employee staying,

sojourning, eating, or employed in the establishment shall conform to and abide by such rules and regulations so long as the guest or employee remains in or at the establishment. Such rules and regulations shall be deemed to be a special contract between the operator and each guest or employee using the services or facilities of the operator. Such rules and regulations shall control the liabilities, responsibilities, and obligations of all parties. Any rules or regulations established pursuant to this section shall be printed in the English language and posted in a prominent place within such public lodging establishment or public food service establishment. In addition, any operator of a public food service establishment shall maintain a copy of the latest food service inspection report ~~or a duplicate copy on premises~~ and shall make it available to the division at the time of any division inspection of the establishment and to the public, upon request.

Section 4. Subsections (1) and (2) of section 509.251, Florida Statutes, are amended to read:

509.251 License fees.—

(1) The division shall adopt, by rule, a schedule of fees to be paid by each public lodging establishment as a prerequisite to issuance or renewal of a license. Such fees shall be based on the number of rental units in the establishment. The aggregate fee per establishment charged any public lodging establishment may ~~shall~~ not exceed $1,000; however, the fees described in paragraphs (a) and (b) may not be

included as part of the aggregate fee subject to this cap. Vacation rental units or timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application, and the division shall charge a license fee as if all units in the application are in a single licensed establishment. The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months before ~~prior to~~ the next such renewal period and one-half of the fee if application is made 6 months or less before ~~prior to~~ such period. The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302, which are payable in full for each application regardless of when the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division ~~within 30 days~~ after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law. ~~A license renewal filed with the division more than 30 but not more than 60 days after the expiration date shall be accompanied~~

~~by a delinquent fee as prescribed by rule, not to exceed $100, in addition to the renewal fee and any other fees required by law.~~

(2) The division shall adopt, by rule, a schedule of fees to be paid by each public food service establishment as a prerequisite to issuance or renewal of a license. The fee schedule shall prescribe a basic fee and additional fees based on seating capacity and services offered. The aggregate fee per establishment charged any public food service establishment may not exceed $400; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months before ~~prior to~~ the next such renewal period and one-half of the fee if application is made 6 months or less before ~~prior to~~ such period. The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302, which are payable in full for each application regardless of when the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division ~~within 30 days~~ after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law. ~~A license renewal filed with the division more than 30 but not more than 60 days after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $100, in addition to the renewal fee and any other fees required by law.~~

Section 5. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 557 Florida Insurance Guaranty Association
SPONSOR(S): Insurance & Banking Subcommittee; Raburn
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 836

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Peterson	Cooper
2) Finance & Tax Committee	16 Y, 0 N	Pewitt	Langston
3) Regulatory Affairs Committee		Peterson KP	Hamon K.W.H.

SUMMARY ANALYSIS

The bill revises the process for insurers to pay and recoup Florida Insurance Guaranty Association (FIGA) assessments. FIGA is the guaranty association for property and casualty insurance. If FIGA lacks adequate funds to pay claims of an insolvent insurer, it can levy an assessment on other member insurers. Under current law, insurers must pay regular assessments within 30 days of the levy, although FIGA, at its discretion, may authorize emergency assessments to be paid in monthly installments. Once the assessment is paid to FIGA, the insurance company may begin to recoup the payment from policyholders at policy issuance or renewal. The amount of an insurance company's assessment is determined based on its premiums written in the calendar year preceding the assessment, regardless of the value of premiums in effect at the time recoupment occurs. Thus, if an insurance company's book of business decreases during that period, it may need to apply and collect the recoupment factor for more than 12 months to recoup the full amount of an assessment paid. Insurance companies that did not write the type of insurance affected by the assessment in the prior year are not subject to the assessment.

The bill revises the assessment and collection procedure to:

- Create a uniform assessment percentage to be collected from all policyholders.
- Authorize FIGA to require payment of assessments by advance payment, prior to an insurer's recoupment of payment from a policyholder; monthly installment; or a combination of both.
- Require an insurer who did not write the affected line of insurance in the preceding year to pay an assessment based on an estimate of premiums it will write in the assessment year.
- Require an insurer to submit a reconciliation report that reflects actual collections as compared to the initial payment.
- Provide for payment of excess collections to FIGA.
- Provide for credits to an insurer against future assessments for collections that are less than an insurer's payment.
- Exempt regular assessments from insurance premiums tax.

The bill allows insurers to recognize FIGA assessments that are subject to recoupment as an admissible asset, thereby codifying current practice of the Office of Insurance Regulation.

Because regular assessments occur on an irregular basis, the Revenue Estimating Conference estimated the bill has a negative indeterminate impact on state general revenues.

The bill has a July 1, 2015 effective date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Insurance Guaranty Association (FIGA)

Current Situation

Part II of chapter 631, F.S., governs the operations of the Florida Insurance Guaranty Association (FIGA). FIGA is a nonprofit corporation that was created to pay covered claims,[1] including unearned premiums,[2] to policyholders of insolvent property and casualty insurers. Current law requires property and casualty insurance companies doing business in Florida to be a member of FIGA as a condition of their authority to transact insurance.[3] When a property and casualty insurance company becomes insolvent, FIGA assumes the claims of the insurer and pays the claims of its policyholders, which include claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others. This ensures that policyholders who have paid premiums for insurance are not left with valid, yet unpaid claims. Generally, the maximum claim amount FIGA will cover is $300,000, but certain special limits may apply.[4]

In order to pay claims and to maintain the operations of an insolvent insurer, FIGA has several potential funding sources. FIGA's primary funding source is from the liquidation of assets of insolvent insurance companies domiciled in Florida.[5] In addition, FIGA obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida.

In the event the insolvent insurer's assets are insufficient to pay all claims, FIGA can issue two types of post-insolvency assessments against property and casualty insurance companies to raise funds to pay claims. FIGA is divided into two accounts: the auto liability and auto physical damage account; and the account for all other included insurance lines (the all-other account).[6] FIGA may levy an assessment for either of its two accounts of up to 2% of an insurer's net direct written premium[7] in Florida, in the preceding calendar year, for insurance within the account.[8] This assessment is known as the "regular assessment." The second type of assessment is an emergency assessment, which may only be used to pay covered claims of an insurer that is rendered insolvent due to a hurricane. The emergency assessment is also capped at 2% of an insurer's net direct written premium in Florida in the preceding calendar year.[9] The Office of Insurance Regulation (OIR) may exempt an insurer from an assessment if the assessment would cause the insurer's financial statement to reflect an amount of capital or surplus that is less than the minimum required to transact business.[10]

---

[1] Section 631.54(3), F.S., provides, in relevant part: "Covered claim" means an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy to which this part applies, issued by an insurer, if such insurer becomes an insolvent insurer and the claimant is a resident of this state at the time of the insured event or the property from which the claim arises is permanently located in this state.

[2] The portion of a premium already received by the insurer under which protection has not yet been provided. The entire premium is not earned until the policy period expires, even though premiums are typically paid in advance. INSURANCE INFORMATION INSTITUTE, *Glossary*, http://www.iii.org/services/glossary/u? (last visited Feb. 17, 2015).

[3] s. 631.55(1), F.S.

[4] s. 631.57(1)(a), F.S. For damages to structure and contents in homeowners' claims, FIGA covers an additional $200,000, for a total of $500,000. For condominium and homeowners' association claims, FIGA covers the lesser of policy limits or $100,000 multiplied by the number of units in the association.

[5] Typically, insurers are placed into liquidation when the company is insolvent. The goal of liquidation is to dissolve the insurance company. *See s.* 631.061, F.S., for the grounds for liquidation.

[6] s. 631.55(2), F.S.

[7] "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this part applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers. s. 631.54(8), F.S.

[8] s. 631.57(3)(a), F.S.

[9] s. 631.57(3)(e), F.S.

[10] s. 631.57(4), F.S.

FIGA last levied a regular assessment in November 2012 with payment due from insurers by December 31, 2012. This assessment amount was 0.9% of an insurer's net direct written premiums for 2011 for insurance written in the all-other account. The last emergency assessment FIGA levied was in 2006 and was for the full 2%.[11]

The procedure used by FIGA to levy an assessment and the procedure used by insurers to recoup the assessment are generally the same for both regular and emergency assessments, as follows:[12]

- FIGA's board determines an assessment is needed to pay claims or administration costs, or to pay bonds issued by FIGA.
- FIGA certifies the need for an assessment levy to the OIR.
- The OIR reviews the certification and, if it is sufficient, issues an order to all insurance companies subject to the assessment instructing the companies to pay their assessment to FIGA.
- Regular assessments must be paid by the insurance company within 30 days of the levy. Emergency assessments may be paid either in one payment or in 12 monthly installments, at the option of FIGA, with the first payment due at the end of the month after the assessment is levied.
- If an insurer intends to recoup the assessment from policyholders, it must make a rate filing with the OIR. The filing reflects the rate factor the insurer determines will recoup the assessment when applied over the next 12 months, unless the insurer opts to recoup the assessment over a longer period, as policies are issued or renewed.[13] If an insurer's book of business declines during the recoupment period, the assessment factor may be insufficient to recoup the total amount of assessment paid to FIGA. In those circumstances, the insurance company may continue to collect the assessment from policyholders beyond 12 months, until the assessment is recouped in full.
- If the insurer collects more than the assessment it paid, the insurer either remits the excess to FIGA (if the excess amount is 15 percent or less than the total assessment paid by the insurer) or refunds it to policyholders (if the excess amount exceeds 15 percent of the total assessment paid).

Effect of the Bill

The bill revises the process for insurers to remit regular and emergency assessments to FIGA, as follows.

The bill requires the OIR to specify in the order levying the assessment the percentage to be collected uniformly from all assessable policyholders and the start of the assessment year. The bill defines "assessment year" as a 12-month period that may start on the first day of a calendar quarter. The initial collection start date must be at least 90 days after the FIGA board certifies the need for an assessment.

An insurer that wrote insurance in the preceding calendar year must submit an initial payment to FIGA based on the insurer's net direct written premiums of the prior year multiplied by the uniform percentage. An insurer that did not write in the prior calendar year must submit an initial payment based on a good faith estimate of premiums it will write during the assessment year multiplied by the uniform percentage. In both cases, the initial payment is due from the insurer before the beginning of the assessment year on or before the date specified in the order.

The bill eliminates the informational filing with the OIR currently required to recoup the FIGA assessment from policyholders. Instead, the bill requires that within 45 days after the end of the assessment year, an insurer must submit a reconciliation report that reflects actual collections as

[11] FLORIDA INSURANCE GUARANTY ASSOCIATION, *Assessments*, http://www.figafacts.com/assessments (last visited Feb. 17, 2015).
[12] s. 631.57(3), F.S.
[13] *See also* OFFICE OF INSURANCE REGULATION, *Frequently Asked Questions for FIGA Recoupment Filings*, available at http://www.figafacts.com/media/files/FAQs%20OIR-FIGA%20Assessment.pdf (last visited Feb. 17, 2015).

compared to the initial payment. If an insurer collects more than its initial payment to FIGA, the insurer remits the excess amount to FIGA. If an insurer collects less than its initial payment to FIGA, FIGA credits the amount to the insurer against future assessments. Consumers will pay a uniform percentage of premium, however, the amount will vary depending on the premium charged.

If FIGA's cash flow is sufficient—adequate to pay claims for the next 6 months—FIGA may authorize insurers to collect an assessment monthly. This option differs from the monthly payment option for emergency assessments currently in statute in that it would not require an insurer to advance funds to FIGA. Instead, an insurer would only pay FIGA the insurer's actual collections from policyholders, which would be the uniform percentage multiplied by the net direct written premiums during the assessment year. FIGA may also utilize the monthly installment method in combination with the method requiring insurers to make an initial payment to FIGA and subsequently recoup that payment from policyholders.

The bill expands current law that defines when the OIR may exempt an insurer from an assessment. Today, an insurer may be exempted if the assessment would result in the insurer's financial statement reflecting an amount of capital or surplus less than the sum required by any jurisdiction in which the insurer is authorized to transact insurance.[14] The bill broadens this authority to allow the OIR not just to exempt, but also to temporarily defer an assessment, and expands the basis for either a deferral or an exemption to include a finding that the insurer is impaired or insolvent.

The bill requires charges or recoupments for FIGA assessments to be delineated separately from premium in the policyholder's insurance bill and does not allow insurers to include FIGA assessments in rates.

Accounting for FIGA Assessments

Current Situation

Most insurers authorized to do business in the U.S. and its territories are required to prepare statutory financial statements to their state insurance regulators in accordance with statutory accounting principles (SAP),[15] which differ from generally acceptable accounting principles (GAAP) in a number of ways. While GAAP provides information useful to investors and other users of financial reporting (such as banks, credit rating agencies, and the U.S. Securities & Exchange Commission), SAP is developed in accordance with the concepts of consistency, recognition and conservatism, and assists state insurance departments with the regulation of the solvency of insurance companies. The ultimate objective of solvency regulation is to ensure that policyholder, contract holder and other legal obligations are met when they come due and that companies maintain capital and surplus at all times and in such forms as required by statute to provide a margin of safety. With the objective of solvency regulation, SAP focuses on the balance sheet, rather than the income statement, and emphasizes insurers' liquidity.[16]

Under both GAAP and SAP, an insurer recognizes a liability when a FIGA assessment is imposed (which reduces the insurer's surplus and net worth). However, a timing difference exists between the two principles for the recognition of an asset relating to the future recoveries of policy surcharges:

- GAAP does not treat the assessments recoverable from future premium writings as an asset, and thus results in an immediate reduction in equity and earnings in the period a FIGA assessment is billed. However, the equity reduction is eliminated the following year as the assessments are recouped from policyholders.
- On the other hand, SAP allows insurers to recognize the assessment amount likely to be recovered from future premium surcharges as an asset, which in turn offsets or eliminates the

[14] s. 631.57(4), F.S.

[15] The OIR requires insurers to file annual SAP statements and independently audited financial reports. (s. 624.424, F.S.)

[16] NAIC & CENTER FOR INSURANCE POLICY AND RESEARCH, *Statutory Accounting Principles*, http://www.naic.org/cipr_topics/topic_statutory_accounting_principles.htm (last visited Feb. 17, 2015). Section 625.01115, F.S., provides that "statutory accounting principles" means accounting principles as defined in the National Association of Insurance Commissioners Accounting Practices and Procedures Manual as of March 2002 and subsequent amendments thereto if the amendments remains substantially consistent.

negative effect on statutory surplus, subject to certain conditions. SAP does not permit an asset to be recognized if the assessment is to be recovered from future rate structures, and limits asset recognition for accrued assessment liabilities to the extent that amount to be recovered is from in-force premiums only.[17]

Effect of the Bill

The bill provides that a FIGA assessment that is paid by an insurer under subparagraph (f)1., which is the procedure requiring a lump-sum payment from insurers before the assessment year begins, are paid *before* policy surcharges are collected and results in a receivable for surcharges that will be collected in the future. The amount is an admissible asset[18] under SAP, to the extent the receivable is likely to be realized. This codifies a practice of the OIR,[19] and eliminates the negative effect FIGA assessments have on statutory surplus. The bill requires the insurer to establish and record the asset separately from the liability and to reduce the amount recorded if it cannot be fully recouped because of a reduction in writings or withdrawal from the market.

For assessments that are paid *after* policy surcharges are collected, pursuant to the monthly installment option created by the bill, recognition of assets is based on actual premium written offset by the obligation to FIGA.

Insurance Premium Tax

Current Situation

Florida requires insurance companies to pay tax on:[20]

- Insurance premiums;
- Premiums for title insurance;
- Assessments, including membership fees, policy fees, and gross deposits received from subscribers to reciprocal or interinsurance agreements; and
- Annuity premiums or considerations.

Florida applies the premium tax to premiums written in Florida at the following rates:[21]

- Gross property and casualty premiums, less reinsurance and returned premiums; life premiums; accident and health premiums; and prepaid limited health premiums, 1.75 percent.
- Commercial self-insurance; group self-insurance; medical malpractice self-insurance; and assessable mutual insurance, 1.6 percent.
- Annuities, 1 percent.

The law authorizes numerous insurance premium tax credits and deductions that allow insurance companies to reduce their premium tax liability.[22] The state distributes revenue from the insurance premium tax to the General Revenue Fund.[23]

---

[17] Statements of Statutory Accounting Principles, No. 35R, Guaranty Fund and Other Assessments (SSAP 35R); *see also* Thomas Howell Ferguson, P.A., *Accounting Implications of Proposed Statutory Changes for FIGA Assessments*, Jan. 2, 2013 (on file with the House Insurance and Banking Subcommittee).

[18] NAIC Statement of Statutory Accounting Principles No. 4.

[19] OFFICE OF INSURANCE REGULATION, Supplemental Memorandum to Information Memorandum OIR-06-023M (Dec. 1, 2006). http://www.floir.com/siteDocuments/SupplementalMemo.pdf (last visited Feb. 18, 2015).

[20] s. 624.509(1), F.S.

[21] ss. 624.46226, 624.4625, 624.475, 624.509(1), and 627.357, F.S.; *see also* FLORIDA REVENUE ESTIMATING CONFERENCE, 2014 Florida Tax Handbook, *available at* http://www.edr.state.fl.us/Content/revenues/reports/tax-handbook/index.cfm (last visited Feb. 18, 2015).

[22] Credit for payments to the Municipal Firefighters' Pension Fund (s. 175.141, F.S.) and Municipal Police Officers' Retirement Fund (s. 185.12, F.S.); Corporate Income Tax Credit (s. 624.509(4), F.S.); Florida Employees' Salary Credit (s. 624.509(5), F.S.); New Markets Tax Credit (s. 288.9916, F.S.);Capital Investment Tax Credit (s. 220.191, F.S.); Community Contribution Tax Credit (s. 624.5105, F.S.); Child Care Tax Credit (s. 624.5107, F.S.); Credit for Contributions to Scholarship-Funding Organizations (s. 624.51055, F.S.); Credit for Workers' Compensation Assessments (440.51, F.S.); and Credit for Florida Life and Health Insurance Guaranty Association Assessments (s. 631.72, F.S.).

[23] s. 624.509(3), F.S.

Regular assessments levied by FIGA for insolvencies occurring on or after July 1, 2010 are considered premium for premium tax purposes and thus subject to the premium tax.[24] Emergency assessments levied by FIGA, however, are exempt.[25]

Effect of the Bill

The bill repeals current law subjecting FIGA regular assessments to the premium tax. Thus, regular assessments will be treated like emergency assessments and exempt from the premium tax.

B. SECTION DIRECTORY:

Section 1: Amends s. 631.54, F.S., relating to definitions.

Section 2: Amends s. 631.57, F.S., relating to powers and duties of FIGA.

Section 3: Amends s. 631.64, F.S., relating to recognition of assessments in rates.

Section 4: Amends s. 627.727, F.S., relating to motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection, to conform a cross reference.

Section 5: Amends s. 631.55, F.S., relating to creation of the association, to conform a cross reference.

Section 6: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference met on February 26, 2015 and estimated that this bill will have a negative indeterminate impact on state general revenues as a result of the bill exempting FIGA regular assessments from insurance premiums tax. The impact is indeterminate because the size and frequency of future regular assessments is unknown.

It is not clear how the new collection procedure may affect FIGA cash flow or its ability to project the amount of an assessment that may be necessary to meet its statutory obligations. Today, the amount of an assessment is fixed at the time it is levied and FIGA can budget based on that amount, subject to any exemptions that may be granted. The bill still provides for advance payments based on the prior year's net direct written premiums, but it creates a reconciliation process that would have insurers pay all excess amounts to FIGA and have FIGA credit insurers any shortfalls in collections against future assessments. Further, the bill extends an assessment to insurers who did not write the affected line of insurance in the preceding year, which will result in collections from policyholders which were not factored into the assessment percentage. Thus, the value of the assessment is not fixed until after collections are recouped from policyholders.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

[24] s. 631.57(3)(g), F.S.
[25] s. 631.57(3)(e)1.e., F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under current law, the assessment levied is based on an insurer's premiums in the calendar year preceding the assessment and the total value of the assessment is fixed at the time it is paid. The insurer recoups the amount from its policyholders by applying a separate recoupment factor, which the insurer selects based on the probability that it will recoup the amount paid. If an insurer writes less in the current year than the prior year, it will have to recoup the full amount from fewer policyholders. If an insurer collects more than it paid, the excess is either paid to FIGA or refunded to policyholders, depending on the amount of the excess. An insurer that did not write the type of insurance subject to the assessment in the prior year, but is currently writing it, is not subject to the assessment. Thus, its policyholders do not pay toward the assessment at all.

The bill establishes a uniform assessment percentage that is to be recouped from all policyholders and extends an assessment to insurers who did not write in the calendar year preceding the assessment. This means that policyholders will all pay the same percentage toward the assessment regardless of any changes in market conditions, for example, if the insurer's market share or rates increase or decrease. The insurer has no discretion to adjust the percentage. If the amount collected (paid by policyholders) is higher than the amount needed to offset the assessment, the excess would be paid to FIGA. The bill does not authorize a refund to policyholders.

The bill's clarification of statutory accounting for FIGA assessments should mitigate the impact of assessments on an insurer's financial statement.

D. FISCAL COMMENTS:

None.

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 an 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 a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2015, the Insurance & Banking Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed one of two deadlines for filing the

reconciliation report which conflicted with each other. The remaining deadline is 90 days after the end of the assessment year.

The staff analysis is drafted to reflect the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to the Florida Insurance Guaranty Association; amending s. 631.54, F.S.; defining the term "assessment year"; amending s. 631.57, F.S.; revising provisions relating to the levy of assessments on insurers by the Florida Insurance Guaranty Association; specifying conditions under which such assessments are paid; revising procedures and timeframes for the levying of the assessments; revising provisions relating to assessments that are premium and not subject to the premium tax; limiting an insurer's liability for uncollectible emergency assessments; deleting the requirement to file a final accounting report documenting the recoupment; revising an exemption for assessments; amending s. 631.64, F.S.; requiring charges or recoupments to be displayed separately on premium statements to policyholders and prohibiting their inclusion in rates; amending ss. 627.727 and 631.55, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (2) through (9) of section 631.54, Florida Statutes, are renumbered as subsections (3) through (10), respectively, and a new subsection (2) is added to that

section to read:

631.54 Definitions.—As used in this part:

(2) "Assessment year" means the 12-month period, which may begin on the first day of any calendar quarter, whether January 1, April 1, July 1, or October 1, as specified in an order issued by the office directing insurers to pay an assessment to the association.

Section 2. Subsections (3) and (4) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(3)(a) To the extent necessary to secure ~~the~~ funds for the respective accounts for the payment of covered claims, to pay the reasonable costs to administer such accounts ~~the same~~, and ~~to the extent necessary~~ to secure ~~the~~ funds for the account specified in s. 631.55(2)(b) or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of ~~any~~ reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy assessments, in accordance with subparagraphs (f)1. or 2., initially estimated in the proportion that each insurer's net direct written premiums in this state in the classes protected by the account bears to the total of said net direct written premiums received in this state by all such

insurers for the preceding calendar year for the kinds of insurance included within such account. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan and paragraph (f). Each insurer so assessed shall have at least 30 days' written notice as to the date the initial assessment payment is due and payable. Every assessment shall be ~~made as~~ a uniform percentage ~~applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made~~. The assessments levied against any insurer may ~~shall~~ not exceed in any one calendar year more than 2 percent of that insurer's net direct written premiums in this state for the kinds of insurance included within such account ~~during the calendar year next preceding the date of such assessments~~.

(b) If sufficient funds from such assessments, together with funds previously raised, are not available in any one year in the respective account to make all the payments or reimbursements then owing to insurers, the funds available shall be prorated and the unpaid portion ~~shall be~~ paid as soon ~~thereafter~~ as funds become available.

(c) The Legislature finds and declares that all assessments paid by an insurer or insurer group as a result of a levy by the office, including assessments levied pursuant to paragraph (a) and emergency assessments levied pursuant to paragraph (e), constitute advances of funds from the insurer to

the association. An insurer may fully recoup such advances by applying the uniform assessment percentage levied by the office to all ~~a separate recoupment factor to the premium of~~ policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group as set forth in paragraph (f).

1. Assessments levied under subparagraph (f)1. are paid before policy surcharges are collected and result in a receivable for policy surcharges collected in the future. This amount, to the extent it is likely that it will be realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4. The asset shall be established and recorded separately from the liability regardless of whether it is based on a retrospective or prospective premium-based assessment. If an insurer is unable to fully recoup the amount of the assessment because of a reduction in writings or withdrawal from the market, the amount recorded as an asset shall be reduced to the amount reasonably expected to be recouped.

2. Assessments levied under subparagraph (f)2. are paid after policy surcharges are collected so that the recognition of assets is based on actual premium written offset by the obligation to the association.

(d) ~~No~~ State funds may not ~~of any kind shall~~ be allocated or paid to the ~~said~~ association or any of its accounts.

(e)1.~~a.~~ In addition to assessments ~~otherwise~~ authorized in paragraph (a), and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(b) for the direct payment of covered claims of insurers rendered insolvent by the effects of a hurricane and to pay the reasonable costs to administer such claims, or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy emergency assessments upon insurers holding a certificate of authority. The emergency assessments levied against ~~payable under this paragraph by~~ any insurer may ~~shall~~ not exceed in any one calendar ~~single~~ year more than 2 percent of that insurer's net ~~direct~~ written premiums~~, net of refunds,~~ in this state ~~during the preceding calendar year~~ for the kinds of insurance within the account specified in s. 631.55(2)(b).

2.~~b.~~ ~~Any~~ Emergency assessments authorized under this paragraph shall be levied by the office upon insurers in accordance with subparagraph (f) ~~referred to in sub-subparagraph a.~~, upon certification as to the need for such assessments by the board of directors. If ~~In the event~~ the board ~~of directors~~ participates in the issuance of bonds in accordance with s. 631.695, emergency assessments shall be levied in each year that

bonds issued under s. 631.695 and secured by such emergency assessments are outstanding~~,~~ in ~~such~~ amounts up to such 2-percent limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of issuance of, such bonds. The emergency assessments ~~provided for in this paragraph~~ are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the holders of such bonds~~,~~ in order ~~to enable such municipality, county, or legal entity~~ to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without ~~the necessity of any~~ further action by the association, the office, or any other party. If ~~To the extent~~ bonds are issued under s. 631.695 and the association determines to secure such bonds by a pledge of revenues received from the emergency assessments, such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for such bonds.

3.~~c.~~ Emergency assessments used to defease bonds issued under this part ~~paragraph~~ may be payable in a single payment or,

at the option of the association, may be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due by ~~not later than~~ the end of each succeeding month.

4.~~d.~~ If emergency assessments are imposed, the report required by s. 631.695(7) must ~~shall~~ include an analysis of the revenues generated from the emergency assessments imposed under this paragraph.

5.~~e.~~ If emergency assessments are imposed, the references in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to assessments levied under paragraph (a) must ~~shall~~ include emergency assessments imposed under this paragraph.

6.~~2.~~ If the board of directors participates in the issuance of bonds in accordance with s. 631.695, an annual assessment under this paragraph shall continue while the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of such bonds.

~~3. Emergency assessments under this paragraph are not premium and are not subject to the premium tax, to any fees, or to any commissions. An insurer is liable for all emergency assessments that the insurer collects and shall treat the failure of an insured to pay an emergency assessment as a~~

~~failure to pay the premium. An insurer is not liable for uncollectible emergency assessments.~~

(f) ~~The recoupment factor applied to policies in accordance with paragraph (c) shall be selected by the insurer or insurer group so as to provide for the probable recoupment of both assessments levied pursuant to paragraph (a) and emergency assessments over a period of 12 months, unless the insurer or insurer group, at its option, elects to recoup the assessment over a longer period. The recoupment factor shall apply to all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group issued or renewed during a 12-month period. If the insurer or insurer group does not collect the full amount of the assessment during one 12-month period, the insurer or insurer group may apply recalculated recoupment factors to policies issued or renewed during one or more succeeding 12-month periods. If, at the end of a 12-month period, the insurer or insurer group has collected from the combined kinds or lines of policies subject to assessment more than the total amount of the assessment paid by the insurer or insurer group, the excess amount shall be disbursed as follows:~~

1. The association, office, and insurers remitting emergency assessments pursuant to paragraph (a) or paragraph (e) must comply with the following:

a. In the order levying an assessment, the office shall specify the actual percentage amount to be collected uniformly

from all the policyholders of insurers subject to the assessment and the date on which the assessment year begins, which may not begin before 90 days after the association board certifies such an assessment.

b. Insurers shall make an initial payment to the association before the beginning of the assessment year on or before the date specified in the order of the office.

c. Insurers that have written insurance in the calendar year before the year in which the assessment is certified by the board shall make an initial payment based on the net direct written premium amount from the previous calendar year as set forth in the insurers annual statement, multiplied by the uniform percentage of premium specified in the order issued by the office. Insurers that have not written insurance in the previous calendar year in any of the lines under the account which are being assessed, but which are writing insurance as of, or after, the date the board certifies the assessment to the office, shall pay an amount based on a good faith estimate of the amount of net direct written premium anticipated to be written in the subject lines of business for the assessment year, multiplied by the uniform percentage of premium specified in the order issued by the office.

d. Insurers shall file a reconciliation report with the association which indicates the amount of the initial payment to the association before the assessment year, whether such amount was based on net direct written premium contained in a previous

calendar year annual statement or a good faith projection, the amount actually collected during the assessment year, and such other information contained on a form adopted by the association and provided to the insurers in advance. If the insurer collected from policyholders more than the amount initially paid, the insurer shall pay the excess amount to the association. If the insurer collected from policyholders an amount which is less than the amount initially paid to the association, the association shall credit the insurer that amount against future assessments. Such payment reconciliation report, and any payment of excess amounts collected from policyholders, shall be completed and remitted to the association within 90 days after the end of the assessment year. The association shall send a final reconciliation report on all insurers to the office within 120 days after each assessment year.

e. Insurers remitting reconciliation reports under this paragraph to the association are subject to s. 626.9541(1)(e). ~~If the excess amount does not exceed 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be remitted to the association within 60 days after the end of the 12-month period in which the excess recoupment charges were collected.~~

2. For assessments required under paragraph (a) or paragraph (e), the association may use a monthly installment method instead of the method described in sub-subparagraphs 1.b.

and c. or in combination thereof based on the association's projected cash flow. If the association projects that it has cash on hand for the payment of anticipated claims in the applicable account for at least 6 months, the board may make an estimate of the assessment needed and may recommend to the office the assessment percentage that may be collected as a monthly assessment. The office may, in the order levying the assessment on insurers, specify that the assessment is due and payable monthly as the funds are collected from insureds throughout the assessment year, in which case the assessment shall be a uniform percentage of premium collected during the assessment year and shall be collected from all policyholders with policies in the classes protected by the account. All insurers shall collect the assessment without regard to whether the insurers reported premium in the year preceding the assessment. Insurers are not required to advance funds if the association and the office elect to use the monthly installment option. All funds collected shall be retained by the association for the payment of current or future claims. This subparagraph does not alter the obligation of an insurer to remit assessments levied pursuant to this subsection to the association. ~~If the excess amount exceeds 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be returned to the insurer's or insurer group's current policyholders by refunds or premium credits. The association shall use any remitted excess recoupment amounts to reduce~~

~~future assessments.~~

(g) ~~Amounts recouped pursuant to this subsection for assessments levied under paragraph (a) due to insolvencies on or after July 1, 2010, are considered premium solely for premium tax purposes and are not subject to fees or commissions. However,~~ Insurers shall treat the failure of an insured to pay a recoupment charge as a failure to pay the premium.

(h) Assessments levied under this subsection are levied upon insurers. This subsection does not create a cause of action by a policyholder with respect to the levying of, or a policyholder's duty to pay, such assessments.

(i) Assessments levied under this subsection are not premium and are not subject to the premium tax, to any fees, or to any commissions. An insurer is liable for any emergency assessments that the insurer collects and shall treat the failure of an insured to pay an emergency assessment as a failure to pay the premium. An insurer is not liable for uncollectible emergency assessments.

~~(h) At least 15 days before applying the recoupment factor to any policies, the insurer or insurer group shall file with the office a statement for informational purposes only setting forth the amount of the recoupment factor and an explanation of how the recoupment factor will be applied. Such statement shall include documentation of the assessment paid by the insurer or insurer group and the arithmetic calculations supporting the recoupment factor. The insurer or insurer group may use the~~

~~recoupment factor at any time after the expiration of the 15-day period. The insurer or insurer group need submit only one informational statement for all lines of business using the same recoupment factor.~~

~~(i) No later than 90 days after the insurer or insurer group has completed the recoupment process, the insurer or insurer group shall file with the office, for information purposes only, a final accounting report documenting the recoupment. The report shall provide the amounts of assessments paid by the insurer or insurer group, the amounts and percentages recouped by year from each affected line of business, and the direct written premium subject to recoupment by year. The insurer or insurer group need submit only one report for all lines of business using the same recoupment factor.~~

(4) The office ~~department~~ may exempt or temporarily defer any insurer from any regular or emergency assessment if the office finds that the insurer is impaired or insolvent or if an assessment would result in such insurer's financial statement reflecting an amount of capital or surplus less than the sum of the minimum amount required by any jurisdiction in which the insurer is authorized to transact insurance.

Section 3. Section 631.64, Florida Statutes, is amended to read:

631.64 Recognition of assessments ~~in rates~~.~~—~~Charges or recoupments shall be separately displayed on premium statements

to enable policyholders to determine the amount charged for association assessments but may not be included in rates filed and approved by the office. ~~The rates and premiums charged for insurance policies to which this part applies may include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.~~

Section 4. Subsection (5) of section 627.727, Florida Statutes, is amended to read:

627.727 Motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.—

(5) Any person having a claim against an insolvent insurer as defined in s. 631.54~~(6)~~ under ~~the provisions of~~ this section shall present such claim for payment to the Florida Insurance Guaranty Association only. In the event of a payment to a ~~any~~ person in settlement of a claim arising under ~~the provisions of~~ this section, the association is not subrogated or entitled to ~~any~~ recovery against the claimant's insurer. The association, however, has the rights of recovery as set forth in chapter 631 in the proceeds recoverable from the assets of the insolvent insurer.

Section 5. Subsection (1) of section 631.55, Florida Statutes, is amended to read:

631.55 Creation of the association.—

(1) There is created a nonprofit corporation to be known as the "Florida Insurance Guaranty Association, Incorporated." All insurers defined as member insurers in s. 631.54~~(7)~~ shall be members of the association as a condition of their authority to transact insurance in this state, and, further, as a condition of such authority, an insurer must ~~shall~~ agree to reimburse the association for all claim payments the association makes on the ~~said~~ insurer's behalf if such insurer is subsequently rehabilitated. The association shall perform its functions under a plan of operation established and approved under s. 631.58 and shall exercise its powers through a board of directors established under s. 631.56. The corporation shall have all those powers granted or permitted nonprofit corporations, as provided in chapter 617.

Section 6. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 641 Amusement Games or Machines
SPONSOR(S): Trumbull and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 268

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Affairs Committee		Anstead	Hamon
2) Appropriations Committee			

SUMMARY ANALYSIS

The bill creates s. 546.10, F. S., the "Family Amusement Games Act," to provide for the use and activation of amusement games and machines, the award of points, coupons or prizes, limits on prize values, and locations authorized for the operation of amusement games and machines.

The bill provides that in addition to the use of a coin, an amusement game may be activated by currency, card, coupon, slug, token, or similar device and may be played if the person playing or operating the game or machine controls the outcome of the game by application of skill.

The bill excludes certain games and devices from the definition of "amusement game or machine," and specifically does not authorize certain types of games, such as video poker and other casino style games.

The bill authorizes the person playing the game or machine to receive points or coupons that may be redeemed for onsite merchandise under certain conditions. It also authorizes direct merchandise games, such as "claw" machines.

The bill only authorizes amusement games or machines at certain locations, including arcade amusement centers or truck stops (as currently authorized), certain bowling centers, hotels, restaurants, and on the premises of certain retailers.

The bill increases the maximum redemption value of points or coupons a player may receive for a single game played from 75 cents to $5.25 and increases the maximum wholesale value of merchandise dispensed directly to 10 times that amount ($52.50). The caps will be adjusted annually, based on changes in the consumer price index.

The bill repeals s. 849.161, F.S., relating to amusement games or machines.

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

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation:

There is a general prohibition against gambling in Florida. Chapter 849, F.S., prohibits keeping a gambling house, running a lottery, and the manufacture, sale, lease, play, or possession of slot machines. Certain exceptions to these prohibitions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games, bingo, cardrooms, charitable drawings, game promotions (sweepstakes), bowling tournaments, and amusement games and machines.[1]

Section 849.161, F.S., currently titled "Amusement Games or Machines; When Chapter Inapplicable," provides that gambling laws do not prohibit amusement games or machines that:

- Are activated by insertion of a coin;
- May entitle a player, by application of skill, to receive points or coupons - the cost value of which does not exceed 75 cents on any game played - that may be exchanged for merchandise; and
- Are located at either an arcade amusement center with at least 50 coin-operated amusement games or machines or at a truck stop.

Current law specifically distinguishes and excludes the following games from the exemption for authorized amusement games or machines:[2]

- Casino-style games in which the outcome is determined by factors "unpredictable by the player";
- Games in which the player does not control the outcome through skill;
- Any game or device defined as a gambling device in 15 U.S.C. s. 1171, unless excluded under 15 U.S.C. 1178;[3] or
- Video poker games or any other game or machine that may be construed as a gambling device under Florida law.

Whether a game is "unpredictable by the player" has been interpreted by the Florida Supreme Court. In a case challenging whether a miniature bowling alley game was a slot machine, the Court held that a miniature bowling game was not a prohibited game under the slot machine statute because the element of unpredictability was not inherent in the machine. It found that if the element of unpredictability is "inherent in the machine," it would be prohibited. Slot machines were defined at the time as devices that operated, as a result of the insertion of a coin, based on "any element of chance" or other outcome unpredictable by the player, and allowed the player to receive any "thing of value." The Court determined that the element of unpredictability cannot simply be based on a player who may "not be sure what score he can accomplish." In addressing whether a device would be removed from a "standing of respectability and legality to one of one-armed banditry," the Court stated "[w]e all know full well the vicious devices [s. 849.16, F.S.] was calculated to destroy, but we know also that a too drastic

[1] s. 849.161, F.S.

[2] s. 849.161(1)(a), and (4), F.S.

[3] Slot machines which deliver or entitle a player to money or property as the result of the application of chance are defined as gambling devices pursuant to 15 U.S.C. s. 1171. Exclusions include: pari-mutuel betting machinery for use at a racetrack, a coin-operated bowling alley, a shuffleboard, marble machine or pinball machine, or mechanical gun, if they are not designed and manufactured primarily for gambling, and which when operated do not deliver any money or property, or entitle a person to receive any money or property, and any so-called claw, crane, or digger machine and similar device which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or state fairs, are excluded pursuant to 15 U.S.C. s. 1178.

and intolerant interpretation of an act of this kind may well result in undermining its true and lofty purpose."[4]

Section 212.02(24), F.S., defines coin-operated amusement machines as those operated by coin, slug, token, coupon, or similar device "for the purposes of entertainment or amusement." Operators of coin-operated pinball machines, music machines, juke boxes, mechanical games, video games, arcade games, billiard tables, moving picture viewers, shooting galleries, and all other similar amusement devices, must pay for and conspicuously display a certificate authorizing the operation of a specified number of machines.[5] A certificate must be obtained before machines are first operated in the state and by July 1 of each year thereafter. The annual fee is based on the number of machines multiplied by $30.

A four percent tax is imposed on charges for the use of coin-operated amusement machines. If a machine is activated by a slug, token, coupon, or any similar device which has been purchased by a user, the four percent tax is imposed on the purchase price amount.[6]

Section 849.21, F.S., provides that any person may petition in circuit court for a writ of injunction against a nuisance created through the use, manufacture, ownership, storage, possession, sale, lease, transport, or operation of a "slot machine or device" outside of eligible facilities.[7] However, such activities related to certain eligible pari-mutuel facilities defined in ss. 551.102, F.S., or the facilities of manufacturers or distributors as provided in s. 551.109(2)(a), F.S., are not prohibited nuisances, and are regulated under ch. 551, F.S.

Current law also provides that no bond is required when petitioning for a temporary injunction and that the judge may issue a restraining order to prevent removal or interference with the offending equipment.

In March 2013, a three-year, multi-state, multi-agency investigation into the operations of illegal gambling at so-called Internet cafes affiliated with Allied Veterans of the World concluded with the arrest of 57 people.[8] Charges included racketeering and money laundering.[9]

During the 2013 Regular Session, ch. 2013-2, L.O.F. was enacted. This bill made several changes to s. 849.0935, F.S., s. 849.094, F.S., s. 849.16, F.S. and s. 849.161, F.S., to address the growing problem of casino-style games at Internet cafes and senior arcades that existed in many parts of Florida. The definition of slot machine in s. 849.16(1), F.S., was amended to include operation by a user "whether by application of skill or by reason of any element of chance or ~~of~~ any other outcome ~~of such operation~~ unpredictable by the user ~~him or her~~" . . . .[10]

After the 2013 Regular Session, third parties cited s. 849.21, F.S., in petitions for injunctions against amusement arcades, including Chuck E. Cheese's, Dave & Buster's, and Festival Fun Parks (Boomers!).[11] Two cases remain pending.[12]

---

[4] *Deeb v. Stoutamire,* 53 So.2d 873, 874 (Fla. 1951).
[5] *See* s. 212.05(1)(h)3.a. and b., F.S.
[6] *See* s. 212.05(1)(h)1, F.S.
[7] *See* ss. 849.15 to 849.23, F.S.
[8] Mary Ellen Klas, *Bill Banning Internet Cafes Becomes Law in Florida*, Governing, The States and Localities (April 11, 2013), http://www.governing.com/news/state/mct-bill-banning-internet-cafes-becomes-law-in-florida.html.
[9] Larry Hannan, *Trial Begins for Jacksonville Attorney Accused of Masterminding Allied Gambling Ring*, The Florida Time Union (Sept. 19, 2013), http://jacksonville.com/news/crime/2013-09-19/story/trial-begins-jacksonville-attorney-accused-masterminding-allied-gambling.
[10] Section 4, ch. 2013-2, L.O.F.
[11] Mary Ellen Klas, *Senior Arcades Suing to Have Dave & Buster's, Boomers Shut Down*, Miami Herald (July 2, 2013), http://www.miamiherald.com/news/local/community/miami-dade/article1952948.html.
[12] *Nebb v. CEC Entertainment, Inc., d/b/a Chuck E. Cheese,* Case No. CACE-13-024356 (03), Broward County Circuit Court; and *DeVarona v. Dave & Buster's,* Case No. CACE-13-016547 (09), Broward County Circuit Court.

Effect of Proposed Changes:

The bill amends ch. 546, F.S., titled "Amusement Facilities," to address various issues associated with the operation of authorized amusement games and machines (amusement machines) in the state. The bill provides that the act may be cited as the "Family Amusement Games Act."

The bill:

- Updates activation methods for amusement machines, in addition to coins;
- Expands the locations authorized for the operation of amusement machines;
- Clarifies authorized methods for the redemption of points and coupons and the dispensation of prizes to players;
- Updates the maximum value for points and coupons that may be redeemed by a player, and specifies a maximum value for the wholesale cost of merchandise that may be received by a player under certain conditions; and
- Provides a method for the Department of Revenue to calculate annual adjustments to the maximum value for the redemption of points and coupons.

The bill creates s. 546.10, F.S., titled "Amusement games or machines."

The bill defines "amusement game or machine" to include coin-operated machines, and machines activated by insertion of currency, cards, coupons, slugs, tokens, or similar devices.

The bill includes the current law provisions that amusement games or machines do not include casino-style games or "games in which the player does not control the outcome of the game through skill." The bill expands the current definition of amusement machine by repeating language from current law that authorized games do not include:

- Video poker games or any other game or machine that may be construed as a gambling device under Florida law; or
- Any game or device defined as a gambling device in 15 U.S.C. s. 1171, unless excluded under s. 1178.

The bill includes the current law definition in s. 849.161(1)(b), F.S., for "arcade amusement center," requiring 50 amusement games or machines. The definition includes the current law provision that the amusement center be operated for the entertainment of the general public.

The bill amends the definition of "merchandise" to specifically exclude cash equivalents, specifically, gift cards and certificates,[13] alcoholic beverages, cards, coupons, points, slugs, tokens, or similar devices that can be used to activate an amusement game or machine, and points or coupons with a redemption value higher than the maximum legal value. The maximum legal value is currently 75 cents, but is proposed to be adjusted for inflation to $5.25 with annual adjustments by the Department of Revenue.

The bill creates requirements for the award to a player of free replays, redeemable points or coupons, and prizes dispensed directly from an amusement machine. It provides the requirements for an amusement machine to allow a player (by application of skill) to win free replays. The provisions in current law that an amusement machine cannot accumulate more than 15 free replays or make a permanent record of free replays are not changed.

[13] Section 501.95(1)(b), F.S., defines "gift certificate" as a certificate, gift card, stored value card, or similar instrument purchased for monetary consideration when the certificate, card, or similar instrument is redeemable for merchandise, food, or services regardless of whether any cash may be paid to the owner of the certificate, card, or instrument as part of the redemption transaction, but this term shall not include tickets as specified in s. 717.1355, F.S., or manufacturer or retailer discounts and coupons.

The bill also provides the requirements for an amusement machine to allow a player, by application of skill, to receive points or coupons that can be redeemed onsite for merchandise, subject to the following conditions:

- The amusement machine is located at an arcade amusement center or truck stop, as authorized under current law, or at a bowling center, public lodging or hotel, or public food service establishment or restaurant;[14]
- Points or coupons have no value other than for redemption onsite for merchandise;
- The redemption value[15] of points or coupons a person receives for a single game played does not exceed the cap specified in subsection (7), which is set at $5.25 initially and adjusted for inflation annually; and
- The redemption value of points or coupons a person receives for playing multiple games simultaneously or competing against others in a multi-player game, does not exceed the cap specified in subsection (7).

The bill provides requirements for an amusement machine, like a claw machine, to allow a player, by application of skill, to receive merchandise directly,[16] provided:

- The amusement game or machine is located at an arcade amusement center, truck stop, bowling center, hotel, restaurant, or on the premises of a retailer as defined in s. 212.02, F.S.;[17] and
- The wholesale cost of the merchandise does not exceed 10 times the cap, which is set at $5.25.

However, the cap on the redemption value of points or coupons, which is set at $5.25 initially, will be adjusted for inflation annually. The bill provides that the Department of Revenue will annually adjust the cap based on the change in the Consumer Price Index for All Urban Consumers, U.S. City Average, and the new cap will take effect July 1. The adjusted cap will be published in a brochure accessible from the Department of Revenue's website relating to sales and use tax on amusement machines.[18]

The bill provides that "notwithstanding any other provision of law, an action to enjoin the operation of any game or machine at any location listed" - arcade amusement center, truck stop, bowling center, hotel, restaurant, or on the premises of a retailer – is limited for filing by the following:

- The Attorney General;
- The state attorney of the circuit where the amusement machine is located;
- Any federally recognized tribal government with sovereign powers and rights of self-government that is a party to a compact with the state; or
- The Department of Agriculture and Consumer Services or the Department of Business and Professional Regulation, in the case of a duty to enforce an alleged violation of law.

The bill repeals s. 849.161, F.S., the current "Amusement games or machines" regulation.

---

[14] The bill expands the places where an authorized amusement machine may be located to include bowling centers defined in s. 849.141. F.S., a public lodging establishment or public food service facility licensed by the Department of Business and Professional Regulation pursuant to ch. 509, F.S.

[15] The bill defines "redemption value" as the imputed value of coupons or points, based on the wholesale cost of merchandise for which those coupons or points may be redeemed.

[16] An amusement machine that dispenses merchandise with "an unpredictable outcome or chance which is inherent in the machine" qualifies as a slot machine. *See* 89-05 Fla. Op. Att'y Gen. 1 (1989)(An opinion by the Florida's Attorney General determined that a "coin operated crane game having an unpredictable outcome or chance which is inherent in the machine qualifies as a 'slot machine' within the meaning of s. 849.15(1), F.S.").

[17] The bill allows for amusement machines that give points or coupons at all of the same locations that claw machines are permitted except for retailers.

[18] The Florida Department of Revenue, *Sales and Use Tax on Amusement Machines* (March 2015), http://dor.myflorida.com/dor/forms/current/gt800020.pdf.

B. SECTION DIRECTORY:

Section 1 cites the Act as the "Family Amusement Games Act."

Section 2 creates s. 546.10, F.S., to provide definitions for terms, authorize amusement games or machines in conformance with specified provisions, authorize direct receipt of merchandise under certain circumstances, provide a cap on the redemption value of points or coupons, require the Department of Revenue to recalculate and publish the cap annually, and provide for enforcement actions.

Section 3 amends s. 551.102, F.S., to conform a cross-reference.

Section 4 repeals s. 849.161, F.S., relating to amusement games or machines.

Section 5 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill requires the Department of Revenue to annually recalculate the maximum cap on the redemption value of a coupon or a point received by a player and to publish the cap, as adjusted, in a brochure accessible on its website relating to sales and use tax on amusement games or machines.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not have a significant private sector impact. The law currently requires registration with the Department of Revenue of all amusement machine operators as defined in s. 212.05(1)(h)2., F.S., and registration of all amusement machines by location.

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:

In order to further limit the use, operation and definition of such machines, the definition of "amusement games or machines" could be amended to include "no material element of chance inherent in the game or machine" or "no outcome is determined by factors unpredictable by the player."

The term "card" is used and a card is authorized to be used to operate an amusement machine. However, it is not defined and could be interpreted to mean that a credit card could be used.

The current limitation on the places that can operate amusement games and machines does not take into account all of the places currently operating such machines.

A cap is set on the redemption value for each play of the machine, but a cap is not set on the maximum accumulated value of a prize that could be received after the accumulation of points and coupons from play nor is there a limitation of how much can be charged for one play.

The section setting a maximum value of points and coupons per game played at $5.25 does not reference points and coupons specifically nor limit the definition of maximum value to the issuance of points or coupons to players.

The limitation provided on who can bring an action to enjoin the operation of any game or machine has been limited to the Attorney General, the state attorney, Indian tribes, the Department of Business and Professional Regulation and the Department of Agriculture and Consumer Services without specific regard for the types of potential suits or persons harmed by the operation of such machines.

Conforming amendments of cross references in the Florida Statutes that include the terms "amusement machine" and "coin-operated" should be considered.

Currently, there is not a limitation on whether the machine could be made to manipulate the level of difficulty of the game without the players' knowledge, thus making the game too difficult for any person to win.

The sponsor has agreed to make these changes regarding these issues via amendment to the current version of the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to amusement games or machines; creating the "Family Amusement Games Act"; creating s. 546.10, F.S.; providing definitions; providing applicability; authorizing amusement games or machines in conformance with specified provisions; authorizing direct receipt of merchandise under certain circumstances; providing a cap on the redemption value of points or coupons; requiring the Department of Revenue to recalculate and publish the cap annually; providing for enforcement actions; amending s. 551.102, F.S.; conforming a cross-reference; repealing s. 849.161, F.S., relating to amusement games or machines; providing an effective date.

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

Section 1. This act may be cited as the "Family Amusement Games Act."

Section 2. Section 546.10, Florida Statutes, is created to read:

546.10 Amusement games or machines.—

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

(a) "Amusement game or machine" means a game or machine operated only for the bona fide entertainment of the general public which a person activates by inserting currency or a coin,

card, coupon, slug, token, or similar device, and, by application of skill, the person playing or operating the game or machine controls the outcome of the game. The term does not include:

1. Casino-style games in which the outcome of the game is determined by factors unpredictable by the player.

2. Games in which the player does not control the outcome of the game through skill.

3. Video poker games or any other games or machines that may be construed as a gambling device under the laws of this state.

4. Any game or device defined as a gambling device in 15 U.S.C. s. 1171, unless excluded under s. 1178.

(b) "Arcade amusement center" means a place of business having at least 50 amusement games or machines on premises which is operated for the entertainment of the general public and tourists as a bona fide amusement facility.

(c) "Game played" means the event beginning with activation of the amusement game or machine and ending when the results of play are determined without the insertion of any additional currency, coin, card, coupon, slug, token, or similar device to continue play. Free replays are not separate games played.

(d) "Merchandise" means noncash prizes, including toys and novelties. The term does not include:

1. Cash equivalents, including gift cards or certificates.

2. Alcoholic beverages.

3. Cards, coupons, points, slugs, tokens, or similar devices that can be used to activate an amusement game or machine.

4. Points or coupons that have a redemption value greater than the maximum value determined under subsection (7).

(e) "Redemption value" means the imputed value of coupons or points, based on the wholesale cost of onsite merchandise for which those coupons or points may be redeemed.

(f) "Truck stop" means a dealer registered pursuant to chapter 212, excluding marinas, which:

1. Declared its primary fuel business to be the sale of diesel fuel; and

2. Operates a minimum of six functional diesel fuel pumps.

(2) Notwithstanding chapter 551, chapter 849, or any other provision of law, amusement games or machines may be operated as provided in this section.

(3) This section applies only to amusement games or machines as defined in subsection (1) and does not authorize:

(a) Casino-style games in which the outcome of the game is determined by factors unpredictable by the player.

(b) Games in which the player does not control the outcome of the game through skill.

(c) Video poker games or any other game or machine that may be construed as a gambling device under the laws of this state.

(d) Any game or device defined as a gambling device in 15 U.S.C. s. 1171, unless excluded under s. 1178.

(4) An amusement game or machine may entitle or enable a person, by application of skill, to replay the game or device without the insertion of any additional currency, coin, card, coupon, slug, token, or similar device, if:

(a) The amusement game or machine can accumulate and react to no more than 15 such replays.

(b) The amusement game or machine can be discharged of accumulated replays only by reactivating the game or device for one additional play for each accumulated replay.

(c) The amusement game or machine cannot make a permanent record, directly or indirectly, of any free replay.

(5) An amusement game or machine may entitle or enable a person, by application of skill, to receive points or coupons that may only be redeemed onsite for merchandise, if:

(a) The amusement game or machine is located at an arcade amusement center, truck stop, bowling center as defined in s. 849.141, or public lodging establishment or public food service establishment licensed pursuant to chapter 509;

(b) The points or coupons have no value other than for redemption onsite for merchandise;

(c) The redemption value of the points or coupons a person receives for a single game played does not exceed the maximum value determined under subsection (7); and

(d) The redemption value of points or coupons that a person receives for playing multiple games simultaneously or competing against others in a multiplayer game does not exceed the maximum value determined under subsection (7).

(6) An amusement game or machine that allows the player to manipulate a claw or similar device within an enclosure may entitle or enable a person, by application of skill, to receive merchandise directly from the game or machine, if:

(a) The amusement game or machine is located at an arcade amusement center, truck stop, bowling center as defined in s. 849.141, public lodging establishment or public food service establishment licensed pursuant to chapter 509, or on the premises of a retailer as defined in s. 212.02; and

(b) The wholesale cost of the merchandise does not exceed 10 times the maximum value determined under subsection (7).

(7) For purposes of this section, the maximum value is $5.25. Beginning July 1, 2016, and annually thereafter, the Department of Revenue shall adjust the maximum value by multiplying the value by the sum of 1 plus the percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, or a successor index as calculated by the United States Department of Labor, for the most recent 12-month period ending March 31, and rounding the product to the nearest cent. The Department of Revenue shall publish the maximum value, as adjusted, in a brochure accessible from its website relating to sales and use tax on amusement machines.

(8) Notwithstanding any other provision of law, an action to enjoin the operation of any game or machine at any location listed in paragraph (6)(a) pursuant to or for an alleged violation of chapter 849 may be brought only by the Attorney General, the state attorney for the circuit in which the game or machine is located, any federally recognized tribal government possessing sovereign powers and rights of self-government that is a party to a compact with the state or, in the case of an alleged violation of statutes that they are charged with enforcing, the Department of Agriculture and Consumer Services or the Department of Business and Professional Regulation.

Section 3. Subsection (8) of section 551.102, Florida Statutes, is amended to read:

551.102 Definitions.—As used in this chapter, the term:

(8) "Slot machine" means any mechanical or electrical contrivance, terminal that may or may not be capable of downloading slot games from a central server system, machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration whatsoever, including the use of any electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be

exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually. The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device. Slot machines may use spinning reels, video displays, or both. A slot machine is not a "coin-operated amusement machine" as defined in s. 212.02(24) or an amusement game or machine as described in s. 546.10 ~~849.161~~, and slot machines are not subject to the tax imposed by s. 212.05(1)(h).

Section 4. Section 849.161, Florida Statutes, is repealed.

Section 5. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 677 Reciprocal Insurers
SPONSOR(S): Santiago
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Haston	Cooper
2) Regulatory Affairs Committee		Haston SH	Hamon K.W.H.

SUMMARY ANALYSIS

A reciprocal insurer is a risk-pooling aggregation of participants, known as subscribers, who share risk equally through a person who is authorized to perform transactions on behalf of the subscribers. Reciprocal insurers can transact any kind of insurance other than life or title.

Under current law, a reciprocal insurer can return to its subscribers any unused premiums, savings, or credits accruing to their accounts. Such distributions cannot unfairly discriminate between classes of risks, or policies, or between subscribers, but may vary as to classes of subscribers based on the experience of such classes. Currently, if a reciprocal insurer wants to make a distribution of surplus to its subscribers, it must establish and maintain subscriber savings accounts.

Under current Florida law, a domestic reciprocal insurer who does not maintain subscriber savings accounts does not have explicit authority to make distributions of surplus to its subscribers.

The bill would clarify that a domestic reciprocal insurer does not need to maintain subscriber savings accounts to make distributions of surplus to its subscribers. The bill provides a domestic reciprocal insurer with an additional method by which it can return surplus funds to its subscribers. The bill gives a domestic reciprocal insurer the option of paying to its subscribers up to ten percent of its unassigned funds (surplus), capping distribution at fifty percent of its net income from the previous calendar year. The bill requires the Office of Insurance Regulation to approve in writing such distributions. Further, the distributions cannot unfairly discriminate between classes of risks, or policies, or between subscribers, but may vary as to classes of subscribers based on the experience of such classes. The bill gives a domestic reciprocal insurer the option to return surplus funds to its subscribers without the administrative costs associated with subscriber savings accounts.

The bill does not appear to have a fiscal impact on state government or local governments. The bill may have a positive economic impact on the private sector.

This bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background Information on Reciprocal Insurance

Reciprocal insurance is a risk-pooling alternative to stock or mutual insurance.[1] Reciprocal insurance involves an exchange of reciprocal agreements of indemnity among participants who are known as "subscribers."[2] The subscribers generally have something in common; for example, USAA is a well-known reciprocal insurer for U.S. military service members and their families.[3]

The agreements of indemnity are exchanged through an attorney in fact, whose powers are set forth by the subscribers.[4] "In general, the attorney in fact manages the reciprocal's finances and handles underwriting, claims administration and investments."[5]

Twenty-five or more persons domiciled in Florida may organize a domestic reciprocal insurer and apply to the Office of Insurance Regulation (OIR) for authority to transact insurance.[6] Reciprocal insurers may transact any kind of insurance other than life or title.[7]

Current Situation

Under Florida law, reciprocal insurers must have and maintain surplus funds of at least $250,000 and an expendable surplus of at least $750,000.[8] Currently, a reciprocal insurer can return to its subscribers any unused premiums, savings, or credits accruing to the subscribers' accounts.[9] Any such distribution cannot unfairly discriminate between classes of risks, or policies, or between subscribers, but such distribution may vary as to classes of subscribers based on the experience of such classes.[10] If a reciprocal insurer wants to make a distribution to its subscribers, it must establish and maintain subscriber savings accounts.[11]

In practice, not all domestic reciprocal insurers maintain subscriber savings accounts; these accounts can be expensive for smaller-sized reciprocal insurers to maintain.[12] However, current Florida law does not provide domestic reciprocal insurers who do not maintain subscriber savings accounts with explicit authority to return surplus to its subscribers.

Effect of Bill

This bill would clarify that a domestic reciprocal insurer does not have to maintain subscriber savings accounts in order to make distributions to its subscribers. The bill adds a subsection to s. 629.271, F.S., providing a domestic reciprocal insurer with another method by which it can make distributions to its

[1] *See* Kevin Moriarty, *Twenty Things You'd Always Wanted to Know about Reciprocals (But May Not Have Thought to Ask)*, THE RISK RETENTION REPORTER, July 2003.
[2] ss. 629.011 and 629.021, F.S.
[3] *See* USAA, http://www.usaa.com (last visited Feb. 26, 2015).
[4] ss. 629.011 and 629.101, F.S.
[5] *See* Kevin Moriarty, *Twenty Things You'd Always Wanted to Know about Reciprocals (But May Not Have Thought to Ask)*, THE RISK RETENTION REPORTER, July 2003.
[6] s. 629.081(1), F.S.
[7] s. 629.041, F.S.
[8] s. 629.071, F.S.
[9] s. 629.271, F.S.
[10] s. 629.271, F.S.
[11] Florida Office of Insurance Regulation, Agency Analysis of 2015 House Bill 677, p. 2 (Feb. 12, 2015).
[12] Information obtained from Star & Shield Insurance Exchange, 2/24/15 (e-mail communication on file with House Insurance & Banking Subcommittee).

subscribers. The proposed language allows a domestic reciprocal insurer to pay to its subscribers up to ten percent of its unassigned funds (surplus), capping distribution at fifty percent of its net income from the previous calendar year. Such distribution would require written approval from OIR and may not unfairly discriminate between classes of risks, or policies, or between subscribers, but may vary as to classes of subscribers based on the experience of such classes.

The alternate method for distribution provided by this bill gives a domestic reciprocal insurer the option to return surplus funds to the subscribers without the administrative costs associated with subscriber savings accounts.[13]

This bill also makes technical changes to the language of s. 629.271, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 629.271, F.S., relating to distribution of savings.

Section 2. Provides an effective date of July 1, 2015.

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 domestic reciprocal insurers who do not maintain subscriber savings accounts would now have the option to make distributions of surplus to its subscribers, there may be a positive economic impact on those subscribers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

[13] Information obtained from Star & Shield Insurance Exchange, 2/24/15 (e-mail communication on file with House Insurance & Banking Subcommittee).

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an 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 a 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

A bill to be entitled

An act relating to reciprocal insurers; amending s. 629.271, F.S.; authorizing domestic reciprocal insurers to return a portion of unassigned funds to their subscribers; providing limitations; providing an effective date.

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

Section 1. Section 629.271, Florida Statutes, is amended to read:

629.271 Distribution of savings.—

(1) A reciprocal insurer may ~~from time to time~~ return to its subscribers any unused premiums, savings, or credits accruing to their accounts. ~~Any~~ Such distribution may ~~shall~~ not unfairly discriminate between classes of risks, or policies, or between subscribers, but ~~such distribution~~ may vary as to classes of subscribers based on ~~upon~~ the experience of such classes.

(2) In addition to the option provided in subsection (1), a domestic reciprocal insurer may, upon the prior written approval of the office, pay to its subscribers a portion of unassigned funds of up to 10 percent of surplus with distribution limited to 50 percent of net income from the previous calendar year. Such distribution may not unfairly discriminate between classes of risks, or policies, or between

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

subscribers, but may vary as to classes of subscribers based on the experience of such classes.

Section 2. This act shall take effect July 1, 2015.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 703 Regulation of Financial Institutions
SPONSOR(S): Insurance & Banking Subcommittee; Broxson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 806

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 0 N, As CS	Bauer	Cooper
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee		Bauer	Hamon

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) charters and regulates banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes ("Codes"), chapters 655 to 667, Florida Statutes. The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness.

The bill makes a number of minor clarifying changes to the Codes and streamlines several OFR regulatory processes. Specifically, the bill:

- Amends the definition of a financial institution "main office";
- Authorizes the electronic payment of assessments and clarifies payment deadlines;
- Eliminates the requirement that appraisal costs be approved by the OFR;
- Clarifies the definition of "executive officer";
- Corrects a cross-reference for trust service offices; and
- Provides a uniform due date for annual certifications of capital accounts required of international banking corporations.

The bill has an insignificant fiscal impact on state revenues and expenditures, and may have a positive impact on the private sector.

The bill provides an effective date of October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Office of Financial Regulation (OFR)'s Division of Financial Institutions charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes), and the Florida Financial Institutions Rules, adopted by the Financial Services Commission.[1] The specific chapters under the Codes are:

- Chapter 655, F.S. – Financial Institutions Generally
- Chapter 657, F.S. – Credit Unions
- Chapter 658, F.S. – Banks and Trust Companies
- Chapter 660, F.S. – Trust Business
- Chapter 663, F.S. – International Banking
- Chapter 665, F.S. – Capital Stock Associations
- Chapter 667, F.S. – Savings Banks

As of June 30, 2014, the Division of Financial Institutions licenses and regulates 254 state-chartered financial institutions for safety and soundness:[2]

- 132 banks
- 72 credit unions
- 25 international bank offices
- 12 trust companies

Under the U.S. dual banking system, banks may be chartered under either state or federal law:

- *National banks* are chartered under federal law (the National Bank Act). Their primary federal regulator is the Office of the Comptroller of the Currency (OCC), an independent agency within the U.S. Department of the Treasury.
    - With the enactment of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Office of Thrift Supervision (formerly the primary federal regulator for savings banks and savings and loans associations), was merged into other federal banking agencies on July 21, 2011.[3] Since then, the Office of the Comptroller of the Currency has assumed primary federal regulatory responsibility over *savings banks and savings and loans associations*, in addition to nationally-chartered banks.

- *State-chartered banks* are chartered under the laws of the state in which the bank is headquartered.
    - The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System (FRB).
    - The primary federal regulator for non-member state banks is the Federal Deposit Insurance Corporation (FDIC).[4]

---

[1] Chs. 69U-100 through 69U-150, Fla. Admin. Code. Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.

[2] OFFICE OF FINANCIAL REGULATION, *Fast Facts* (2nd ed., Dec. 2014), http://flofr.com/StaticPages/documents/FastFacts2015.pdf

[3] 12 U.S.C. §5412-5413.

[4] 12 U.S.C. §1813(q).

Credit unions may also be chartered under either state or federal law. *Federal credit unions* are chartered under the Federal Credit Union Act of 1934. Their primary federal regulator is the National Credit Union Administration (NCUA), which also operates and manages the National Credit Union Share Insurance Fund, which insures deposits for account holders in all federal credit unions and most state-chartered credit unions.[5]

Additionally, *international banking entities* enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent those foreign institutions seek to engage in the business of banking or trust business in Florida, which requires a Florida charter and compliance with the provisions of chapter 663 of the Codes. Chapter 663 of the Codes set forth a variety of business models, each of which must be separately licensed by the OFR and abide by the permissible activities accorded to each license type.

Effect of the Bill

The bill clarifies and streamlines several regulatory processes in the Codes for Florida-chartered financial institutions:

Main Office Designation

Currently, s. 665.005(1)(q), F.S., defines the "main office" or "principal office" of a financial institution to mean only the location designated in a financial institution's articles of incorporation or bylaws. When a financial institution seeks to re-designate the location of its main office, it must file an amendment to its articles of incorporation or bylaws and obtain the OFR's approval.[6] Additionally, banks and trust companies must obtain the OFR's approval to relocate their main offices.[7]

The bill amends the definition of "main office" to include a subsequently re-designated location by way of a relocation application filed with the OFR, and thus eliminates the need to refile or amend its articles of incorporation and provide those to the OFR for approval. According to the OFR, this change would provide an easier, streamlined process for re-designating an institution's main office.[8]

It is noted that this change does not affect state-chartered credit unions. Current law provides that a credit union may change its "principal place of business" by filing an amendment to its bylaws and obtaining the OFR's approval. Credit unions are not required to file relocation applications with the OFR.[9]

Assessments

Currently, s. 655.047, F.S., requires every state financial institution to pay semiannual assessments to the OFR to cover the costs of regulation and supervision. Assessments are based on each institution's total assets reflected on the statement of condition on the last business day in December and the last

---

[5] NATIONAL CREDIT UNION ADMINISTRATION, *Share Information Fund Information, Reports, and Statements: FAQs,* http://www.ncua.gov/DataApps/Pages/SI-FAQs.aspx (last visited Feb. 22, 2015).

[6] ss. 655.043 and 658.23(6), F.S. (banks and trust companies). Banks and trust corporations may be formed as corporations or, under specified conditions, as limited liability companies in this state. *See* s. 658.16, F.S. Credit unions do not use articles of incorporations since they are cooperative, nonprofit associations, as opposed to corporations. *See* s. 657.003, F.S.

[7] Section 658.26(2), F.S., and Rules 69U-105.208 and 69U-105.406, F.A.C., set forth the requirements and procedures for relocating the main office of a bank or trust company.

[8] Office of Financial Regulation, Agency Analysis of 2015 House Bill 703, p. 4 (Feb. 19, 2015). It is noted that the Florida Business Corporation Act (ch. 607, F.S.) separately requires every corporation authorized to transact business in this state to designate its principal office in its articles of incorporation, and thereafter kept current in a sworn annual report filed with the Department of State. *See* ss. 607.01401(20) and 607.1622, F.S.

[9] ss. 657.008(1) and 657.0061, F.S. and Rule 69U-110.006(4), Fla. Admin. Code.

business day in June every year.[10] Currently, the Codes do not recognize the ability to pay semiannual assessments electronically, by wire transfer or automated clearinghouse, although the OFR does currently provide this benefit to its chartered financial institutions.[11] In addition, the Codes specify that semiannual assessments paid by mail must be postmarked on or before January 31 and July 31 each year.

Because most of the semiannual assessment payments are made to the OFR electronically, the bill codifies this practice into s. 655.047(2), F.S., and clarifies that the due date of *receipt* of these payments is on or before January 31 and July 31 of each year, rather than "postmarked by" such date. The bill retains the option to mail payments to the OFR, but specifies that mailed payments must also be *received* by January 31 and July 31 every year, not postmarked.

Appraisals

Currently, s. 655.60, F.S., authorizes the OFR to require a financial institution to complete an appraisal of real estate or other property held by any state financial institution for certain reasons, such as when specific facts or information (with respect to real estate or other property held, secured loans, or lending), or in the OFR's opinion, the state financial institution's policies, practices, operating results, and trends give evidence that the state financial institution's appraisals or evaluations of ability to make payments may be excessive. Other indicators that could trigger a mandatory appraisal include evidence that the institution's lending or investment may be marginal, or that real estate held by the or assets secured by real estate are overvalued. If the OFR requires an appraisal, then the statute requires that the appraisal must be made by a licensed or certified appraiser selected by the OFR (unless otherwise ordered by the OFR), and also requires the OFR to first approve a statement of costs for such appraisal before the financial institution may pay for it.

However, in many situations, the OFR has found the requirement for regulatory approval of appraisal costs to be burdensome for financial institutions because of the resulting delay to the appraisal process. Additionally, financial institutions would likely have already contracted for the appraisal by the time the OFR reviews the statement of costs.[12]

The bill removes the requirement that the OFR pre-approve appraisal costs. This is consistent with the goals of s. 655.001(2)(h), F.S., which states that the Codes should promote the opportunity of financial institutions' management to exercise their business judgment in conducting the affairs of the institution. However, the bill does *not* modify the requirements that the financial institution still furnish copies of required appraisals to the OFR and that the appraisals be conducted by licensed or certified appraisers. Additionally, the bill retains the statutory authority for the OFR to accept appraisals required by other regulatory or insuring agencies or corporations.

Applications for authority to organize banks or trust companies

Currently, the Codes' general definition of "executive officer" contains a presumption that certain named executives, including the president and the chief executive officer are executive officers, unless excluded from major policymaking functions by board resolution or by the institution's bylaws, as well as actual non-participation in those major policymaking functions by the individual.[13]

One of the requirements to apply for authority to organize a state bank or trust company is to provide the OFR with certain financial, business, and biographical information of each proposed director, *chief*

[10] Assessment amounts and related matters are addressed in the following statutes and rules: s. 658.73(1), F.S. and Rule 69U-120.730, F.A.C. (banks and trust companies); s. 657.053, F.S. and Rule 69U-110.053, F.A.C. (credit unions); s. 663.12(2), F.S. and Rule 69U-140.020, F.A.C. (international banks).
[11] Office of Financial Regulation, Agency Analysis of 2015 House Bill 703, pp. 2, 4 (Feb. 19, 2015).
[12] *Id.* at p. 3; 2015 Legislative Proposal from OFR Division of Financial Institutions, p. 5 (Dec. 16, 2014).
[13] s. 655.005(1)(g), F.S.

executive officer (if other than the president), and trust officer.[14] Because the listing of non-president chief executive officer is confusing and duplicative of the Codes' general definition of "executive officer," the bill removes these terms from s. 658.19(1)(f), F.S., and replaces them with the term "executive officer," which includes both president and chief executive officer.

Trust service offices

Section 660.33(1), F.S., authorizes trust companies to maintain one or more trust service offices at the location of any state or federally chartered bank, association, or credit union that is organized under Florida or federal law and with its principal place of doing business in Florida. However, this provision contains an obsolete cross-reference to s. 660.32, F.S., which was repealed in 1992.[15]

The bill replaces that obsolete cross-reference with s. 658.26, F.S., which is the applicable cross-reference that authorizes trust companies to have principal offices and branch trust companies.

Certification of capital accounts for international banking corporations

Currently, s. 663.08, F.S., requires licensed international banking corporations with offices in Florida to certify its capital accounts both before opening an office in this state and annually thereafter so long as a bank office is maintained in this state. However, the statute does not contain a specific due date for these annual certifications. This results in the OFR receiving the annual certifications at various times throughout the year and causes confusion for the institutions.[16]

The bill amends this statute to set a uniform annual deadline of "on or before June 30" for all international banking corporations to submit their required certification of capital accounts. The change provides clarity to international banking corporations, and will allow the OFR to better manage its review of certifications.[17]

Reenactments

For the purpose of incorporating the changes made by the bill, the bill reenacts the following provisions of the Florida Statutes:

- Section 8 of the bill reenacts subsection 655.960(8), F.S.
- Section 9 of the bill reenacts paragraph 663.302(1)(a), F.S.
- Section 10 of the bill reenacts subsection 658.165(1), F.S.
- Section 11 of the bill reenacts subsection 665.013(3), F.S.
- Section 12 of the bill reenacts subsection 667.003(3), F.S.
- Section 13 of the bill reenacts subsection 658.12(4), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 655.005, F.S., relating to definitions.

Section 2: Amends s. 655.047, F.S., relating to assessments; financial institutions.

Section 3: Amends s. 655.60, F.S., relating to appraisals.

Section 4: Amends s. 658.19, F.S., relating to application for authority to organize a bank or trust company.

[14] s. 658.19(1)(f), F.S.
[15] Ch. 92-303, Laws of Fla.
[16] Office of Financial Regulation, Agency Analysis of 2015 House Bill 703. (Feb. 19, 2015)
[17] *Id.*

Section 5: Amends s. 660.33, F.S., relating to trust service offices.

Section 6: Amends s. 663.08, F.S., relating to certification of capital accounts.

Section 7: Reenacts s. 655.960, F.S., relating to definitions.

Section 8: Reenacts s. 663.302, F.S., relating to applicability of state banking laws.

Section 9: Reenacts s. 655.165, F.S., relating to banker's banks; formation; applicability of financial institutions codes; exceptions.

Section 10: Reenacts s. 665.013, F.S., relating to applicability of chapter 658.

Section 11: Reenacts s. 667.003, F.S., relating to applicability of chapter 658.

Section 12: Reenacts s. 658.12, F.S., relating to definitions.

Section 13: Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the OFR, the bill may have an insignificant negative fiscal impact on revenues deposited into the Financial Institutions Regulatory Trust Fund. The bill clarifies the date that statutorily required financial assessments are due. The OFR indicates that the clarification of the due date will likely create a potential reduction in fine collection from non-compliance.[18] However, the loss in revenue would likely not exceed $9,900 in any given year. Fines collected from late filed financial institution assessments from 2012 through 2014 are as follows:[19]

Semi-Annual Assessment Date	Number of Late Filed Financial Institution Assessments	Revenue Collection
June 30, 2012	10	$ 6,100
December 31, 2012	5	$ 3,800
June 30, 2013	3	$ 2,100
December 31, 2013	3	$ 3,900
June 30, 2014	4	$ 2,000
December 31, 2014	4	$ 1,200

2. Expenditures:

The OFR indicates the bill has a potential positive, yet indeterminate fiscal impact on state expenditures caused by the streamlining of processes, resulting in potential savings of staff time within the OFR.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

[18] *Id.*

[19] Email correspondence with the Office of Financial Regulation (Mar. 3, 2015) on file with the Government Operations Appropriations Subcommittee.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive impact on the private sector due to process improvements, reduction in paperwork requirements and costs, and decreased compliance costs and fines due to bill's clarification of several provisions.[20]

D. FISCAL COMMENTS:

None.

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 an 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 a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill. However, passage of the bill will require the Financial Services Commission to amend or update the following administrative rules to implement the bill's changes: Rule 69U-110.021, F.A.C.; Chapters 69U-100, 69U-105, 69U-120, and 69-140, Fla. Admin. Code.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2015, the Insurance & Banking Subcommittee considered and adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the original bill's section 4, which created a new statute requiring credit unions to notify OFR of certain newly elected or appointed personnel, due to a similar requirement already in current law.

The staff analysis has been updated to reflect the committee substitute as passed by the Insurance & Banking Subcommittee.

[20] Office of Financial Regulation, Agency Analysis of 2015 House Bill 703. (Feb. 19, 2015)

A bill to be entitled

An act relating to the regulation of financial institutions; amending s. 655.005, F.S.; redefining the terms "main office" and "principal office"; amending s. 655.047, F.S.; requiring electronically transmitted semiannual assessments to be transmitted to the Office of Financial Regulation by specified dates; amending s. 655.60, F.S.; deleting the requirement that the office select a licensed or certified appraiser to conduct certain appraisals; deleting the requirement that the office approve the cost of certain appraisals before payment of that cost by a state financial institution, subsidiary, or service corporation; amending s. 658.19, F.S.; revising the individuals for whom certain information must be provided to the office on an application for authority to organize a banking corporation or trust company; amending s. 660.33, F.S.; conforming a cross-reference; amending s. 663.08, F.S.; requiring an international banking corporation to provide its annual certification of capital accounts to the office by a specified date; reenacting ss. 655.960(8) and 663.302(1)(a), F.S., to incorporate the amendment made to s. 655.005, F.S., in references thereto; reenacting ss. 658.165(1), 665.013(3), and 667.003(3), F.S., to incorporate the amendment made to s. 658.19, F.S., in

references thereto; reenacting s. 658.12(4), F.S., to incorporate the amendment made to s. 660.33, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (q) of subsection (1) of section 655.005, Florida Statutes, is amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(q) "Main office" or "principal office" of a financial institution means the main business office designated in its articles of incorporation or bylaws, or redesignated in a relocation application filed with the office, at an identified location approved by the office in the case of a state financial institution, or by the appropriate federal regulatory agency in the case of a federal financial institution. With respect to the trust department of a bank or association that has trust powers, the terms mean the office or place of business of the trust department at an identified location, which need not be the same location as the main office of the bank or association, approved by the office in the case of a state bank or association, or by the appropriate federal regulatory agency in the case of a national bank or federal association. The "main office" or "principal office" of a trust company means the office

designated or provided for in its articles of incorporation~~,~~ at an identified location as approved by the relevant chartering authority.

Section 2. Subsection (2) of section 655.047, Florida Statutes, is amended to read:

655.047 Assessments; financial institutions.—

(2) If mailed, the ~~mailing of a~~ semiannual assessment must be received by the office ~~postmarked~~ on or before January 31 and July 31 of each year. If transmitted through a wire transfer, an automated clearinghouse, or other electronic means approved by the office, the semiannual assessment must be transmitted to the office on or before January 31 and July 31 of each year. The office may levy a late payment penalty of up to $100 per day or part thereof that a semiannual assessment payment is overdue, unless it is excused for good cause. However, for intentional late payment of a semiannual assessment, the office shall levy an administrative fine of up to $1,000 a day for each day the semiannual assessment is overdue.

Section 3. Subsection (1) of section 655.60, Florida Statutes, is amended to read:

655.60 Appraisals.—

(1) The office is authorized to cause appraisals to be made ~~appraisals~~ of real estate or other property held by a ~~any~~ state financial institution, subsidiary, or service corporation or securing the assets of the state financial institution, subsidiary, or service corporation if ~~when~~ specific facts or

information with respect to real estate or other property held, secured loans, or lending, or when in its opinion the state financial institution's policies, practices, operating results, and trends give evidence that the state financial institution's appraisals or evaluations of ability to make payments may be excessive, that lending or investment may be of a marginal nature, that appraisal policies and loan practices may not conform with generally accepted and established professional standards, or that real estate or other property held by the state financial institution, subsidiary, or service corporation or assets secured by real estate or other property are overvalued. In lieu of causing such appraisals to be made, the office may accept any appraisal caused to be made by an appropriate state or federal regulatory agency or other insuring agency or corporation of a state financial institution. Unless otherwise ordered by the office, an appraisal of real estate or other property pursuant to this section must be made by a licensed or certified appraiser ~~or appraisers selected by the office, and the cost of such appraisal shall be paid promptly by such state financial institution, subsidiary, or service corporation directly to such appraiser or appraisers upon receipt by the state financial institution of a statement of such cost bearing the written approval of the office~~. A copy of the report of each appraisal caused to be made by the office pursuant to this section shall be furnished to the state financial institution, subsidiary, or service corporation within

a reasonable time, not exceeding 60 days, following the completion of the ~~such~~ appraisal and may be furnished to the insuring agency or corporation or federal or state regulatory agency.

Section 4. Paragraph (f) of subsection (1) of section 658.19, Florida Statutes, is amended to read:

658.19 Application for authority to organize a bank or trust company.—

(1) A written application for authority to organize a banking corporation or a trust company shall be filed with the office by the proposed directors and shall include:

(f) Such detailed financial, business, and biographical information as the commission or office may reasonably require for each proposed director, ~~president, chief~~ executive officer ~~(if other than the president)~~, and, if applicable, trust officer ~~(if applicable)~~.

Section 5. Subsection (1) of section 660.33, Florida Statutes, is amended to read:

660.33 Trust service offices.—

(1) In addition to its principal office and any branch trust company authorized under s. 658.26 ~~s. 660.32~~, a trust company or ~~a~~ trust department with its principal place of doing business in this state may maintain one or more trust service offices at the location of any bank, association, or credit union that ~~which~~ is organized under the laws of this state or under the laws of the United States with its principal place of

doing business in this state. However, a trust service office may be established only after the trust company or ~~the~~ trust department has secured the consent of a majority of the stockholders or members entitled to vote on such proposal at a meeting of stockholders or members, and of a majority of the board of directors, of the bank, association, or credit union at which a trust service office is proposed to be maintained, and after a certificate of authorization has been issued to the trust company or ~~the~~ trust department by the office.

Section 6. Section 663.08, Florida Statutes, is amended to read:

663.08 Certification of capital accounts.—Before opening an office in this state, and annually thereafter so long as a bank office is maintained in this state, an international banking corporation licensed pursuant to ss. 663.01-663.14 shall certify to the office the amount of its capital accounts, expressed in the currency of the jurisdiction of its incorporation. The dollar equivalent of these amounts, as determined by the office, shall be deemed to be the amount of its capital accounts. <u>The annual certification of capital accounts must be received by the office on or before June 30 of each year.</u>

Section 7. For the purpose of incorporating the amendment made by this act to section 655.005, Florida Statutes, in a reference thereto, subsection (8) of section 655.960, Florida Statutes, is reenacted to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(8) "Financial institution office" means a main office or principal office, as defined in s. 655.005, and a branch or branch office as defined in s. 658.12(4).

Section 8. For the purpose of incorporating the amendment made by this act to section 655.005, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 663.302, Florida Statutes, is reenacted to read:

663.302 Applicability of state banking laws.—

(1)(a) International development banks shall be subject to the following provisions of chapter 655 as though such international development banks were state banks:

1. Section 655.005, relating to definitions.

2. Section 655.012, relating to general supervisory powers of the office.

3. Section 655.016, relating to liability.

4. Section 655.031, relating to administrative enforcement guidelines.

5. Section 655.032, relating to investigations; etc.

6. Section 655.0321, relating to hearings and proceedings.

7. Section 655.033, relating to cease and desist orders.

8. Section 655.034, relating to injunctions.

9. Section 655.037, relating to removal of financial institution-affiliated party.

10. Section 655.041, relating to administrative fines.

11. Section 655.043, relating to articles of incorporation.

12. Section 655.044, relating to accounting practices.

13. Section 655.045, relating to examinations, reports, and internal audits.

14. Section 655.049, relating to deposit of fees and assessments.

15. Section 655.057, relating to records.

16. Section 655.071, relating to international banking facilities.

17. Section 655.50, relating to reports of transactions involving currency.

Section 9. For the purpose of incorporating the amendment made by this act to section 658.19, Florida Statutes, in a reference thereto, subsection (1) of section 658.165, Florida Statutes, is reenacted to read:

658.165 Banker's banks; formation; applicability of financial institutions codes; exceptions.—

(1) If authorized by the office, a corporation may be formed under the laws of this state for the purpose of becoming a banker's bank. An application for authority to organize a banker's bank is subject to ss. 658.19, 658.20, and 658.21, except that s. 658.20(1)(b) and (c) and the minimum stock ownership requirements for the organizing directors provided in s. 658.21(2) do not apply.

Section 10. For the purpose of incorporating the amendment made by this act to section 658.19, Florida Statutes, in a reference thereto, subsection (3) of section 665.013, Florida Statutes, is reenacted to read:

665.013 Applicability of chapter 658.—The following sections of chapter 658, relating to banks and trust companies, are applicable to an association to the same extent as if the association were a "bank" operating thereunder:

(3) Section 658.19, relating to application for authority to organize a bank or trust company.

Section 11. For the purpose of incorporating the amendment made by this act to section 658.19, Florida Statutes, in a reference thereto, subsection (3) of section 667.003, Florida Statutes, is reenacted to read:

667.003 Applicability of chapter 658.—Any state savings bank is subject to all the provisions, and entitled to all the privileges, of the financial institutions codes except where it appears, from the context or otherwise, that such provisions clearly apply only to banks or trust companies organized under the laws of this state or the United States. Without limiting the foregoing general provisions, it is the intent of the Legislature that the following provisions apply to a savings bank to the same extent as if the savings bank were a "bank" operating under such provisions:

(3) Section 658.19, relating to application for authority to organize a bank or trust company.

Section 12. For the purpose of incorporating the amendment made by this act to section 660.33, Florida Statutes, in a references thereto, subsection (4) of section 658.12, Florida Statutes, is reenacted to read:

658.12 Definitions.—Subject to other definitions contained in the financial institutions codes and unless the context otherwise requires:

(4) "Branch" or "branch office" of a bank means any office or place of business of a bank, other than its main office and the facilities and operations authorized by ss. 658.26(4) and 660.33, at which deposits are received, checks are paid, or money is lent. With respect to a bank that has a trust department, the terms have the meanings herein ascribed to a branch or a branch office of a trust company and mean any office or place of business of a trust company, other than its main office and its trust service offices established pursuant to s. 660.33, where trust business is transacted with its customers.

Section 13. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 707 Real Estate Brokers and Appraisers
SPONSOR(S): Business & Professions Subcommittee; Burton
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 608

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Butler	Luczynski
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	White	Topp
3) Regulatory Affairs Committee		Butler BSB	Hamon K.W.H.

SUMMARY ANALYSIS

This bill amends Florida's Real Estate law related to real estate licensure, rulemaking, and appraisers.

The bill requires the Florida Real Estate Commission to adopt rules to allow a brokerage to register a temporary broker in an emergency situation when the sole broker of a brokerage office dies or unexpectedly cannot remain a broker.

The bill extends the current pre-licensing and post-licensing education exemption for real estate salesperson and broker applicants who hold a four-year degree in real estate to also include applicants who hold a degree in real estate greater than a four-year degree, such as a Master's or Doctorate Degree.

The bill grants authority to the Florida Real Estate Commission to adopt rules to reinstate a license that has become null and void, under certain circumstances. The Commission may reinstate such a license if the request for reinstatement is within six months of the license becoming null and void, and the applicant was unable to comply due to illness or economic hardship.

The bill clarifies several records retention requirements for appraisers and appraisal management companies, to align Florida's retention requirements with the Federal requirements. The bill deletes a limited exception to the restriction on the Department's authority to inspect or copy the records of an appraisal management company and provides full authority to inspect such records.

To conduct federally related appraisal transactions, an appraiser, in any state, must be certified by a state licensure board that meets the federal minimum appraisal standards, one of which is a requirement that the state offer reciprocity to any appraiser licensed or certified by another state, so long as the other state's licensure requirements meet or exceed the host state's requirements. Appraisers nationwide complete two examinations for certification, a national-level generalized exam and a state-specific exam.

In order to comply with federal reciprocity requirements, the bill removes the authority for the Florida Real Estate Appraisal Board to have a "mutual agreement" with another state for an out-of-state appraiser to become licensed in Florida without having to fulfill all of Florida's education, experience, and examination requirements for licensure. Florida will only require out of state certified appraisers to complete the Florida specific examination to become certified in Florida.

The bill has a minimal negative fiscal impact on the Department of Business and Professional Regulation; however, the impact can be handled with existing resources. There is no fiscal impact on local funds.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Real Estate Commission (FREC), within the Division of Real Estate (Division), within the Department of Business and Professional Regulation (Department) administers and enforces the real estate license law, ch. 475, Part 1, F.S. The FREC is also empowered to adopt rules that enable it to implement its statutorily authorized duties and responsibilities. The rules are contained in ch. 61J2, F.A.C.

The Florida Real Estate Appraisal Board (FREAB), within the Division of the Department, administers and enforces the real estate appraiser license law within Florida, in conjunction with standards promulgated by the Appraisal Foundation. The FREAB is empowered to pass rules that enable it to implement its statutorily authorized duties and responsibilities to properly protect the health, safety, and welfare of the general public.

The Appraisal Foundation is composed of over eighty organizations, corporations, and government agencies that provide guidelines for uniform standards for appraisers and appraisals. The Appraisal Standards Board within the Foundation adopts the Uniform Standards of Professional Appraisal Practice (USPAP) which is recognized throughout the nation as the generally accepted standards of professional appraisal practice.

The rules of the FREAB, along with the licensing requirements of the FREC, and the standards of the USPAP, provide guidance for appraisers, appraisals, and appraisal management companies (AMC) throughout the nation.

Real Estate Brokerage Registration Requirements

In order for a real estate brokerage to act as a real estate broker in Florida, at least one active member of the brokerage must be licensed or registered as a broker at all times. If the real estate firm does not have at least one broker within the firm, the registration of the firm, usually a corporation, limited liability company, limited liability partnership, or partnership, is canceled automatically during the period of time that no broker is registered.[1] Additionally, all sales associates registered under the brokerage must stop all work during the period when a brokerage has no member broker. The FREC does not have any statutory authority to establish rules regarding vacancies at a real estate firm, should a firm suddenly lose its only broker.

Real Estate Broker Education Requirements

Individuals with a four-year degree in real estate from an accredited institution of higher learning are exempt from the pre-licensing and post-licensing education requirements of licensure as a broker or sales associate.[2]

This statute allows individuals to avoid retaking real estate education courses if the individual already has a higher education degree focused on real estate; however, if an individual does not have a four-year real estate degree, but has a higher degree, such as a Masters or a Doctorate degree in real estate, that individual is unable to take advantage of this exemption.[3]

[1] s. 475.15, F.S.
[2] s. 475.17(6), F.S.
[3] Department of Business and Professional Regulation, Agency Analysis of 2015 Senate Bill 680, p. 2 (Feb. 26, 2015) (Senate Bill 608 is identical to House Bill 707).

Reinstatement of Null and Void License

A license is considered in involuntary inactive status when the license is not renewed at the end of the license period prescribed by the Department.[4] The license may subsequently be renewed only if the licensee meets the educational and other qualifications specified in s. 475.183, F.S. Section 475.183(2)(b), F.S., provides that any license that has been involuntarily inactive for more than two years shall automatically expire and become null and void without further action.

Additionally, a license for a sales associate or broker can become null and void if the sales associate or broker does not complete the post licensure education requirements prior to the first renewal following initial licensure.[5]

Once a license becomes null and void, the licensee is required to re-apply for licensure and meet the initial requirements that a new applicant is required to complete: a new application, fees, fingerprints, pre-licensing education, and successful completion of the state exam.

Appraiser Records Retention

An appraiser or AMC must retain original and true copies of contracts, appraisal reports, supporting documentation, and other documents involved in engaging an appraiser's services for five years or longer, if required by the USPAP.

These documents must be made available to the Department for inspection and copying; however, the Department may only inspect or copy such documents of an AMC if there is a pending investigation or complaint against the AMC.

The Department may inspect the offices of individual appraisers and firms offering appraisal services to determine if the provisions of law governing the practice of appraisers are being upheld.

Mutual Agreements with Other States

The FREAB may enter into written agreements with other states that have similar licensing requirements as Florida to provide out-of-state licensees an opportunity to become licensed in Florida without having to go through the entirety of Florida's licensing process. Absent one of these "mutual agreements," an out-of-state licensee must meet all of Florida's education, experience, and examination requirements to become licensed in Florida as an appraiser.

As part of the Federal reform of financial services, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires that states offer reciprocity to any appraiser licensed or certified by another state, so long as the other state's licensure requirements meet or exceed the host state's requirements.[6]

To conduct federally related appraisal transactions, an appraiser, in any state, must be certified by a state licensure board that meets the federal minimum appraisal standards. Appraisers nationwide complete two examinations for certification, a national-level generalized exam and a state-specific exam.

[4] s. 475.01(g), F.S.
[5] ss. 475.17(3)(c) & 475.17(4)(c), F.S.
[6] Dodd-Frank Wall Street Reform and Consumer Protection Act, PL 111-203, July 21, 2010, 124 Stat 1376.

Licensed or Certified Appraisers

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council, who are charged with monitoring the states' appraisal regulatory programs, have established two title designations for appraisers, "state licensed" and "state certified." The ASC strongly urges states to use these federally-recognized designations or titles in order to decrease confusion among the states' different regulatory programs.

Since July 1, 2003, Florida does not issue new credentials for "licensed" appraisers. Further, the Appraiser Qualifications Board (AQB) of the Appraisal Foundation, who establishes the minimum education, experience, and examination requirements for appraisers, no longer permits "licensed" appraisers to supervise trainee appraisers. Only "certified" appraisers may act as supervisors of trainee appraisers.

Chapter 2013-144, Laws of Florida, amended Florida law to align with the AQB, and removed "licensed" appraisers from the definition of "supervisor appraiser." Consequently, only "certified" appraisers are recognized to be a "supervisor appraiser" in Florida law.

Effect of the Bill

Real Estate Brokerage Registration Requirements

The bill provides authority for the FREC to adopt rules that will allow a real estate brokerage firm to register a broker on a temporary, emergency basis, when the sole broker of a brokerage dies or is unexpectedly unable to remain a broker.

The rules adopted in accordance with this authority should allow businesses and licensees to operate the business without interruption during a period of unexpected loss of its licensed broker.

Real Estate Broker Education Requirements

The bill provides authority for license applicants to be exempt from pre-licensing education requirements and allows licensees to be exempt from the post-licensing education requirement if the applicant holds a degree that is considered higher than a four-year degree, such as a Master or Doctorate degree. Such degree must be in real estate from an accredited institution of higher education.

Reinstatement of Null and Void License

The bill allows the FREC to reinstate the license of an individual whose license has become null and void, if the commission determines that the individual failed to comply within the time requirements and his delay was because of illness or economic hardship. The FREC will define "illness or economic hardship" by rule.

The individual must apply for reinstatement within six months of the license becoming null and void. The bill requires that the individual also meet all continuing education requirements, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure.

Appraiser Records Retention

The bill clarifies what documents, and in what form, an appraiser or AMC must retain records and other specified documents. The bill requires that each appraiser or AMC prepare and retain a work file for each appraisal, appraisal review, or appraisal consulting agreement. The work file must be maintained for at least five years, or for a greater period if specified by the USPAP.

The retained work file shall contain:

- Original or true copies of any contracts engaging the appraiser or AMC's services;
- Appraisal reports;
- Supporting data assembled and formulated by the appraiser or company in preparing appraisal reports or engaging in appraisal management services; and
- All other data, information, and documentation required by the standards for the development or communication of a real estate appraisal as approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, as established by rule of the FREAB.

Additionally, the bill requires that, in accordance with administrative rules adopted by the FREAB, AMCs shall also retain:

- company accounts;
- correspondence;
- memoranda;
- papers;
- books; and
- other records.

There are pending Federal rules that impose these requirements on AMCs. The proposed language will ensure that Florida is in compliance with Federal law. Failure to comply with the requirements of Federal law could result in sanctions that could prohibit appraisers licensed in Florida from conducting federally related appraisal transactions.

The bill removes the requirement that the Department must have a pending investigation or complaint in order to inspect or copy, upon reasonable notice, any of the above specified records that are retained by an AMC. Further, the bill affirmatively includes AMCs in the list of appraiser offices that employees of the Department may inspect at reasonable hours for the purpose of determining if any provision of statute or rule is being violated.

Mutual Agreements with Other States

In order to comply with federal reciprocity requirements, the bill removes the authority for the Florida Real Estate Appraisal Board to have a "mutual agreement" with another state for an out-of-state appraiser to become licensed in Florida without having to fulfill all of Florida's education, experience, and examination requirements for licensure. Florida will only require out of state certified appraisers to complete the Florida specific examination to become certified in Florida.

These changes would bring Florida's appraiser laws in line with the federal requirements of the Dodd-Frank Act, and allow Florida licensed appraisers to continue to conduct federally related appraisal transactions.

Licensed or Certified Appraisers

The bill removes several cross-references to "licensed" appraisers in s. 475.611, F.S. These changes are in line with the requirements of the AQB for a trainee appraiser to be supervised by a "certified" appraiser and not a "licensed" appraiser, and with prior statutory updates in 2013.[7]

B. SECTION DIRECTORY:

Section 1 amends s. 475.15, F.S., requires the FREC to adopt rules to allow a brokerage to register a broker on a temporary, emergency basis, when the sole broker is unexpectedly unable to do so.

[7] Ch. 2013-144, Laws of Fla.

Section 2 amends s. 475.17(6), F.S., allows applicants with real estate degrees greater than a four-year degree to be exempt from pre-licensing and post-licensing education requirements.

Section 3 amends s. 475.183, F.S., creates a new subsection (4) to allow the FREC to reinstate an individual with a null and void license under certain conditions.

Section 4 amends s. 476.611, F.S., to clarify the supervision requirements of trainee appraisers.

Section 5 amends s. 475.612(5), F.S., to clarify the supervision requirements of trainee appraisers.

Section 6 amends s. 475.621(2), F.S., to clarify where the annual fee for persons who seek to perform federally related transactions is sent.

Section 7 amends s. 475.629, F.S., to clarify records retention requirements for appraisers and AMCs, and to align with Federal retention requirements.

Section 8 amends s. 475.6295, F.S., to include AMCs in the list of licensees that the Department may inspect at any reasonable time.

Section 9 amends s. 473.631, F.S., to remove the requirements that out-of-state appraisers must be licensed in a state with a mutual agreement with Florida in order to bypass the new licensee education, experience and exam requirements.

Section 10 provides an effective date of July 1, 2015.

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:

   This bill has a minimal negative fiscal impact on the Department of Business and Professional Regulation that can be handled with existing resources.[8]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may prevent a brokerage which would otherwise need to close due to the death or unexpected loss of its only broker from closing by appointing a new, temporary broker in his place. The actual economic impact of such an event is indeterminable.

[8] Department of Business and Professional Regulation, Agency Analysis of 2015 Senate Bill 680, p. 7-8 (Feb. 26, 2015) (Senate Bill 608 is identical to House Bill 707).

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:

Section 1 would allow the FREC to establish procedures by rule, and allow the amendment of the existing rule. A prior rule was created prior to more stringent rulemaking requirements and the FREC has been unable to amend it. This section would also likely require the FREC to adopt rules to allow a brokerage to register a broker on a temporary basis.

Section 2 would likely require the FREC to amend rules to review and consider education transcripts of graduate degrees in real estate in place of the pre-licensing and post-licensing education requirements of sales associates and brokers.

Section 3 allows the FREC to amend its rules to accommodate licensees that did not previously have the ability to request reinstatement of null and void licenses due to hardship. It will also likely require the commission to adopt a reinstatement fee and define "illness or economic hardship."

Section 7 would require the FREAB to amend its rules to incorporate any finalized federal regulations.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Business & Professions Subcommittee adopted three amendments. The amendments clarify the supervision requirements for trainee appraisers, clarify the documents required in an appraiser's work file, and clarify the legislative intent for rulemaking related to reinstating a real estate broker or salesperson license that is null and void. The bill was reported favorably as a committee substitute.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to real estate brokers and appraisers; amending s. 475.15, F.S.; requiring the Florida Real Estate Commission to adopt certain rules pertaining to broker registration on a temporary, emergency basis; amending s. 475.17, F.S.; clarifying education requirements that apply to postlicensure and initial real estate licensure; amending s. 475.183, F.S.; providing that the commission may reinstate the license of an individual in certain circumstances; amending s. 475.611, F.S.; revising the definition of the term "registered trainee appraiser"; amending s. 475.612, F.S.; revising supervision requirements for specified graduate students; amending s. 475.621, F.S.; revising requirements related to certain annual fees required to be collected by the Department of Business and Professional Regulation; amending s. 475.629, F.S.; requiring an appraiser to prepare and retain a work file in certain circumstances; requiring the work file to be retained for a specified period; requiring the work file to contain certain data, information, and documentation; requiring appraisal management companies to retain certain items; removing a prohibition that the department may not inspect or copy the records except in certain circumstances; amending s. 475.6295, F.S.; providing that duly

authorized agents and employees of the department may inspect an appraisal management company at all reasonable hours; amending s. 475.631, F.S.; removing the board's authority to enter into written agreements with similar licensing or certification authorities; providing an effective date.

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

Section 1. Section 475.15, Florida Statutes, is amended to read:

475.15 Registration and licensing of general partners, members, officers, and directors of a firm.—Each partnership, limited liability partnership, limited liability company, or corporation which acts as a broker shall register with the commission and shall renew the licenses or registrations of its members, officers, and directors for each license period. However, if the partnership is a limited partnership, only the general partners must be licensed brokers or brokerage corporations registered pursuant to this part. If the license or registration of at least one active broker member is not in force, the registration of a corporation, limited liability company, limited liability partnership, or partnership is canceled automatically during that period of time. The commission shall adopt rules that allow a brokerage to register a broker on a temporary, emergency basis if a sole broker of a

brokerage dies or is unexpectedly unable to remain a broker.

Section 2. Subsection (6) of section 475.17, Florida Statutes, is amended to read:

475.17 Qualifications for practice.—

(6) The postlicensure education requirements of this section, and the education course requirements for one to become initially licensed, do not apply to any applicant or licensee who has received a 4-year degree, or higher, in real estate from an accredited institution of higher education.

Section 3. Subsection (4) is added to section 475.183, Florida Statutes, to read:

475.183 Inactive status.—

(4) The commission may reinstate the license of an individual whose license has become void if the commission determines that the individual failed to comply because of illness or economic hardship, as defined by rule. The individual must apply to the commission for reinstatement within 6 months after the date that the license becomes void. Such individual must meet all continuing education requirements prescribed by law, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this section.

Section 4. Paragraph (r) of subsection (1) of section 475.611, Florida Statutes, is amended to read:

475.611 Definitions.—

(1) As used in this part, the term:

(r) "Registered trainee appraiser" means a person who is

registered with the department as qualified to perform appraisal services only under the direct supervision of a ~~licensed or~~ certified appraiser. A registered trainee appraiser may accept appraisal assignments only from her or his primary or secondary supervisory appraiser.

Section 5. Subsection (5) of section 475.612, Florida Statutes, is amended to read:

475.612 Certification, licensure, or registration required.—

(5) This section does not apply to any full-time graduate student who is enrolled in a degree program in appraising at a college or university in this state, if the student is acting under the direct supervision of a certified ~~or licensed~~ appraiser and is engaged only in appraisal activities related to the approved degree program. Any appraisal report by the student must be issued in the name of the supervising individual who is responsible for the report's content.

Section 6. Subsection (2) of section 475.621, Florida Statutes, is amended to read:

475.621 Registry of licensed and certified appraisers.—

(2) The department shall collect from such individuals who perform or seek to perform appraisals in federally related transactions, an annual fee as set by and transmitted to the appraisal subcommittee ~~to be transmitted to the Federal Financial Institutions Examinations Council on an annual basis~~.

Section 7. Section 475.629, Florida Statutes, is amended

to read:

475.629 Retention of records.—An appraiser registered, licensed, or certified under this part or an appraisal management company registered under this part shall prepare and retain a work file for each appraisal, appraisal review, or appraisal consulting assignment. This work file shall be retained~~,~~ for 5 years or the period specified in the Uniform Standards of Professional Appraisal Practice, whichever is greater. The work file shall contain~~,~~ original or true copies of any contracts engaging the appraiser's or appraisal management company's services, appraisal reports, and supporting data assembled and formulated by the appraiser or company in preparing appraisal reports or engaging in appraisal management services and all other data, information, and documentation required by the standards for the development or communication of a real estate appraisal as approved and adopted by the Appraisal Standards Board of The Appraisal Foundation, as established by rule of the board. Except as otherwise specified in the Uniform Standards of Professional Appraisal Practice, the period for retention of the records applicable to each engagement of the services of the appraiser or appraisal management company runs from the date of the submission of the appraisal report to the client. Appraisal management companies shall also retain the company accounts, correspondence, memoranda, papers, books, and other records in accordance with administrative rules adopted by the board. These records must be

made available by the appraiser or appraisal management company for inspection and copying by the department upon reasonable notice to the appraiser or company. ~~However, the department may not inspect or copy the records of an appraisal management company except in connection with a pending investigation or complaint.~~ If an appraisal has been the subject of or has served as evidence for litigation, reports and records must be retained for at least 2 years after the trial or the period specified in the Uniform Standards of Professional Appraisal Practice, whichever is greater.

Section 8. Section 475.6295, Florida Statutes, is amended to read:

475.6295 Authority to inspect.—Duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours any appraisal management company, appraiser or appraisal office certified, registered, or licensed under this chapter, for the purpose of determining if any of the provisions of this chapter, chapter 455, or any rule promulgated under authority of either chapter is being violated.

Section 9. Section 475.631, Florida Statutes, is amended to read:

475.631 Nonresident licenses and certifications.—

~~(1) Notwithstanding the requirements for certification set forth in ss. 475.615 and 475.616, the board may enter into written agreements with similar licensing or certification authorities of other states, territories, or jurisdictions of~~

~~the United States to ensure for state-certified appraisers nonresident licensure or certification opportunities comparable to those afforded to nonresidents by this section. Whenever the board determines that another jurisdiction does not offer nonresident licensure or certification to state-certified appraisers substantially comparable to those afforded to certified appraisers or licensees of that jurisdiction by this section, the board shall require certified appraisers or licensees of that jurisdiction who apply for nonresident certification to meet education, experience, and examination requirements substantially comparable to those required by that jurisdiction with respect to state-certified appraisers who seek nonresident licensure or certification, not to exceed such requirements as are prescribed in ss. 475.615 and 475.616.~~

(1)~~(2)(a)~~ Any resident state-certified appraiser who becomes a nonresident shall, within 60 days, notify the board of the change in residency and comply with nonresident requirements. Failure to notify and comply is a violation of the license law, subject to the penalties in s. 475.624.

(2)~~(b)~~ All nonresident applicants, certified appraisers, and licensees shall comply with all requirements of board rules and this part. The board may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary for the regulation of nonresident certified appraisers and licensees.

Section 10. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 715 Eligibility for Coverage by Citizens Property Insurance Corporation
SPONSOR(S): Insurance & Banking Subcommittee; Raschein
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 842

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Peterson	Cooper
2) Regulatory Affairs Committee		Peterson KP	Hamon K.W.H.

SUMMARY ANALYSIS

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company. Current law provides an eligibility restriction for insurance in Citizens based on the location of the property. The current restriction based on property location prevents a major structure that is newly-constructed or substantially-improved pursuant to a building permit applied for on or after July 1, 2015, from obtaining insurance in Citizens if the structure is located seaward of the coastal construction control line or within the Coastal Barrier Resources System. A substantial improvement generally encompasses any repair, reconstruction, rehabilitation, or improvement to a structure that costs 50% or more of the market value of the structure. A property owner who incurs a catastrophic loss likely would exceed the threshold in rebuilding the property.

The bill removes the prohibition on coverage for any major structure that is substantially improved pursuant to a building permit applied for on or after July 1, 2015, but retains the prohibition on new construction of a major structure. A major structure that is rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent pursuant to a permit applied for after July 1, 2015 is also ineligible for coverage from Citizens.

The bill has no fiscal impact on state or local governments. Owners of major structures in certain coastal areas will be able to repair, remodel, or rebuild their properties and remain eligible for insurance through Citizens provided the square footage of finished area is not increased by 25% or more.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

As of January 22, 2015, Citizens is the largest property insurer in Florida with over 660,000 policies extending approximately $202 billion of property coverage to Floridians.[1] Citizens insures over 282,000 residential and commercial policies in Florida's coastal areas and over 370,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas.

Citizens was created statutorily in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (FRPCJUA) and the Florida Windstorm Underwriting Association (FWUA). The FRPCJUA provided full-coverage personal and commercial residential property policies in all counties of Florida, while the FWUA provided personal and commercial residential property wind-only coverage in designated territories.

Citizens writes property insurance in three separate accounts:[2]

- Personal Lines Account – personal residential[3] multiperil[4] policies
  - With wind coverage, on properties located outside the Coastal Account area; and
  - Without wind coverage, on properties located within the Coastal Account Area.
- Commercial Lines Account – commercial residential[5] and commercial non-residential policies
  - With wind coverage, on properties located outside the Coastal Account area; and
  - Without wind coverage, on properties located within the Coastal Account Area.
- Coastal Account – personal residential, commercial residential, and commercial non-residential wind-only[6] and multiperil policies[7] for properties in limited eligible coastal areas.[8]

Eligibility for Insurance in Citizens

Current law provides specific eligibility requirements for property to be insured by Citizens which are based on premium amount,[9] value of the property insured,[10] and the location of the property.[11] Property not meeting the statutory eligibility requirements cannot be insured by Citizens.

---

[1] https://www.citizensfla.com/about/bookofbusiness/ (last viewed March 17, 2015).

[2] s. 627.351(6)(b)2., F.S.

[3] Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

[4] A multiperil policy is defined as a package policy, such as a homeowners or business insurance policy that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. Multiperil property insurance policies may include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

[5] Commercial residential policies include condominium association, apartment building, homeowner's association policies

[6] A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

[7] Effective July 1, 2014, Citizens may no longer offer new commercial residential policies providing multiperil coverage, but may continue to renew existing policies. (s. 627.351(6)(b)2.a.(III), F.S.)

[8] These include areas eligible for coverage by the FWUA as those areas were defined on January 1, 2002. (s. 627.351(6)(a)2., F.S.)

[9] s. 627.351(6)(c)5.a. and b., F.S

[10] s. 627.351(6)(a)3., F.S

[11] s. 627.351(6)(a)5.b., F.S

The current restriction based on property location prevents a major structure that is newly-constructed or substantially-improved pursuant to a building permit applied for on or after July 1, 2015, from obtaining insurance in Citizens if the structure is located seaward of the coastal construction control line[12] or within the Coastal Barrier Resources System (CBRS).[13] The definition of "major structure"[14] is broad, encompassing all residential and commercial buildings. The definition of "substantial improvement"[15] generally encompasses any repair, reconstruction, rehabilitation, or improvement to a structure that costs 50% or more of the market value of the structure. A property owner who incurs a catastrophic loss likely would exceed the threshold in rebuilding the property.

Statewide Impact of Citizens' Eligibility Based on Location of Property

Using county property appraiser data collected by the Department of Revenue, Citizens identified approximately 89,000 statewide parcels of improved residential land and 23,000 statewide parcels of vacant land within the CBRS or seaward of the coastal construction control line. Citizens does not insure any of the 23,000 vacant parcels because property insurance cannot be purchased to insure vacant land. It only insures structures and contents in structures located on land. Citizens currently insures 19,000 - 55,000 of the 89,000 residential parcels. Thus, any substantial improvement to property located on one of the 89,000 parcels where a building permit is applied for on or after July 1, 2015 would render the property ineligible for new or renewed coverage by Citizens. The homeowner would have to find insurance in the private voluntary or surplus lines market.[16]

In addition, Citizens currently writes a minimum of over 4,000 and a maximum of almost 13,000 policies insuring commercial buildings and condominium associations in the affected coastal areas. Thus, any substantial improvement to the property insured by these 4,000 - 13,000 policies where a building permit is applied for on or after July 1, 2015 would render the property ineligible for coverage by Citizens and these business owners and condominium associations currently insured by Citizens would have to find insurance in the private voluntary or surplus lines market.

---

[12] A coastal construction control line (CCCL) is an upland jurisdictional line defining the portion of the beach and dune system that is subject to severe fluctuations caused by a 100-year storm surge, storm waves, or other forces such as wind, wave, or water level changes. The CCCL permitting program regulates construction activities on Florida's beach-dune system. Its purpose is to preserve and protect beaches from imprudent construction that can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access. The CCCL is not a setback line or line of prohibition for construction. Rather, new construction, as well as additions, remodeling, and repairs to existing structures are allowed seaward of the control line; however, such structures and activities, unless exempt by rule or law, require a CCCL permit from the Florida Department of Environmental Protection. (*see* ch. 62B-33-005(1), F.A.C.; s. 161.053(1)(a), F.S., and part III of chapter 161, F. S. An interactive map is available at http://www.dep.state.fl.us/beaches/ (last visited March 17, 2015).

[13] The Coastal Barrier Resources Act (CBRA or Act) was passed in 1982 and reauthorized in 1990, 2000 and 2005. Under CBRA, some undeveloped land located on coastal barriers is designated by the Secretary of the Interior as CBRA units in the Coastal Barrier Resource System. The Act does not prohibit or regulate development of land in the CBRS, it simply precludes land owners from obtaining federal financial assistance for development of coastal barrier land. The Act encourages the conservation of hurricane prone, biologically rich coastal barriers by restricting federal expenditures that encourage development, such as federal flood insurance, road building, disaster relief, and wastewater systems. Areas within the CBRS can be developed if the private developer or other non-federal party bears the full cost of development. The U.S. Fish and Wildlife Service is the federal agency responsible for implementing CBRA. Florida has 128 units in the CBRS totaling 680,915 acres, and 414 shoreline miles. The CBRS boundaries are depicted on U.S. Geological Survey topographic quadrangle maps. With three exceptions, only Congress has the authority to change CBRA boundaries to include or exclude specific property. The exceptions allow the Secretary of the Interior to change the boundaries for (1) voluntary additions to the CBRS by property owners, (2) additions of excess federal property to the CBRS, and (3) the required CBRA 5-year review that solely considers changes to the CBRS by natural forces such as erosion or accretion. (*see generally* U.S.FISH AND WILDLIFE SERVICE, *Coastal Barrier Resources Act,* http://www.fws.gov/CBRA/index.html (last visited March 5, 2015).

[14] A "major structure" means houses, mobile homes, apartment buildings, condominiums, motels, hotels, restaurants, and other types of construction having the potential for substantial impact on coastal zones. (s. 161.54(6), F.S.)

[15] A "substantial improvement" means any repair, reconstruction, rehabilitation, or improvement of a structure when the cost of the improvement or repair to pre-damage condition is 50 percent or more of the market value before construction begins or the damage occurred, as applicable. (*see* s. 161.54(12), F.S.)

[16] Numbers reflect properties and policies as of September 30, 2014. Original data on file with the House Insurance & Banking Subcommittee.

Effect of Proposed Changes Related to Citizens' Eligibility Based on Location of Property

The bill revises eligibility for insurance with Citizens based on location of the property. It removes the prohibition on coverage for any major structure that is substantially improved pursuant to a building permit applied for on or after July 1, 2015, but retains the prohibition on new construction of a major structure. The bill revises the prohibition applicable to existing structures. A major structure that is rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area[17] by more than 25 percent pursuant to a permit applied for after July 1, 2015 is ineligible for coverage from Citizens. A property owner who incurs a catastrophic loss would be able to rebuild and retain eligibility for Citizens coverage provided the total square footage of finished space is not increased beyond the threshold.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 2: Provides an effective date of July 1, 2015.

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:

Owners of structures in certain coastal areas will be able to improve or repair or rebuild their properties and remain eligible for insurance through Citizens provided the total square footage of finished area is not increased by more than 25%.

D. FISCAL COMMENTS:

None.

III. COMMENTS

[17] The bill does not define "finished space." However, the American National Standard Institute, Inc. has defined the term in the residential setting to include "an enclosed area in a house that is suitable for year-round use, embodying walls, floors, and ceilings that are similar to the rest of the house." *American National Standard for Single-Family Residential Buildings, Square Footage-Method for Calculating: ANSI Z765-2003, 1* (November 2003) (on file with the House Insurance & Banking Subcommittee). The American National Standards Institute is a voluntary, consensus standard setting organization. Its standards are subject to periodic review and revision.

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an 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 a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Insurance & Banking Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment corrected a drafting error related to the prohibition on eligibility for existing properties that are rebuilt or remodeled to give effect to the prohibition, and changed the threshold for the prohibition from an increase of 25% or more of original square footage to an increase of more than 25% of total square footage of finished area. The amendment also narrowed the title to an act relating to Eligibility for Coverage by Citizens Property Insurance Corporation.

The staff analysis is drafted to reflect the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to eligibility for coverage by Citizens Property Insurance Corporation; amending s. 627.351, F.S.; deleting a provision prohibiting certain improvements to major structures from being eligible for coverage by Citizens Property Insurance Corporation; revising provisions with respect to prohibitions on coverage for major structures that have undergone specified changes after a specified permit application date; reenacting s. 627.712(1), F.S., relating to residential windstorm coverage, to incorporate the amendment made by this act to s. 627.351, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (a) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance

coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in the state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes.

Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment

building, and similar policies.

3. With respect to coverage for personal lines residential structures:

a. Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.

b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.

c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single

condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.

d. Effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term.

The requirements of sub-subparagraphs b.-d. do not apply in counties where the office determines there is not a reasonable degree of competition. In such counties a personal lines residential structure that has a dwelling replacement cost of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office

with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to ~~for which~~ a permit ~~is~~ applied for ~~on or~~ after July 1, 2015, ~~for new construction or substantial improvement as defined in s. 161.54(12)~~ is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

6. With respect to wind-only coverage for commercial lines

residential condominiums, effective July 1, 2014, a condominium shall be deemed ineligible for coverage if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

Section 2. For the purpose of incorporating the amendment made by this act to section 627.351, Florida Statutes, in a reference thereto, subsection (1) of s. 627.712, Florida Statutes, is reenacted to read:

627.712 Residential windstorm coverage required; availability of exclusions for windstorm or contents.—

(1) An insurer issuing a residential property insurance policy must provide windstorm coverage. Except as provided in paragraph (2)(c), this section does not apply to risks that are eligible for wind-only coverage from Citizens Property Insurance Corporation under s. 627.351(6), and risks that are not eligible for coverage from Citizens Property Insurance Corporation under s. 627.351(6)(a)3. or 5. A risk ineligible for coverage by the corporation under s. 627.351(6)(a)3. or 5. is exempt from this section only if the risk is located within the boundaries of the coastal account of the corporation.

Section 3. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 825 Family Trust Companies
SPONSOR(S): Insurance & Banking Subcommittee; Roberson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 568

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Bauer	Cooper
2) Regulatory Affairs Committee		Bauer	Hamon

SUMMARY ANALYSIS

In 2014, the Florida Legislature created the Florida Family Trust Company Act (ch. 662, F.S., "the Act"). Effective October 1, 2015, the Act allows families to form unlicensed, licensed, and foreign licensed private family trust companies (FTCs), subject to certain regulatory requirements. The Act will be enforced by the Office of Financial Regulation (OFR), which charters and regulates entities engaging in financial institution business in Florida, including public, commercial trust companies.

The bill modifies and clarifies a number of the Act's requirements of licensed FTCs, unlicensed FTCs, and foreign licensed FTCs. The bill:

- Provides that OFR must conduct an examination of a licensed FTC every 36 months instead of the current 18 months;
- Removes the requirement that OFR conduct examinations of unlicensed FTCs;
- Requires that judicial determination of a breach of fiduciary duty or trust before the OFR may enter a cease and desist order, and clarifies that a FTC has an opportunity for an administrative hearing before the OFR may revoke a FTC's license;
- Requires all FTCs in operation on October 1, 2015, to either apply for the appropriate FTC license or registration, or cease doing business in this state by December 30, 2015;
- Clarifies that OFR is responsible for the regulation, supervision, and examinations of licensed FTCs, but limits the OFR's role over unlicensed or foreign FTCs to ensuring that services provided by such companies are provided only to family members and to determining conformity with the Act;
- Requires the management of a licensed FTC to have at least three directors or managers and requires that at least one of those directors or managers be a Florida resident;
- Provides that a FTC registration application must state that trust operations will comply with statutory provisions relating to organizational documents, minimum capital requirements, and segregated books, records, and assets;
- Provides that the designated relatives in a licensed FTC may not have a common ancestor within three generations, instead of the current five generations;
- Requires that a registration application for a foreign licensed FTC must provide proof that the company is in compliance with the FTC laws and regulations of its principal jurisdiction;
- Requires amendments to certificates of formation or certificates of organization to be submitted to the OFR at least 30 days before it is filed or effective; and
- Allows FTCs to file annual renewal applications within 45 days of the end of each calendar year.

The bill does not appear to have a fiscal impact on state and local governments. The bill may have a positive impact on the private sector.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Trusts

A trust is generally defined as, "a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it."[1] A trust must have three interest holders - a settlor (also called a "grantor"), a trustee, and a beneficiary. The settlor is the party creating the trust. The beneficiary has an equitable interest in property subject to trust, enjoying the benefit of the administration of the trust by a trustee.[2] The trustee holds legal title to the property held in trust for the benefit of the beneficiary.[3] A bank with trust powers or a trust company may offer its services to the general public to serve as trustee of private trusts.

Background: Florida Family Trust Company Act

In 2014, the Florida Legislature created the Florida Family Trust Company Act (ch. 662, F.S., "the Act").[4] Effective October 1, 2015, the Act allows families to form unlicensed, licensed, and foreign licensed private family trust companies (FTCs), subject to certain regulatory requirements that will be enforced by the Office of Financial Regulation (OFR), which charters and regulates entities engaging in financial institution business in Florida, which include public, commercial trust companies, in accordance with the Florida Financial Institutions Codes (Codes).[5]

Families may prefer to form a private FTC (instead of using individual or institutional trustees) for a variety of reasons, such as tax and regulatory advantages, privacy, flexibility, and self-governance of the family's financial affairs. At least 14 other states currently have statutes governing the organization and operation of FTCs.

In general, an FTC is an entity which provides trust services similar to those provided by an individual or an institutional trustee. This includes serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family. A Florida FTC must be owned exclusively by family members and may not provide fiduciary services to the public.[6] The Act's three FTC types are:[7]

1. *(Unlicensed) Family trust company*
   A FTC is a corporation or limited liability company exclusively owned by one or more family members, organized or qualified to do business in Florida, and acts as a fiduciary for one or more family members. A FTC may not serve as a fiduciary for a non-family member, except that it may provide such fiduciary services for up to 35 individuals who are not family members, but who are current or former employees of the FTC or of trusts, companies, or other entities that are family members.

2. *Foreign licensed family trust company*
   A foreign licensed FTC has its principal place of business outside of Florida, and is licensed, operating, and supervised by a state other than Florida or by the District of Columbia, and is not owned by or a

[1] 55A Fla.Jur.2d Trusts s.1; *see also* s. 731.201(38), F.S.
[2] *Id.*
[3] 55A Fla.Jur.2d Trusts s.1.
[4] Ch. 2014-97, Laws of Fla.
[5] The Codes consist of ch. 655 (Financial Institutions), ch. 657 (Credit Unions), ch. 658 (Banks and Trust Companies), ch. 660 (Trust Business), ch. 663 (International Banking), ch. 665 (Associations), and ch. 667 (Savings Banks), F.S.
[6] s. 662.102, F.S.
[7] s. 662.111(12), (15), and 16), F.S.

subsidiary of a business entity that is organized in or licensed by any foreign country as defined by the international banking chapter of the Codes.[8]

3. *Licensed family trust company*
   A licensed FTC operates under a current (not revoked or suspended) license issued by the OFR.

The Act contains regulatory requirements relating to:

- Initial and renewal licensure and registration,
- Acts authorizing the OFR to take action against a FTC's license or registration, including cease and desist authority,
- Qualifications for directors, officers, managers or managerial members of any FTC type,
- Organizational and management authority for FTCs,
- Capital requirements for FTCs with a principal place of business in Florida, and
- Investigation, examination, and enforcement authority by the OFR, including cease and desist authority.

Current Situation

According to proponents of the Act and the bill, a number of family offices in Florida have indicated that the Act is not workable in its current form, namely due to the Act's examination requirements that would be intrusive into private family arrangements, and may exceed what is minimally required to avoid triggering the application of certain federal securities laws.[9] Currently, the Act requires that OFR conduct an examination of all FTC types at least once every 18 months.[10]

Deficiencies in the Act for unlicensed FTCs and foreign licensed FTCs

Section 662.141(1), F.S., requires OFR to conduct mandatory examinations of each unlicensed FTC once every 18 months in order to determine that it is operating as an unlicensed FTC within the meaning of the Act. It is unclear how OFR will conduct such examinations, but each review of an unlicensed FTC will necessarily require a review of private family trust instruments and financial arrangements. The majority of FTCs in existence in other jurisdictions choose to organize as unlicensed, unregulated FTCs, due to the desire to keep family arrangements private and to avoid being subjected to intrusive examinations. Examinations of unlicensed FTCs are inconsistent with the purpose of the Act, which provides that "unlike trust companies formed under chapter 658, there is no public interest to be served outside of ensuring that fiduciary activities performed by a family trust company are restricted to family members."[11] If unlicensed FTCs are subject to mandatory OFR examinations, then Florida's comparatively intrusive examination requirements may deter unlicensed FTCs located in other states, as well as family offices currently operating in Florida, from organizing as an unlicensed FTC in Florida.[12]

Deficiencies in the Act for licensed FTCs

According to the proponents, there is no public interest served by having OFR regulate FTCs. Nevertheless, a small number of FTCs may desire OFR supervision for any of a number of reasons including family governance issues, federal income tax considerations and exemption from SEC regulation under the federal Investment Adviser Act of 1940. A family office may need to register with the SEC as an "investment adviser" if it does not fit within the SEC's definition of "family office."[13] An "investment adviser" is any person who, for compensation, engages in the business of advising others, either directly or through

[8] *See* s. 663.01(3), F.S.
[9] Real Property, Probate and Trust Law Section (RPPTL) of the Florida Bar, *White Paper on Proposed Changes to the Florida Family Trust Company Act*, pp. 2-3 (on file with the Insurance & Banking Subcommittee staff).
[10] s. 662.141(1), F.S.
[11] s. 662.102, F.S.
[12] RPPTL White Paper, pp. 3-4.
[13] 15 U.S.C. §80-2(a)(11).

publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.[14] However, the SEC has somewhat restrictively defined "family office," and for many families this definition would exclude certain in-laws, aunts and uncles, and cousins. Thus, a family office serving those individuals would typically fail the SEC's "family office" definition, subjecting it to burdensome SEC registration as an investment adviser.

SEC registration requirements and regulations may include: (1) filing a Form ADV with the SEC, which must be kept current with periodic updates; (2) annual filings with the SEC of an audited balance sheet; (3) undergoing an annual surprise examination by an independent public accountant to verify client assets; and (4) inspections and examinations by SEC staff.[15] While the 1940 Investment Adviser Act generally protects the disclosure of client identity, investments or affairs and the fact of examination or investigation by the SEC, it does make public information contained in registration applications, reports, and amendments thereto filed with the SEC, unless the SEC "finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors."[16]

The Act was written with the intention that a licensed FTC would not be required to register as an "investment adviser" under the 1940 Investment Advisers Act. In addition to exempting family offices, the 1940 Act excludes "banks" from the definition of "investment adviser," and includes "trust company[ies]... doing a substantial portion of the business which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks....*and which is supervised and examined* by State or Federal authority having supervision over banks...and which is not operated for the purpose of evading the provisions of this subchapter"[17] (emphasis added). It was believed that OFR regulation of licensed FTCs under the Act would be sufficient to constitute "supervised and examined" within the meaning of this so-called "bank exemption" from SEC regulation under the 1940 Act.

The view of SEC regulation experts regarding whether state "supervision and examination" is sufficient to allow an FTC to qualify for the "bank exemption" has evolved since the enactment of chapter 662. Currently, the Act requires OFR to examine licensed FTCs once every 18 months, but only for compliance with very specific provisions of the Act.[18] Moreover, licensed FTCs may be able to satisfy examination requirements through the submission of audits conducted by certified public accounting firms. Experts in the field of SEC regulation now believe that in order to qualify for the "bank exemption," a licensed FTC must be regulated and examined in substantially the same manner as a public trust company, although not necessarily with the same frequency.[19] The regulation and examination of licensed FTCs under the current Act falls short of this standard, which would make them unlikely to qualify for the "bank exemption" from investment advisor registration requirements.[20]

Effect of the Bill

In addition to addressing the deficiencies in the Act's examination requirements as discussed above, the bill clarifies a number of other provisions in the Act.

Examinations of FTCs

Section 1 of the bill amends 662.102, F.S., which describes the purpose of the Act, to clarify that OFR will regulate, supervise and examine only those FTCs which choose to organize as licensed FTCs.

---

[14] 15 U.S.C. §80b-2(a)(11).
[15] 15 U.S.C. §§80b-3 and 80b-4; *see also* SECURITIES & EXCHANGE COMMISSION, *How to Register as an Investment Adviser*, at http://www.sec.gov/divisions/investment/iaregulation/regia.htm (last viewed Mar. 1, 2015).
[16] 15 U.S.C. §80b-10.
[17] *See* 15 U.S.C. §80b-2(a)(11)(A) (definition of "investment adviser") and 15 U.S.C. §80b-2(a)(2)(C) (definition of "bank").
[18] s. 662.141, F.S.
[19] Section 655.045(1), F.S., requires the OFR to examine each state financial institution at least every 18 months. While OFR may accept an examination from an appropriate federal regulator or conduct joint or concurrent examinations with federal regulators, OFR must conduct its own independent examination at least once during each 36-month period beginning July 1, 2014.
[20] RPPTL White Paper, pp. 4-6.

Section 3 of the bill creates s. 662.113, F.S., to clarify that the financial institutions codes do not apply to FTCs unless otherwise indicated in the Act, although it does not limit the OFR's ability to investigate any entity to ensure that it is not in violation with the Act or the Codes. The Act is intended to be a stand-alone framework for FTC governance.

Section 11 of the bill amends s. 662.141, F.S., to expand the scope of OFR examinations of *licensed FTCs* to make them sufficiently similar to examinations of public trust companies in order for to qualify for the "bank exemption" from SEC regulation under the 1940 Act. Although examinations of licensed FTCs will be more rigorous, the bill provides that they will occur only once every 36 months rather than once every 18 months. The bill also clarifies that *unlicensed FTCs and foreign licensed FTCs* are subject to OFR examinations to the extent necessary to determine whether they have engaged in certain prohibited activities or have advertised services to the general public, and makes some drafting changes to reorder subsections.

Licensure, Registration, and Regulation of FTCs

Section 5 of the bill amends s. 662.1215, F.S., to specify that the OFR's initial investigation of applicants seeking to become licensed FTCs includes a confirmation that the proposed FTC's management structure complies with s. 662.125, F.S., which contains requirements for directors and officers.

Section 6 of the bill amends s. 662.122, F.S., to add cross-references (regarding organizational documents and minimum capital requirements) for the registration process for unlicensed FTCs and foreign licensed FTCs. It also adds a requirement to this statute that every foreign licensed FTC provide proof it is in compliance with the FTC laws and regulations of its principal jurisdiction.

Section 7 of the bill amends s. 662.1225, F.S., to clarify that a foreign licensed FTC must be in compliance with the FTC laws and regulations of its principal jurisdiction as a condition to operating in this state. The bill also provides that companies operating as a FTC as of October 1, 2015, must apply for licensure or registration on or before December 30, 2015, or cease doing business in this state.

Section 9 of the bill amends s. 662.128, F.S., to allow FTCs to file their annual renewals within 45 days after the end of the calendar year, rather than the 30 days currently required in statute. The annual renewal application is anticipated to be a somewhat complex document requiring more than 30 days to prepare. The bill also clarifies that the license renewal application's verified statement be made by the FTC's authorized representative.

Section 12 of the bill amends s. 662.142, F.S., which sets forth the grounds for revocation of a licensed FTC's license by OFR, including an act of commission or omission that is determined by a court of competent jurisdiction to be a breach of trust or fiduciary duty. If OFR finds that an FTC has committed an act constituting a breach of trust or fiduciary duty, OFR may enter an order immediately revoking the FTCs license. The bill modifies s. 662.142, F.S., to account for the licensed FTC's administrative hearing rights under the Administrative Procedure Act (ch. 120, F.S.), and clarifies that the OFR may enter an order of revocation after a hearing has not been timely requested pursuant to ss. 120.569 and 120.57 or if a hearing is held and it has been determined that the licensed FTC has committed any violations enumerated in subsection (1).

Section 13 of the bill amends s. 662.143, F.S., allows OFR to issue a cease and desist order upon an FTC in the event of certain violations of the Act, including an act of commission or omission that OFR has reason to believe constitutes a breach of trust or a breach of fiduciary duty. The bill modifies s. 662.143, F.S., to require that an act of commission or omission be judicially determined to be a breach of trust or fiduciary duty prior to OFR issuing a cease and desist order.

Section 17 of the bill amends s. 662.151, F.S., to relocate existing language to s. 662.1225, F.S. (which is amended by Section 7 of the bill), regarding general FTC requirements. The language requires that an FTC that is in operation prior to October 1, 2015 must apply for licensure as a licensed FTC or register as

an unlicensed FTC within 90 days of the Act's effective date (i.e., January 1, 2016), or cease doing business in this state. The bill clarifies that FTCs in operation as of October 1, 2015 must, on or before December 30, 2015, apply for the appropriate FTC licensure or registration.

FTC Organization & Operation

Section 2 of the bill amends s. 662.111, F.S., is the definition of "officer," and includes non-director individuals who participate in the FTC's major policymaking functions. The definition contains a presumption that certain officers, such as the president, the chief financial officer, etc., are *executive* officers, unless excluded from major policymaking function by board resolution, bylaws, or operating agreement, as well as actual non-participation in those major policymaking functions by the individual. The bill amends this definition to eliminate reference to an "executive" officer.

Section 4 of the bill amends s. 662.120(2), F.S., which limits licensed FTCs to two "designated relatives," so long as the designated relatives do not have a common ancestor within five generations. The bill amends this provision to prohibit the two designated relatives from having a common ancestor within *three* generations.

Section 8 of the bill amends s. 662.123, F.S., sets forth certain requirements for organizational documents for an FTC and requires an FTC to submit any proposed changes to its articles of incorporation, articles of organization, bylaws, or articles of organization of a limited liability company to OFR for review at least 30 days before an amendment is to become effective. The bill adds certificates of formation or certificates of organization to these organizational documents requiring OFR's preapproval, but eliminates bylaws and articles of organization. According to the proponents, amendments to a FTC's bylaws or articles of organization should not require approval from OFR, because the overwhelming majority of such instruments typically involve ministerial acts of day-to-day governance.[21]

Section 10 of the bill amends s. 662.132, F.S., which sets forth restrictions on the purchases of bonds or other security instruments by an FTC from an affiliate of the FTC. The bill deletes the reference with the term "affiliate" in order to avoid confusion with the defined term "family affiliate" in s. 662.111, F.S. The bill substitutes "parent or subsidiary company" in place of the term "affiliate." Additionally, the bill substitutes the more legally accurate term "broker-dealer" instead of "distributor" to describe permissible investment transactions for FTCs.

Section 14 of the bill amends s. 662.143, F.S., to provide procedures for reinstating a FTC license or registration through the filing of a renewal application and payment of fees and fines.

Sections 15 and 16 of the bill make technical changes to ss. 662.145 and 662.150, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 662.102, F.S., relating to the purpose of the Family Trust Company Act.

Section 2. Amends s. 662.111, F.S., relating to definitions.

Section 3. Creates s. 662.113, F.S., relating to applicability of other chapters of the financial institutions codes.

Section 4. Amends s. 662.120, F.S., relating to maximum number of designated relatives.

Section 5. Amends s. 662.1215, F.S., relating to investigation of license applicants.

[21] RPPTL White Paper, p. 7.

Section 6. Amends s. 662.122, F.S., relating to registration of a family trust company or a foreign licensed family trust company.

Section 7. Amends s. 662.1225, F.S., relating to requirements for a family trust company, licensed family trust company, and foreign licensed family trust company.

Section 8. Amends s. 662.123, F.S., relating to organizational documents; use of term "family trust" in name.

Section 9. Amends s. 662.128, F.S., relating to annual renewal.

Section 10. Amends s. 662.132, F.S., relating to investments.

Section 11. Amends s. 662.141, F.S., relating to examination, investigations, and fees.

Section 12. Amends s. 662.142, F.S., relating to revocation of license.

Section 13. Amends s. 662.143, F.S., relating to cease and desist authority.

Section 14. Amends s. 662.144, F.S., relating to failure to submit required report; fines.

Section 15. Amends s. 662.145, F.S., relating to grounds for removal.

Section 16. Amends s. 662.150, F.S., relating to domestication of a foreign family trust company.

Section 17. Amends s. 662.151, F.S., relating to registration of a foreign licensed family trust company.

Section 18. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   According to the bill's proponents, the bill should not have a fiscal impact on state and local governments. The bill's elimination and simplification of OFR examination requirements on licensed and non-licensed FTCs, respectively, should be revenue neutral or revenue positive. The application fees for establishing FTCs, annual certification and other fees are anticipated to offset OFR's costs in regulating licensed FTCs.[22]

   OFR does not anticipate that the bill will have a fiscal impact to state government.[23]

2. Expenditures:

   See Revenues, above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[22] RPPTL White Paper, p. 10.
[23] Office of Financial Regulation, Agency Analysis of 2015 House Bill 825, p. 5 (Mar. 3, 2015).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the proponents, the bill should help attract high net worth families to choose Florida as a jurisdiction to establish family trust companies.[24]

D. FISCAL COMMENTS:

See above.

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 an 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 a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide any new rulemaking authority. The bill reorganizes s. 662.141, F.S., to move existing rulemaking authority to the Financial Services Commission in subsection (3) (regarding records and requirements necessary to demonstrate conformity with the Act) to subsection (6).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Insurance Banking & Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment made the bill identical to the Senate companion bill (CS/SB 658) to include additional clarifying changes to the Act:

- Clarifies that OFR may investigate any entity to ensure that it is not in violation with the Act or the financial institutions codes.
- Clarifies and reorganizes language requiring family trust companies to apply for licensure or registration on or before December 30, 2015, or cease operating in this state.
- Substitutes the more legally accurate term of "broker-dealer" instead of "distributor" to describe permissible investments for FTCs.
- Clarifies that unlicensed and foreign FTCs are subject to OFR examinations to the extent necessary to determine whether they have engaged in certain prohibited activities or have advertised services to the general public.
- Expands the scope of OFR examinations of licensed family trust companies so that such examinations are comparable to OFR examinations of public trust companies.
- Provides procedures for reinstatement of a family trust company upon filing of renewal application and payment of fees and fines.

[24] *Id.*

- Provides that any family trust company that fails to renew or reinstate must wind up its affairs by a date certain.

The staff analysis has been updated to reflect the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to family trust companies; amending s. 662.102, F.S.; revising the purposes of the Family Trust Company Act; providing legislative findings; amending s. 662.111, F.S.; redefining the term "officer"; creating s. 662.113, F.S.; specifying the applicability of other chapters of the financial institutions codes to family trust companies; providing that the section does not limit the authority of the Office of Financial Regulation to investigate an entity to ensure that it does not violate of chapter 662, F.S., or applicable provisions of the financial institutions codes; amending s. 662.120, F.S.; revising the ancestry requirements for designated relatives of a licensed family trust company; amending s. 662.1215, F.S.; revising the requirements for investigations of license applicants by the Office of Financial Regulation; amending s. 662.122, F.S.; revising the requirements for registration of a family trust company and a foreign licensed family trust company; amending s. 662.1225, F.S.; requiring a foreign licensed family trust company to be in compliance with the family trust laws and regulations in its jurisdiction; specifying the date by which family trust companies must be registered or licensed or, if not registered or

licensed, cease doing business in this state; amending s. 662.123, F.S.; revising the types of amendments to organizational documents which must have prior approval by the office; amending s. 662.128, F.S.; extending the deadline for the filing of, and revising the requirements for, specified license and registration renewal applications; amending s. 662.132, F.S.; revising the authority of specified family trust companies while acting as fiduciaries to purchase certain bonds and securities; revising the prohibition against the purchase of certain bonds or securities by specified family trust companies; amending s. 662.141, F.S.; revising the purposes for which the office may examine or investigate a family trust company that is not licensed and a foreign licensed family trust company; deleting the requirement that the office examine a family trust company that is not licensed and a foreign licensed family trust company; providing that the office may rely upon specified documentation that identifies the qualifications of beneficiaries as permissible recipients of family trust company services; deleting a provision that authorizes the office to accept an audit by a certified public accountant in lieu of an examination by the office; authorizing the Financial Services Commission to adopt rules establishing

specified requirements for family trust companies; amending s. 662.142, F.S.; deleting a provision that authorizes the office to immediately revoke the license of a licensed family trust company under certain circumstances; revising the circumstances under which the office may enter an order revoking the license of a licensed family trust company; amending s. 662.143, F.S.; revising the acts that may result in the entry of a cease and desist order against specified family trust companies and affiliated parties; amending s. 662.144, F.S.; authorizing a family trust company to have its terminated registration or revoked license reinstated under certain circumstances; revising the timeframe for a family trust company to wind up its affairs under certain circumstances; requiring the deposit of certain fees and fines in the Financial Institutions' Regulatory Trust Fund; amending s. 662.145, F.S.; revising the office's authority to suspend a family trust company-affiliated party who is charged with a specified felony or to restrict or prohibit the participation of such party in certain financial institutions; s. 662.150, F.S.; making a technical change; amending s. 662.151, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Section 662.102, Florida Statutes, is amended to read:

662.102 Purposes; findings ~~Purpose~~.—The purposes ~~purpose~~ of the Family Trust Company Act are ~~is~~ to establish requirements for licensing family trust companies, to regulate ~~provide regulation of those~~ persons who provide fiduciary services to family members of no more than two families and their related interests as a family trust company, and to establish the degree of regulatory oversight required of the Office of Financial Regulation over such companies. The ~~Unlike trust companies formed under chapter 658, there is no~~ public interest ~~to be~~ served by this chapter is to ensure ~~outside of ensuring~~ that fiduciary activities performed by a family trust company are restricted to family members and their related interests and as otherwise provided ~~for~~ in this chapter. Therefore, the Legislature finds that:

(1) A family trust company is ~~companies are~~ not a financial institution ~~institutions~~ within the meaning of the financial institutions codes.~~, and~~ Licensure of such a company ~~these companies~~ pursuant to chapters 658 and 660 is ~~should~~ not ~~be~~ required as it would not promote the purposes of the codes specified ~~as set forth~~ in s. 655.001.

(2) A family trust company may elect to be a licensed

family trust company under this chapter if the company desires to be subject to the regulatory oversight of the office, as provided in this chapter, notwithstanding that the company restricts its services to family members.

(3) With respect to: ~~Consequently, the office~~

(a) A licensed ~~of Financial Regulation is not responsible for regulating~~ family trust company, the office is responsible for regulating, supervising, and examining the company as provided under this chapter.

(b) A family trust company that does not elect to be licensed and a foreign licensed family trust company, ~~companies to ensure their safety and soundness, and the responsibility of~~ the office's role ~~office~~ is limited to ensuring that fiduciary services provided by the company ~~such companies~~ are restricted to family members and authorized related interests and not to the general public. The office is not responsible for examining a family trust company or a foreign licensed family trust company regarding the safety or soundness of its operations.

Section 2. Subsection (19) of section 662.111, Florida Statutes, is amended to read:

662.111 Definitions.—As used in this chapter, the term:

(19) "Officer" of a family trust company means an individual, regardless of whether the individual has an official title or receives a salary or other compensation, who may participate in the major policymaking functions of a family trust company, other than as a director. The term does not

include an individual who may have an official title and exercise discretion in the performance of duties and functions, but who does not participate in determining the major policies of the family trust company and whose decisions are limited by policy standards established by other officers, regardless of whether the policy standards have been adopted by the board of directors. The chair of the board of directors, the president, the chief officer, the chief financial officer, the senior trust officer, and all executive vice presidents of a family trust company, and all managers if organized as a limited liability company, are presumed to be ~~executive~~ officers unless such officer is excluded~~,~~ by resolution of the board of directors or members or by the bylaws or operating agreement of the family trust company, other than in the capacity of a director, from participating in major policymaking functions of the family trust company, and such excluded officer does not actually participate therein.

Section 3. Section 662.113, Florida Statutes, is created to read:

662.113 Applicability of other chapters of the financial institutions codes.—If a family trust company, licensed family trust company, or foreign licensed family trust company limits its activities to the activities authorized under this chapter, the provisions of other chapters of the financial institutions codes do not apply to the trust company unless otherwise expressly provided in this chapter. This section does not limit

the office's authority to investigate an entity to ensure that it does not violate this chapter or applicable provisions of the financial institutions codes.

Section 4. Subsection (2) of section 662.120, Florida Statutes, is amended to read:

662.120 Maximum number of designated relatives.—

(2) A licensed family trust company may ~~not~~ have up to ~~more than~~ two designated relatives.~~, and~~ The designated relatives may not have a common ancestor within three ~~five~~ generations.

Section 5. Paragraph (e) is added to subsection (2) of section 662.1215, Florida Statutes, to read:

662.1215 Investigation of license applicants.—

(2) Upon filing an application for a license to operate as a licensed family trust company, the office shall conduct an investigation to confirm:

(e) That the management structure of the proposed company complies with s. 662.125.

Section 6. Paragraph (b) of subsection (1) and paragraphs (a) and (c) of subsection (2) of section 662.122, Florida Statutes, are amended to read:

662.122 Registration of a family trust company or a foreign licensed family trust company.—

(1) A family trust company that is not applying under s. 662.121 to become a licensed family trust company must register with the office before beginning operations in this state. The

registration application must:

(b) State that the family trust company is a family trust company as defined under this chapter and that its operations will comply with ss. 662.1225, 662.123(1), 662.124, 662.125, 662.127, 662.131, and 662.134.

(2) A foreign licensed family trust company must register with the office before beginning operations in this state.

(a) The registration application must state that its operations will comply with ss. 662.1225, 662.125, 662.127, 662.131, and 662.134 and that it is currently in compliance with the family trust company laws and regulations of its principal jurisdiction.

(c) The registration must include a certified copy of a certificate of good standing, or an equivalent document, authenticated by the official having custody of records in the jurisdiction where the foreign licensed family trust company is organized, along with satisfactory proof, as determined by the office, that the company is organized in a manner similar to a family trust company as defined under this chapter and is in compliance with the family trust company laws and regulations of its principal jurisdiction.

Section 7. Subsection (2) of section 662.1225, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

662.1225 Requirements for a family trust company, licensed family trust company, and foreign licensed family trust

company.—

(2) In order to operate in this state, a foreign licensed family trust company must be in good standing in its principal jurisdiction, must be in compliance with the family trust company laws and regulations of its principal jurisdiction, and must maintain:

(a) An office physically located in this state where original or true copies of all records and accounts of the foreign licensed family trust company pertaining to its operations in this state may be accessed and made readily available for examination by the office in accordance with this chapter.

(b) A registered agent who has an office in this state at the street address of the registered agent.

(c) All applicable state and local business licenses, charters, and permits.

(d) A deposit account with a state-chartered or national financial institution that has a principal or branch office in this state.

(3) A company in operation as of October 1, 2015, which meets the definition of a family trust company, must, on or before December 30, 2015, apply for licensure as a licensed family trust company, register as a family trust company or foreign licensed family trust company, or cease doing business in this state.

Section 8. Subsection (2) of section 662.123, Florida

Statutes, is amended to read:

662.123 Organizational documents; use of term "family trust" in name.—

(2) A proposed amendment to the articles of incorporation, articles of organization, certificate of formation, or certificate of organization~~, bylaws, or articles of organization~~ of a ~~limited liability company,~~ family trust company~~,~~ or licensed family trust company must be submitted to the office for review at least 30 days before it is filed or effective. An amendment is not considered filed or effective if the office issues a notice of disapproval with respect to the proposed amendment.

Section 9. Subsections (1) through (4) of section 662.128, Florida Statutes, are amended to read:

662.128 Annual renewal.—

(1) Within 45 ~~30~~ days after the end of each calendar year, a family trust company ~~companies~~, licensed family trust company ~~companies~~, or ~~and~~ foreign licensed family trust company ~~companies~~ shall file its ~~their~~ annual renewal application with the office.

(2) The license renewal application filed by a licensed family trust company must include a verified statement by an authorized representative of the trust company that:

(a) The licensed family trust company operated in full compliance with this chapter, chapter 896, or similar state or federal law, or any related rule or regulation. The application

must include proof acceptable to the office that the company is a family trust company as defined under this chapter.

(b) Describes any material changes to its operations, principal place of business, directors, officers, managers, members acting in a managerial capacity, and designated relatives since the end of the preceding calendar year.

(3) The registration renewal application filed by a family trust company must include:

(a) A verified statement by an authorized representative ~~officer~~ of the trust company that it is a family trust company as defined under this chapter and that its operations are in compliance with ss. 662.1225, 662.123(1), 662.124, 662.125, 662.127, 662.131, and 662.134, ~~,~~ chapter 896, ~~,~~ or similar state or federal law~~,~~ or ~~any~~ related rule or regulation.

(b) ~~, and include~~ The name of the company's ~~its~~ designated relative or relatives, if applicable, and the street address for its principal place of business.

(4) The registration renewal application filed by a foreign licensed family trust company must include a verified statement by an authorized representative of the trust company that its operations are in compliance with ss. 662.1225, 662.125, 662.131, and 662.134 and in compliance with the family trust company laws and regulations of its principal jurisdiction. It must also provide:

(a) The current telephone number and street address of the physical location of its principal place of business in its

principal jurisdiction.

(b) The current telephone number and street address of the physical location in this state of its principal place of operations where its books and records pertaining to its operations in this state are maintained.

(c) The current telephone number and address of the physical location of any other offices located in this state.

(d) The name and current street address in this state of its registered agent.

(e) Documentation satisfactory to the office that the foreign licensed family trust company is in compliance with the family trust company laws and regulations of its principal jurisdiction.

Section 10. Subsections (4) and (7) of section 662.132, Florida Statutes, are amended to read:

662.132 Investments.—

(4) Notwithstanding any other law, a family trust company or licensed family trust company may, while acting as a fiduciary, purchase directly from underwriters or broker-dealers ~~distributors~~ or in the secondary market:

(a) Bonds or other securities underwritten or brokered ~~distributed~~ by:

1. The family trust company or licensed family trust company;

2. A family affiliate; or

3. A syndicate, including the family trust company,

licensed family trust company, or family affiliate.

(b) Securities of an investment company, including a mutual fund, closed-end fund, or unit investment trust, as defined under the federal Investment Company Act of 1940, for which the family trust company or licensed family trust company acts as an advisor, custodian, distributor, manager, registrar, shareholder servicing agent, sponsor, or transfer agent.

(7) Notwithstanding subsections (1)-(6), a family trust company or licensed family trust company may not, while acting as a fiduciary, purchase a bond or security issued by the company or its parent, or a subsidiary company ~~an affiliate~~ thereof or its parent, unless:

(a) The family trust company or licensed family trust company is expressly authorized to do so by:

1. The terms of the instrument creating the trust;

2. A court order;

3. The written consent of the settlor of the trust for which the family trust company or licensed family trust company is serving as trustee; or

4. The written consent of every adult qualified beneficiary of the trust who, at the time of such purchase, is entitled to receive income under the trust or who would be entitled to receive a distribution of principal if the trust were terminated; and

(b) The purchase of the security is at a fair price and complies with:

1. The prudent investor rule in s. 518.11~~,~~ or other prudent investor or similar rule under other applicable law, unless ~~such~~ compliance is waived in accordance with s. 518.11 or other applicable law.

2. The terms of the instrument, judgment, decree, or order establishing the fiduciary relationship.

Section 11. Section 662.141, Florida Statutes, is amended to read:

662.141 Examination, investigations, and fees.—The office may conduct an examination or investigation of a ~~family trust company,~~ licensed family trust company~~, or foreign licensed family trust company~~ at any time it deems necessary to determine whether the ~~a family trust company,~~ licensed family trust company~~, foreign licensed family trust company,~~ or licensed family trust company-affiliated party thereof ~~person~~ has violated or is about to violate any provision of this chapter, ~~or rules adopted by the commission pursuant to this chapter, or~~ any applicable provision of the financial institution codes, or any rule ~~rules~~ adopted by the commission pursuant to this chapter or the ~~such~~ codes. The office may conduct an examination or investigation of a family trust company or foreign licensed family trust company at any time it deems necessary to determine whether the family trust company or foreign licensed family trust company has engaged in any act prohibited under s. 662.131 or s. 662.134 and, if a family trust company or a foreign licensed family trust company has engaged in such act, to

determine whether any applicable provision of the financial institution codes has been violated.

(1) The office may rely upon a certificate of trust, trust summary, or written statement from the trust company which identifies the qualified beneficiaries of any trust or estate for which a family trust company, licensed family trust company, or foreign licensed family trust company serves as a fiduciary and the qualifications of such beneficiaries as permissible recipients of company services.

(2) The office shall conduct an examination of a licensed family trust company~~, family trust company, and foreign licensed family trust company~~ at least once every 36 ~~18~~ months.

~~(2) In lieu of an examination by the office, the office may accept an audit of a family trust company, licensed family trust company, or foreign licensed family trust company by a certified public accountant licensed to practice in this state who is independent of the company, or other person or entity acceptable to the office. If the office accepts an audit pursuant to this subsection, the office shall conduct the next required examination.~~

~~(3)~~ The office shall examine the books and records of a ~~family trust company or~~ licensed family trust company as necessary to determine whether it is a ~~family trust company or~~ licensed family trust company as defined in this chapter~~,~~ and is operating in compliance with this chapter ~~ss. 662.1225, 662.125, 662.126, 662.131, and 662.134, as applicable~~. ~~The office may~~

~~rely upon a certificate of trust, trust summary, or written statement from the trust company identifying the qualified beneficiaries of any trust or estate for which the family trust company serves as a fiduciary and the qualification of the qualified beneficiaries as permissible recipients of company services. The commission may establish by rule the records to be maintained or requirements necessary to demonstrate conformity with this chapter as a family trust company or licensed family trust company.~~

(3)~~(4)~~ The office shall examine the books and records of a foreign licensed family trust company as necessary to determine if it is a foreign licensed trust company as defined in this chapter and is in compliance with ss. 662.1225, 662.125, 662.130(2), 662.131, and 662.134. In connection with an examination of the books and records of the company, the office may rely upon the most recent examination report or review or certification letters or similar documentation issued by the regulatory agency to which the foreign licensed family trust company is subject to supervision. ~~The commission may establish by rule the records to be maintained or requirements necessary to demonstrate conformity with this chapter as a foreign licensed family trust company.~~ The office's examination of the books and records of a foreign licensed family trust company is, to the extent practicable, limited to books and records of the operations in this state.

(4)~~(5)~~ For each examination of the books and records of a

family trust company, licensed family trust company, or foreign licensed family trust company as authorized under this chapter, the trust company shall pay a fee for the costs of the examination by the office. As used in this section, the term "costs" means the salary and travel expenses of field staff which are directly attributable to the examination of the trust company and the travel expenses of any supervisory and ~~or~~ support staff required as a result of examination findings. The mailing of payment for costs incurred must be postmarked within 30 days after the receipt of a notice stating that the ~~such~~ costs are due. The office may levy a late payment of up to $100 per day or part thereof that a payment is overdue~~,~~ unless waived for good cause. However, if the late payment of costs is intentional, the office may levy an administrative fine of up to $1,000 per day for each day the payment is overdue.

(5)~~(6)~~ All fees collected under this section must be deposited into the Financial Institutions' Regulatory Trust Fund pursuant to s. 655.049 for the purpose of administering this chapter.

(6) The commission may establish by rule the records to be maintained or requirements necessary to demonstrate conformity with this chapter as a family trust company, licensed family trust company, or foreign licensed family trust company.

Section 12. Section 662.142, Florida Statutes, is amended to read:

662.142 Revocation of license.—

(1) Any of the following acts constitute ~~or conduct constitutes~~ grounds for the revocation by the office of the license of a licensed family trust company:

(a) The company is not a family trust company as defined in this chapter.~~;~~

(b) A violation of s. 662.1225, s. 662.123(1)(a), s. 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, s. 662.131, s. 662.134, or s. 662.144.~~;~~

(c) A violation of chapter 896, relating to financial transactions offenses, or a ~~any~~ similar state or federal law or ~~any~~ related rule or regulation.~~;~~

(d) A violation of any rule of the commission.~~;~~

(e) A violation of any order of the office.~~;~~

(f) A breach of any written agreement with the office.~~;~~

(g) A prohibited act or practice under s. 662.131.~~;~~

(h) A failure to provide information or documents to the office upon written request.~~; or~~

(i) An act of commission or omission which ~~that~~ is judicially determined by a court of competent jurisdiction to be a breach of trust or ~~of~~ fiduciary duty ~~pursuant to a court of competent jurisdiction~~.

(2) If the office finds ~~Upon a finding~~ that a licensed family trust company has committed any of the acts specified ~~set forth~~ in subsection (1) ~~paragraphs (1)(a)-(h)~~, the office may enter an order suspending the company's license and provide notice of its intention to revoke the license and of the

opportunity for a hearing pursuant to ss. 120.569 and 120.57.

(3) If a hearing is not timely requested pursuant to ss. 120.569 and 120.57 or if a hearing is held and it has been determined that the licensed family trust company has committed any of the acts specified in subsection (1) ~~there has been a commission or omission under paragraph (1)(i)~~, the office may ~~immediately~~ enter an order revoking the company's license. A ~~The~~ licensed family trust company has ~~shall have~~ 90 days to wind up its affairs after license revocation. If after 90 days the company is still in operation, the office may seek an order from the circuit court for the annulment or dissolution of the company.

Section 13. Subsection (1) of section 662.143, Florida Statutes, is amended to read:

662.143 Cease and desist authority.—

(1) The office may issue and serve upon a family trust company, licensed family trust company, ~~or~~ foreign licensed family trust company, or ~~upon a~~ family trust company-affiliated party~~,~~ a complaint stating charges if the office has reason to believe that such company, family trust company-affiliated party, or individual named therein is engaging in or has engaged in any of the following acts ~~conduct that~~:

(a) ~~Indicates that~~ The company is not a family trust company or foreign licensed family trust company as defined in this chapter.~~;~~

(b) ~~Is~~ A violation of s. 662.1225, s. 662.123(1)(a), s.

662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, or s. 662.134.~~;~~

(c) ~~Is~~ A violation of any rule of the commission.~~;~~

(d) ~~Is~~ A violation of any order of the office.~~;~~

(e) ~~Is~~ A breach of any written agreement with the office.~~;~~

(f) ~~Is~~ A prohibited act or practice pursuant to s. 662.131.~~;~~

(g) ~~Is~~ A willful failure to provide information or documents to the office upon written request.~~;~~

(h) ~~Is~~ An act of commission or omission that is judicially determined by ~~or~~ a court of competent jurisdiction ~~practice that the office has reason~~ to be ~~believe is~~ a breach of trust or ~~of~~ fiduciary duty.~~; or~~

(i) ~~Is~~ A violation of chapter 896 or similar state or federal law or any related rule or regulation.

Section 14. Section 662.144, Florida Statutes, is amended to read:

662.144 Failure to submit required report; fines.—If a family trust company, licensed family trust company, or foreign licensed family trust company fails to submit within the prescribed period its annual renewal or any other report required by this chapter or any rule, the office may impose a fine of up to $100 for each day that the annual renewal or report is overdue. Failure to provide the annual renewal within 60 days after the end of the calendar year shall automatically result in termination of the registration of a family trust

company or foreign licensed family trust company or revocation of the license of a licensed family trust company. A family trust company may have its registration or license automatically reinstated by submitting to the office, on or before August 31 of the calendar year in which the renewal application is due, the company's annual renewal application and fee required under s. 662.128, a $500 late fee, and the amount of any fine imposed by the office under this section. A family ~~The~~ trust company that fails to renew or reinstate its registration or license must ~~shall thereafter have 90 days to~~ wind up its affairs on or before November 30 of the calendar year in which such failure occurs. Fees and fines collected under this section shall be deposited into the Financial Institutions' Regulatory Trust Fund pursuant to s. 655.049 for the purpose of administering this chapter.

Section 15. Paragraph (a) of subsection (6) of section 662.145, Florida Statutes, is amended to read:

662.145 Grounds for removal.—

(6) The chief executive officer, or the person holding the equivalent office, of a family trust company or licensed family trust company shall promptly notify the office if he or she has actual knowledge that a family trust company-affiliated party is charged with a felony in a state or federal court.

(a) If a family trust company-affiliated party is charged with a felony in a state or federal court, or is charged with an offense in a court ~~the courts~~ of a foreign country with which

the United States maintains diplomatic relations which involves a violation of law relating to fraud, currency transaction reporting, money laundering, theft, or moral turpitude and the charge is equivalent to a felony charge under state or federal law, the office may enter an emergency order suspending the family trust company-affiliated party or restricting or prohibiting participation by such ~~company-affiliated~~ party in the affairs of that particular family trust company or licensed family trust company or any state financial institution, subsidiary, or service corporation, upon service of the order upon the company and ~~the~~ family trust company-affiliated party ~~so~~ charged.

Section 16. Paragraph (b) of subsection (1) of section 662.150, Florida Statutes, is amended to read:

662.150 Domestication of a foreign family trust company.—

(1) A foreign family trust company lawfully organized and currently in good standing with the state regulatory agency in the jurisdiction where it is organized may become domesticated in this state by:

(b) Filing an application for a license to begin operations as a licensed family trust company in accordance with s. 662.121, which must first be approved by the office, or by filing the prescribed form with the office to register as a family trust company to begin operations in accordance with s. 662.122.

Section 17. Subsection (3) of section 662.151, Florida

Statutes, is amended to read:

662.151 Registration of a foreign licensed family trust company to operate in this state.—A foreign licensed family trust company lawfully organized and currently in good standing with the state regulatory agency in the jurisdiction under the law of which it is organized may qualify to begin operations in this state by:

~~(3) A company in operation as of the effective date of this act that meets the definition of a family trust company shall have 90 days from the effective date of this act to apply for licensure as a licensed family trust company, register as a family trust company or foreign licensed family trust company, or cease doing business in this state.~~

Section 18. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 851 Manatee County
SPONSOR(S): Boyd
TIED BILLS: None. **IDEN./SIM. BILLS:** None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	12 Y, 0 N	Darden	Miller
2) Regulatory Affairs Committee		Whittier	Hamon

SUMMARY ANALYSIS

Under ch. 153, F.S., unpaid water and sewer bills to county governments create a lien on the property or parcel serviced. Counties are able to initiate foreclosure proceedings to collect on this lien. The Manatee County Utility System (utility system) was authorized by a special act that not did create a lien on parcels or property for unpaid utility bills.

The bill amends Chapter 63-1598, Laws of Florida, to place a lien on property for unpaid utility bills to Manatee County. The bill does not allow the county to foreclose on the property solely on the basis of this lien.

The Economic Impact Statement, signed by an employee of the Manatee County Board of County Commissioners, stated the bill would have no fiscal impact. However, the utility system has written off over $6,000,000 in bad debt over the five most recent fiscal years.

The bill provides that the act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

General Law

To address an historic lack of water and sewer systems in unincorporated areas, the Legislature authorized counties to construct such systems.[1] Counties are required to set a schedule of rates, fees, and other charges for water and sewer service.[2] These fees must be sufficient, when combined with other county funds appropriated for the purpose, to fund the operation and maintenance expenses of the water system, including the payment of principal and interest on revenue bonds issued for the system.[3]

To help ensure prompt payment, the statute provides that any unpaid balance and all interest accruing on that balance creates a lien on the parcel or property receiving service.[4] This lien has priority over the interests of any owner, lessee, tenant, mortgagee, or other person.[5] The lien is considered to be on the same level as that of any outstanding taxes owed to the county.[6] If the unpaid balance is greater than thirty days old, the county may file a civil action to recover the balance, interest, and any attorney fees and court costs associated with the action.[7] The county may foreclose upon this lien as the foreclosure of a mortgage on real property.[8]

Manatee County

The Manatee County Utility System does not fall under the auspices of ch. 153, F.S., since it was created by special act.[9] The act authorized the county to construct a water and sewer system.[10] The county may charge "fees, rental, and other charges" according to a schedule of rates set by the Manatee County Board of County Commissioners.[11]

Under current law, the only tool available to the county to collect unpaid utility bills is to discontinue and shut off services for nonpayment.[12] The county is allowed to shut off services until the debtor has paid the outstanding balance in full, including interest and any disconnection fees.[13] The county may also file suit in a court of competent jurisdiction for the recovery of fees, plus any reasonable attorney's fees.[14]

The county currently charges a late fee for past due bills and sends a final notice to a debtor if the account balance is over $200.[15] After final notice is sent, the county turns off water service and requires

---

[1] S. 153.51, F.S.
[2] S. 153.64(1), F.S.
[3] *Id.*
[4] S. 153.67, F.S.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Ch. 63-1598, Laws of Fla.
[10] Ch. 63-1598, s. 7(1), Laws of Fla.
[11] Ch. 63-1598, s. 7(4), Laws of Fla.
[12] Ch. 63-1598, s. 14, Laws of Fla.
[13] *Id.*
[14] *Id.*
[15] "Manatee County Utility Delinquent Account Collection Process Overview," provided in an email from Cari Roth, Dean Mead, Re: HB 851, March 21, 2015. A copy of the Collection Process Overview is attached as Appendix A.

a $50 reconnection fee and the payment of the past due amount to restore service.[16] If the debtor is a tenant, the county closes the account and the landowner is notified and established as a new customer until an account is established in the name of a new tenant.[17] The county makes attempts throughout this process to identify the debtor to collect the past due amount.[18]

The inability to effectively recover unpaid utility fees has placed a financial burden on the county. According to figures provided by the Manatee County Utility System, the System wrote off $875,080 in bad debt during Fiscal Year 2014 and has written off almost $6,000,000 in bad debt over the course of the five most recent fiscal years.[19] The adopted Manatee County utility budget for Fiscal Year 2014 was $99,140,723[20] and the utility system had total bonded debt outstanding of $121,205,000.[21]

Effect of Proposed Changes

The bill amends Chapter 63-1598, Laws of Florida, to make unpaid fees, rentals, rates, or other charges to the Manatee County Utility System a lien upon the property serviced. The bill would enable the county to enforce the lien on the property, pursuant to s. 153.67, F.S., which allows county water and sewer districts to enforce liens for unpaid fees. The bill would not, however, allow Manatee County to initiate a foreclosure action solely on the basis of the utility lien created by this bill.

The bill would improve the financial situation of the Manatee County Utility System by giving the county an additional enforcement tool to collect unpaid fees.[22] The bill would also benefit utility customers who make prompt payments, by reducing the extent to which they face higher fees to make up shortfalls caused by the non-payment of others.[23]

The county has made a commitment to conduct public hearings to evaluate, discuss, and consider the utility lien collections process before implementation of the provisions of the bill.[24]

B. SECTION DIRECTORY:

Section 1: Amends Chapter 63-1598, Laws of Florida, authorizing the Manatee County Utility System to place a lien on property for unpaid fees.

Section 2: Provides that the act shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? December 15, 2014

---

[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] Email from Cari Roth, Dean Mean, RE: Info on Manatee County Utilities HB 851 (03/09/15). Email retained by House Local Government Affairs Subcommittee staff.
[20] Manatee County, *Fiscal Year 2015 Adopted Budget*, at 178, available at http://www.mymanatee.org/home/government/departments/financial-management/budget-downloads.html (accessed 3/13/15).
[21] *Id.*
[22] Economic Impact Statement for HB 851 (2015).
[23] *Id.*
[24] Letter from Betsy Benac, Chair of the Manatee County Commission to Rep. Steube, as chair of Manatee County local delegation, March 19, 2015. A copy of this letter is attached as Appendix B.

WHERE? Bradenton Herald, a daily newspaper published in Manatee County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does not provide authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

APPENDIX A: Manatee County Utility Delinquent Account Collection Process Overview

The Manatee County Utilities Department provides and bills for water, sewer and garbage collection. The Utilities Department has 95,348 water metered accounts, 59 sewer only accounts, 264 garbage and sewer only accounts, and 8,187 garbage accounts with no water or sewer service.

The Utility Department makes every effort to collect unpaid fees and service charges, but some remain uncollectible. When utility bills are unpaid and collection efforts fail, these charges are written-off and the cost is ultimately borne by the paying customers. A lien provides another tool for collection. Any outstanding charges that are collected benefit other Utility customers and ensure a fair distribution of the system cost among rate paying customers.

The existing collections process for utility accounts is based on the Utility's special act, specifically Section 14 of Chapter 63-1598, and Sec. 2-31-266 of the County's Code (Ord. No. 07-62, § 1, 8-7-07; Ord. No. 10-69, §§ 18, 19, 11-9-10; Ord. No. 14-09, § 12, 1-29-14)

Existing Collection Process: (Utility system customers are notified of their responsibilities for payment and procedures for collection of past due accounts when opening an account.)

- Customer is billed and given 21 days to make payment.
- On the 23rd day, a late charge of $5 is assessed to the account.
- Between the 23rd day and the 31st day, the customer is called for collection.
- **A payment arrangement may be entered into, allowing for regularly scheduled payments of the past due amount.**
- If the balance on the account is $200 or more a final notice is sent.
- On the 32nd day, a turn-off service order is initiated if the past due account balance exceeds $200. Turn-off orders are only issued for accounts receiving water service and are usually processed in a few business days.
- The turn-off will often generate a phone call from the customer at which time full payment of past due amounts are required to have service restored.
- A reconnection fee of $50.00 is charged to the account.
- Tenants with discontinued service due to delinquency will have their accounts closed and the owner according to the public records will be notified and established as the customer and will be billed monthly customer base charges until an account is established in the name of a new tenant.
- The account remains in active status until the Utility is notified that ownership has transferred to another or that a new tenant has moved in and established service.
- **Attempts are made throughout this time to verify correct address, phone number, etc. in order to contact customer to collect past due funds.**

Upon reaching inactive status the account will be sent to a collection agency. (Accounts are transferred daily after they have been inactive for a total of 60 days past the final bill due date.) The collection agency retains 18% of funds collected.

APPENDIX B: Benac Letter of 3/19/2015

MANATEE COUNTY
FLORIDA

March 19, 2015

The Honorable Greg Steube
State Representative, District 73
204 House Office Building
402 South Monroe Street
Tallahassee, FL 32399-1300

Dear Chairman Steube:

As you know, HB 851, Manatee County's utility lien bill will provide our utility system with a new ability to pursue a collection process on a relatively small number of unpaid accounts. Currently, these unpaid accounts are liabilities that are ultimately passed along to prompt paying customers in the form of higher rates. We view this ability to collect on unpaid accounts as a fairness issue, and for the past three years the bill has been a legislative priority of the County Commission.

As the governing body of our public utility system, the Manatee Board of County Commissioners has the responsibility over the utility system and all collections procedures. In the event HB 851 is approved by the Florida Legislature, I want to assure you that the County Commission will have a public hearing to evaluate, discuss and consider the utility lien collections process. The hearing will be advertised and noticed in hopes of generating public feedback that may improve our process. Our goal is to encourage good communication with and prompt payment from our utility customers.

We value our delegation and the work that you do for our community and shared constituents. We also welcome and value your unique perspective as a property owner and real estate attorney. If you have suggestions on how we may structure our utility lien procedure, or any other utility collection procedure, we would be happy to receive them. Please feel free to contact me with any questions.

Thank you again,

Betsy Benac
Chairman, Manatee County Commission

Board of County Commissioners
1112 Manatee Avenue West, Bradenton, FL 34205
Website: *www.mymanatee.org* * Phone: 941.745.3700 * FAX: 941.745.3790

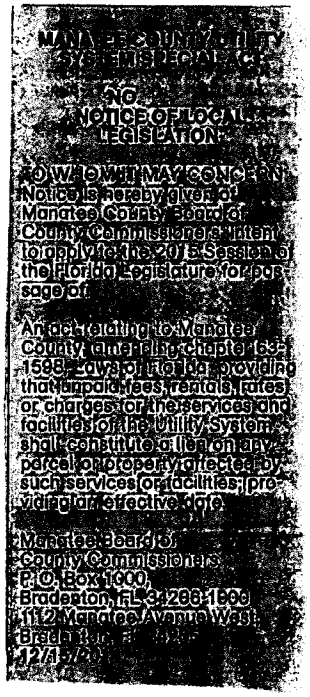
BRADENTON HERALD

WWW.BRADENTON.COM
P.O. Box 921
Bradenton, FL 34206-0921
102 Manatee Avenue West
Bradenton, FL 34205-8894
941-745-7066

Bradenton Herald
Published Daily
Bradenton, Manatee County, Florida

STATE OF FLORIDA
COUNTY OF MANATEE

Before the undersigned authority personally appeared Steve Mansfield, who, on oath, says that he is a Legal Advertising Representative of The Bradenton Herald, a daily newspaper published at Bradenton in Manatee County, Florida; that the attached copy of the advertisement, being a Legal Advertisement in the matter of **Manatee County Utility System Special Act, Notice of Legal Legislation** was published in said newspaper in the issue(s) of **12/15/2014.**
Affidavit further says that the said publication is a newspaper published at Bradenton, in said Manatee County, Florida, and that the said newspaper has heretofore been continuously published in said Manatee County, Florida, each day and has been entered as second-class mail matter at the post office in Bradenton, in said Manatee County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.


MANATEE COUNTY UTILITY SYSTEM SPECIAL ACT
NOTICE OF LOCAL LEGISLATION
NOTICE IS HEREBY GIVEN that the Manatee County Board of County Commissioners intends to apply to the 2015 Session of the Florida Legislature for passage of:
An act relating to Manatee County; amending chapter 63-1598, Laws of Florida; providing that unpaid fees, rentals, rates or charges for the services and facilities of the Utility System shall constitute a lien on any parcel or property served by such services or facilities; providing an effective date.
Manatee Board of County Commissioners
P.O. Box 1000,
Bradenton, FL 34206-1000
1112 Manatee Avenue West,
Bradenton, FL 34205
12/15/14

(Signature of Affiant)

Sworn to and subscribed before me this
15 Day of Dec, 2014

NICOLE S PATTERSON
Notary Public - State of Florida
My Comm. Expires Sep 11, 2018
Commission # FF 159270
Bonded through National Notary Assn.

SEAL & Notary Public
Personally Known ✓ OR Produced Identification_____
Type of Identification Produced_____

HOUSE OF REPRESENTATIVES
2015 LOCAL BILL CERTIFICATION FORM

BILL #: 851

SPONSOR(S): The Honorable State Representative Jim Boyd

RELATING TO: Manatee County Utility System -- Lien priority

[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Manatee County

CONTACT PERSON: Cari Roth

PHONE NO.: (850) 999-4100 **E-Mail:** croth@deanmead.com

I. *House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Local Government Affairs Subcommittee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES [✔] **NO** [ ]

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [✔] **NO** [ ]

Date hearing held: Nov. 14, 2014

Location: Selby Auditorium, USF Sarasota-Manatee Campus

(3) Was this bill formally approved by a majority of the delegation members?

YES [✔] **NO** [ ]

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [x] NO [ ] DATE December 15, 2014

Where? Bradenton Herald County Manatee

Referendum in lieu of publication: YES [ ] NO [x]

Date of Referendum _____

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [ ] NO [✓] NOT APPLICABLE [ ]

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [ ] NO [✓] NOT APPLICABLE [ ]

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [ ] NO [ ]

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Local Government Affairs Subcommittee.

Delegation Chair (Original Signature) — Date: 3-19-15

W. Greg Steube

Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES
2015 ECONOMIC IMPACT STATEMENT FORM

Read all instructions carefully.
House local bill policy requires that no local bill will be considered by a committee or a subcommittee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL by an individual who is qualified to establish fiscal data and impacts, and has personal knowledge of the information given (for example, a chief financial officer of a particular local government). Please submit this completed, original form to the Local Government Affairs Subcommittee as soon as possible after a bill is filed. Additional pages may be attached as necessary.

BILL #: HB 851

SPONSOR(S): The Honorable State Representative Jim Boyd

RELATING TO: Manatee County Utility System - Lien Priority

[Indicate Area Affected (City, County or Special District) and Subject]

I. REVENUES:

These figures are new revenues that would not exist but for the passage of the bill. The term "revenue" contemplates, but is not limited to, taxes, fees and special assessments. For example, license plate fees may be a revenue source. If the bill will add or remove property or individuals from the tax base, include this information as well.

	FY 15-16	FY 16-17
Revenue decrease due to bill:	$ n/a	$ n/a
Revenue increase due to bill:	$ n/a	$ n/a

II. COST:

Include all costs, both direct and indirect, including start-up costs. If the bill repeals the existence of a certain entity, state the related costs, such as satisfying liabilities and distributing assets.

Expenditures for Implementation, Administration and Enforcement:

FY 15-16	FY 16-17
$ n/a	$ n/a

Please include explanations and calculations regarding how each dollar figure was determined in reaching total cost.

The County's request to amend Chapter 63-1598, the Special Act that created the Manatee County Utility System, will allow the Utility to recoup a portion of receivable payments, the entirety of which is currently absorbed by the Utility System and passed along to prompt-paying customers in the form of higher utility rates.

III. FUNDING SOURCE(S):

State the specific source from which funding will be received, for example, license plate fees, state funds, borrowed funds or special assessments.

If certain funding changes are anticipated to occur beyond the following two fiscal years, explain the change and at what rate taxes, fees or assessments will be collected in those years.

	FY 15-16	FY 16-17
Local:	$ n/a	$ n/a
State:	$ n/a	$ n/a
Federal:	$ n/a	$ n/a

III. ECONOMIC IMPACT:

Potential Advantages:

Include all possible outcomes linked to the bill, such as increased efficiencies, and positive or negative changes to tax revenue. If an act is being repealed or an entity dissolved, include the increased or decreased efficiencies caused thereby.

Include specific figures for anticipated job growth.

1. Advantages to Individuals: Prompt-paying utility customers will no longer bear the burden of absorbing the cost for utility customers who do not pay their bills.

2. Advantages to Businesses: n/a

3. Advantages to Government: Manatee County Utility System will have a new tool to collect unpaid utility accounts, putting our Utility System on par with most other Florida Utility Systems that have the ability as defined under F S 153.67.

Potential Disadvantages:

Include all possible outcomes linked to the bill, such as inefficiencies, shortages, or market changes anticipated.

Include reduced business opportunities, such as reduced access to capital or training.

State any decreases in tax revenue as a result of the bill.

1. Disadvantages to Individuals: n/a

2. Disadvantages to Businesses: n a

3. Disadvantages to Government: n a

IV. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

Include all changes for market participants, such as suppliers, employers, retailers and laborers. If the answer is "None," explain the reasons why. Also, state whether the bill may require a governmental entity to reduce the services it provides.

1. Impact on Competition:

None.

2. Impact on the Open Market for Employment:

None. The requested amendment will simply extend to Manatee County Utility System the same lien authority already granted to Florida's county and municipally owned utility systemsunder Section 153.67, Florida Statutes.

V. SPECIFIC DATA USED IN REACHING ESTIMATES:

Include the type(s) and source(s) of data used, percentages, dollar figures, all assumptions made, history of the industry/issue affected by the bill, and any audits.

PREPARED BY: [Must be signed by Preparer]

Print preparer's name: Nick Azzara

Nov. 26, 2014
Date

TITLE (such as Executive Director, Actuary, Chief Accountant, or Budget Director):

Information Outreach Manager

REPRESENTING: Manatee Board of County Commissioners

PHONE: (941) 745-3771

E-MAIL ADDRESS: nicholas.azzara@mymanatee.org

A bill to be entitled

An act relating to Manatee County; amending chapter 63-1598, Laws of Florida; providing that unpaid rentals, rates, or charges for services and facilities of the utility system constitute a lien on any parcel or property affected by such services or facilities; providing an effective date.

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

Section 1. Section 14 of chapter 63-1598, Laws of Florida, is amended to read:

Section 14. Collection of Charges; Unpaid Fees to Constitute Lien.

(a) In the event that the fees, rentals, or other charges for the services and facilities of said Utility System are ~~shall~~ not ~~be~~ paid when due, the County may discontinue and shut off the supply of the services and facilities of said Utility System and of any other undertaking, utility, or public works owned, operated, and controlled by the County, the person, firm, corporation, or other body, public or private, so supplied with such services or facilities, until such fees, rentals, or other charges, including interest, penalties, and charges for the shutting off and discontinuance or the restoration of such services or facilities are fully paid, and for such purposes may enter on any lands, water, and premises of such person, firm,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

corporation, or other body, public or private, within or without the boundaries of the County. Such delinquent fees, rentals, or other charges, together with interest, penalties, and charges for the shutting off and discontinuance or the restoration of such services or facilities, and reasonable attorneys' fees and other expenses, may be recovered by the County by suit in a court of competent jurisdiction. The County may also enforce payments of such delinquent fees, rentals, or other charges by any other lawful method of enforcement.

(b) In the event that the fees, rentals, rates, or charges for the services and facilities of said Utility System are not paid when due, any unpaid balance thereof and all interest accruing thereon shall be a lien on any parcel or property affected thereby. Such liens may be enforced in the same manner as liens of a county water and sewer district pursuant to s. 153.67, Florida Statutes; however, such a lien may not serve as the sole basis upon which a foreclosure action is initiated. Such liens shall be equal in rank and dignity with the lien of all state, County, district, or municipal tax liens and shall be superior in rank and dignity to all other liens, titles, and claims until paid.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 927 Title Insurance
SPONSOR(S): Insurance & Banking Subcommittee; Hager
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1136

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Lloyd	Cooper
2) Government Operations Appropriations Subcommittee	9 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee		Lloyd	Hamon

SUMMARY ANALYSIS

Title insurance insures owners of real property or others having an interest in real property, such as lenders, against loss by: encumbrance; defective title; invalidity; or adverse claim to title. The Office of Insurance Regulation (OIR) licenses title insurers and establishes their rates. The Department of Financial Services (DFS) manages insolvent title insurers, in its role as "receiver," either through liquidation or rehabilitation. Since liquidation requires policy cancellation and unforeseen costs to property owners and lenders, such insolvencies are handled through rehabilitation.

The insolvency claim costs and expenses are funded through assessments on active title insurers (three assessments to date) and recovered through surcharges on title insurance policies issued in the state. A $3.28 surcharge per policy is currently in force. Surcharges are retained by the insurer until they recover their assessment payments. Excess surcharges are paid to the Insurance Regulatory Trust Fund (IRTF). Excess surcharge collections do not reduce future assessments or assist insurers that are slow to recover their assessment payments. The surcharges cease once all insurers recover their assessment payment. There is uncertainty over when the surcharges end on account of how the assessment methodology assigns the amount due from each title insurer.

The bill changes the administration process regarding assessment recovery surcharges. Specifically, the bill:

- removes language limiting the surcharge to one per insolvent company, permitting the receiver to adjust the surcharge amount related to a particular company;
- requires transaction settlement statements to specify that the surcharge amount is a "surcharge" and provide that the surcharge is not premium;
- requires any insurer that was not subject to a given assessment, regardless of their activity in the previous calendar year, to collect and remit the surcharge to the receiver as an excess surcharge;
- establishes an excess surcharge account for use as specified in the bill and described below;
- allows the OIR to end surcharges after all actively writing title insurers have recovered the assessment;
- rolls unused excess surcharges held by the receiver into the IRTF after certain conditions are met, rather than immediately upon receipt; and
- grants specific rulemaking authority.

The bill has an indeterminate fiscal impact on state revenues and a potential positive fiscal impact on state expenditures. To date, no excess surcharges have been remitted for deposit into the IRTF within the DFS. However, given the approximate amount of 1,000,000 title insurance policies written each year, and the current $3.28 surcharge which began in September of 2014, the surcharge will generate approximately $3,280,000 per year. Total assessments to date equal $2,536,348. These figures lead to an approximate amount of excess surcharges of $743,652 that could soon be deposited into the IRTF. The bill would reduce this expected revenue to the IRTF by redirecting the funds into an excess surcharge account retained by the DFS, as receiver, to exclusively service the needs of insolvent title insurer estates, potential estates, and title insurers that have yet to recover their assessment payments. This excess surcharge account will maintain the funds until there are either no active title insurer receiverships for twelve consecutive months, or there are no payable claims for 60 consecutive months, at which time the excess surcharge funds will be deposited into the IRTF.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Title Insurance

Title insurance insures owners of real property or others having an interest in real property, such as lenders, against loss by: encumbrance; defective title; invalidity; or adverse claim to title.[1] Title insurance is a policy issued by a title insurer that, after evaluating a search of title, insures against certain covered risks including: forgery; fraud; liens; and encumbrances on a title. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend against adverse claims on the subject property's title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.[2]

Regulation in Florida

Two entities provide regulatory oversight of the title insurance industry in Florida: the Department of Financial Services (DFS or receiver), which regulates title insurance agents and acts as receiver of insolvent title insurer estates; and the Office of Insurance Regulation (OIR), which licenses title insurers. Title insurance forms must be filed and approved by the OIR prior to usage[3] and premium rates charged by title insurers are specified by rule by the Financial Services Commission (FSC).[4] Title insurers may petition the OIR for an order authorizing a specific deviation from the premium established by rule.[5]

In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.[6] Eighteen title insurers are authorized and actively writing title insurance in the state.[7]

Pursuant to s. 627.782, F.S., the FSC is mandated to adopt a rule specifying the premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer.[8] The FSC must review the premium not less than once every three years.

Title insurers and title insurance agencies are required to submit to the OIR, on or before May 31 of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry.

---

[1] Section 624.608, F.S. Title insurance is also insurance of owners and secured parties of the existence, attachment, perfection and priority of security interests in personal property under the Uniform Commercial Code.

[2] See, e.g., the website of the American Land Title Association (ALTA), http://www.alta.org (Last accessed: March 12, 2015). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies.

[3] Section 627.777, F.S.

[4] Section 627.782, F.S.

[5] Section 627.783, F.S.

[6] Section 627.786, F.S.

[7] Florida Office of Insurance Regulation, http://www.floir.com/CompanySearch/ (last accessed March 12, 2015). Search for "Title Insurance" under "Company Type."

[8] A minimum 30 percent of premium must be retained by the title insurer. Section 627.782, F.S.

Insurer Insolvency: Rehabilitation and Liquidation

Chapter 631, F.S., relates to insurer insolvency and guaranty payments. It governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.[9] Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the DFS is responsible for rehabilitating or liquidating insurance companies as the "receiver."[10] This process involves the initiation of a delinquency proceeding and the placement of an insurer under the control of the receiver. Insolvencies are handled before the Circuit Court of Leon County, i.e., the 2nd Judicial Circuit.[11]

Foreign Title Insurers in Receivership[12]

When a foreign title insurer with policies in Florida is placed in receivership by its domiciliary state, the DFS may apply to the court for an order appointing it as ancillary receiver for the purpose of making assessments. The proceeds of such assessments may be used for the payment of claims, to acquire reinsurance, or otherwise provide for the assumption of Florida policy obligations by another insurer. If the assets in Florida are insufficient to pay the administrative costs of the ancillary receivership, the receiver may request additional funds from the Insurance Regulatory Trust Fund (IRTF).

Liquidation

When the DFS determines that a Florida-domiciled insurer is insolvent or is operating in a financially hazardous manner, it petitions the court for an order requiring the insurer to show cause why it should not be placed into liquidation.[13] If the insurer's board of directors either joins in the petition or consents, a liquidation order is issued appointing the DFS as receiver to liquidate the insurer; otherwise, a hearing is held to determine whether the petition should be granted.

Under the court's supervision, the receiver as liquidator is charged with gathering (marshaling) the company's assets, converting them into cash, and distributing the cash to the insurer's claimants in accordance with the priority for claims payment established by statute.

After issuance of the liquidation order, the DFS takes possession of the insurer's offices, equipment, records and assets. A notice is sent to all potential claimants advising them of the liquidation and the process to follow to perfect their claim against the insurer's estate. All property and casualty insurance policies are cancelled within 30 days of the liquidation order.

After all assets have been converted to cash, claims prioritized and valued, and any objections to the valuation of claims resolved, the receiver will file a petition with the court asking for authority to distribute the cash according to the priorities set in statute.[14]

Liquidation of title insurers is disfavored because it results in the cancellation of the insurer's policies. This would eliminate the insurance covering the lender's interest in the title and require the owner to obtain new title insurance or refinance the mortgage at unexpected additional cost. According to the DFS, they have never liquidated a title insurer in the state.

---

[9] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).

[10] Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

[11] Section 631.021, F.S.

[12] "Foreign insurer" is defined in s. 624.06, F.S., as an insurer formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida.

[13] The grounds for liquidation are set forth in s. 631.061, F.S.

[14] Section 631.271, F.S.

Rehabilitation

The receiver of an impaired insurer, as the rehabilitator, prepares a plan to assist an insurer to resolve its difficulties and is responsible for taking actions necessary to correct the conditions that necessitated the receivership, as the court may direct. Generally, the receiver suspends all powers of the company's directors, officers, and managers.

By statute and court order, for insurers generally, the receiver:

- Is authorized to conduct all business of the insurer.
- Directs, manages, hires, and discharges employees.
- Is authorized to manage the property and assets of the insurer as it deems necessary.
- Files for release of the company from receivership if rehabilitation efforts are successful and grounds for receivership no longer exist.

By statute, for title insurers, the receiver reviews the insurer's condition and files a rehabilitation plan, subject to court approval, that provides for the following:[15]

- Title insurance policies covering real property in Florida are to remain in force, unless assessments on other title insurers would be insufficient to pay the insurer's claims in the ordinary course of business.
- Title insurance policies covering real property in other states ("out-of-state policies") that do not statutorily provide for payment of future losses of title insurers in receivership may be cancelled as of a date proposed by the receiver (if approved by the court); with a claims filing deadline proposed for out-of-state policies that are cancelled.
- A proposed percentage of the remaining estate assets to fund out-of-state claims where policies have been cancelled, with any unused funds returned to the general assets of the insurer's estate.
- A proposed percentage of the remaining estate assets to fund out-of-state claims where policies remain in force.
- That funds allocated to pay claims on out-of-state policies are to be based on the pro-rata share of premiums written in each state over each of the 5 calendar years preceding the date of the order of rehabilitation.

If the receiver determines that further attempts to rehabilitate the insurer are futile or if continued rehabilitation would increase the risk of loss to policyholders, the receiver may file for liquidation of the insurer. However, as noted above, liquidation of title insurance companies is disfavored.

Title Insurers in Rehabilitation

There are two title insurers in rehabilitation: National Title Insurance Company (National) and K.E.L. Title Insurance Group, Inc. (K.E.L.).[16] According to the DFS, these two are the only title insurers to go into receivership in the state. Both cases resulted in assessments[17] and the collection of surcharges.

Assessments[18]

As a condition of doing business in the state, title insurers are liable for an assessment to pay all unpaid title insurance claims on policies covering real property in Florida, and the expenses of administering

---

[15] Section 631.400, F.S.

[16] See State of Florida, ex rel., the Department of Financial Services of the State of Florida v. National Title Insurance Company, Case No. 2009-CA-2577 (Fla. Cir. Ct.), and State of Florida, ex rel., the Department of Financial Services of the State of Florida v. K.E.L. Title Insurance Group, Inc., Case No. 2012-CA-3514 (Fla. Cir. Ct.). Detailed information can be obtained from the Department of Financial Services at http://www.myfloridacfo.com/Division/Receiver/Companies/CompaniesinRehabilitation.htm#.VQGU1qPD_cv . (Last accessed on March 12, 2015.)

[17] See 2012 Title Insurance Assessment for National Title Insurance Company Rehabilitation, Office of Insurance Regulation Case No. 127302-12, 2014 Title Insurance Assessment for National Title Insurance Company Rehabilitation, Office of Insurance Regulation Case No. 162723-14, and 2014 Title Insurance Assessment for K.E.L. Title Insurance Group Rehabilitation, Office of Insurance Regulation Case No. 150289-14.

[18] Section 631.400, F.S.

and settling such claims, of a title insurer ordered into rehabilitation. The OIR, upon request of the receiver, is required to order an annual assessment in an amount the receiver considers sufficient to pay known claims, loss adjustment expenses, and the cost of administration of rehabilitation expenses. In requesting an assessment, the receiver is required to consider the remaining assets of the insurer in receivership. Annual assessments may be made until the insurer in rehabilitation does not have any policies in force or the potential for future liability has been satisfied. Assessments are to be based on each title insurer's pro-rata share of direct title insurance premiums written in Florida in the previous calendar year as reported to the OIR.

The assessment levied against a title insurer cannot exceed three percent of an insurer's surplus to policyholders at the end of the previous calendar year or ten percent of an insurer's surplus to policyholders over any consecutive five-year period. The ten percent limitation is to be calculated as the sum of the percentages of surplus to policyholders assessed in each of those five years. An emergency assessment may also be ordered, if requested by the receiver. However, the total of the emergency assessment and any annual assessment to be paid by a title insurer in a single calendar year cannot exceed the cap applicable to the annual assessment alone. The OIR may exempt a title insurer from, or limit payment of, the assessment when such payment would reduce the insurer's surplus to policyholders below the minimum required for the insurer to maintain its certificate of authority in another state. Assessments are payable within 90 days or under a quarterly installment plan approved by the receiver, accompanied by applicable finance charges.

Proceeds of assessments may be used by the receiver in an effort to keep in force title policies on Florida real property, including purchasing reinsurance or otherwise providing for the assumption of policy obligations by another insurer. When an assessment has been ordered, the insurer in rehabilitation is barred from issuing new title insurance policies until it is released from rehabilitation. An insurer may not be released from rehabilitation until all title insurers have received full reimbursement for assessments paid. However, because an insurer may become inactive in the interim, it may be impossible to meet this condition.

Surcharges

To reimburse title insurers for assessments paid, the OIR is required to order a surcharge on all subsequently issued title insurance policies on Florida real property. The surcharge cannot exceed $25 per transaction for each impaired title insurer and the surcharge must be in an amount estimated to be sufficient to recover all amounts assessed within 7 years. The surcharge is to be paid by the party responsible for payment of the title insurance premium, unless otherwise agreed between the parties.

If additional title insurers become impaired, the OIR is required to order an increase in the surcharge amount to reflect the aggregate surcharge. However, the statute does not permit the OIR to alter the surcharge related to a particular insolvency. The OIR may authorize one surcharge per insolvency, but a particular surcharge cannot be adjusted as additional claim and expenses develop. Because of the nature of title insurance, it is very difficult to estimate the development of claims and expenses over the long term.

Title insurance agents and agencies are required to collect and remit the surcharges to the title insurer upon which a policy is written within 60 days. No surcharge is due or owing as to any policy of insurance issued at the simultaneous issue rate. The surcharge is to be considered a separate governmental assessment to be separately stated on any settlement statement, and is not subject to premium tax or reserve requirements. Title insurers are required to provide the OIR with an accounting, by March 1st of each year, of assessments paid and surcharges collected during the previous calendar year. Any surcharges collected by an insurer in excess of the assessment paid are payable to the IRTF.

The OIR may only order the collection of surcharges ceased after all title insurers that paid the assessment fully recover the amount that they paid on account of the assessment.[19] Because the assessment is set as a pro rata share of direct written premium, but the surcharge is collected on a per

[19] Section 627.401(6), F.S.

policy basis, title insurers with a high average premium but a low policy volume may require an exceptionally long period of time to fully recover their assessment payment. Additionally, title insurers that paid the assessment may become inactive prior to recovering their assessment payments. So, the condition precedent to ceasing the surcharge may be impossible to meet.

Current Assessments and Surcharges

To date, the OIR, at the request of the receiver, has ordered three assessments.[20] Two are related to National ($212,478 in 2012 and $300,000 in 2014) and one is related to K.E.L. ($2,023,870 in 2014). Seventeen title insurers were ordered to pay the 2012 assessment. Fifteen title insurers were ordered to pay the 2014 assessments. There is a difference between the number assessed because K.E.L. became insolvent and another company became inactive prior to the 2014 assessments. The OIR reports that the first two assessments have been fully paid and that compliance on the last is ongoing.

Together, the total authorized surcharge on all title insurance policies written in the state is $3.28 ($0.28 related to National and $3.00 related to K.E.L.). Title insurers began collecting surcharges in September 2014. Excess surcharge collections have not yet occurred.

Effect of the Bill

The bill removes language limiting the surcharge to one per insolvent company. This permits the receiver to adjust the surcharge amount related to a particular company as claims and expenses develop. Currently, the surcharge related to National is set at $0.28 per policy. To date, there has been only $512,478 in claims and expenses converted into assessments in the matter. If higher claim activity occurs, the surcharge related to National cannot be adjusted in response. When one considers that the assessment related to K.E.L., which only held 0.27 percent of the Florida market in 2011, was over $2,000,000, it becomes apparent that far higher claim activity could occur in the National case. The bill allows the flexibility to react to actual claim development, as it occurs.

Currently, the amount of the surcharge is required to be listed on title transaction settlement statements. The bill requires the settlement statement to specify that the amount is a "surcharge." Also, the surcharge is not subject to the insurance premium tax. The bill specifically states that the surcharge does not qualify as premium.

Title insurers who did not write title insurance policies in the previous calendar year are required to collect and remit surcharges if they begin writing policies. The bill clarifies this provision to require any insurer that was not subject to a given assessment, when issued, to collect and remit the surcharge for any policies it writes while the assessment is in effect. These surcharge collections are entirely excess surcharges (because these companies did not pay the assessment) and are remitted to the excess surcharge account maintained by the receiver, as established by the bill.

While no excess surcharges have been collected and remitted, statute requires excess surcharges to be paid into the IRTF. The bill establishes an excess surcharge account under the receiver (i.e., the Department of Financial Services). The receiver is allowed to use the excess surcharge funds only to:

- Reduce or eliminate the amount of a future assessment related to a title insurer in receivership at the time of the assessment or one that later enters receivership, or
- Reduce the amount of time that a surcharge for the recovery of assessment is in effect, by transferring excess surcharge collections to title insurers that have not yet recovered the amount of assessment the paid.

The OIR shall order the end of surcharge collections once all title insurers that paid the assessment have recovered their payment. The bill allows the OIR to order title insurers to stop collecting the surcharges once all title insurers that wrote policies in the previous year have fully recovered their assessment payment. This allows the collection of surcharges, including excess surcharges, to end at

[20] See footnote 16, above.

the earliest opportunity. If any title insurers are unable to recover their assessment payment, they will be able to claim recovery against the excess surcharge account provided for in the bill.

The bill rolls over excess surcharges held in the account to the IRTF if there are no active title insurer receiverships for twelve consecutive months or there are no payable claims for 60 consecutive months. This allows the receiver to continue to use the excess surcharge collections to fund the claims and expenses of title insurers in receivership as long as at least one title insurer is in receivership with ongoing payable claims activity. This avoids sending excess surcharges to the IRTF while those funds could be used for ongoing or developing title insurer insolvencies. This is expected to minimize the value of additional assessments and the value and term of the aggregate surcharges.

The Financial Services Commission, as the agency head for the OIR, is given specific rulemaking authority to adopt rules governing the collection, use, and transfer of surcharges, including excess surcharges. Specific rulemaking authority is also given to the DFS, Division of Rehabilitation and Liquidation, to oversee the claiming and distribution of funds from the excess surcharge account.

B. SECTION DIRECTORY:

Section 1: Amends s. 631.401, F.S., relating to recovery of assessments and assumed policy obligations.

Section 2: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has an indeterminate fiscal impact on revenues that could be deposited into the Insurance Regulatory Trust Fund (IRTF) within the Department of Financial Services (DFS). Currently, no excess surcharges have been remitted for deposit into the IRTF. However, the OIR has stated that there are approximately 1,000,000 title insurance policies written each year.[21] Given the approximate amount of 1,000,000 title insurance policies written each year, and the current $3.28 surcharge which began in September of 2014, the surcharge will generate approximately $3,280,000 per year. Total assessments to date equal $2,536,348. These figures lead to an approximate amount of excess surcharges of $743,652 that could soon be deposited into the IRTF. The bill would reduce this expected revenue to the IRTF by redirecting the funds into an excess surcharge account retained by the DFS, as receiver, to exclusively service the needs of insolvent title insurer estates, potential estates, and title insurers that have yet to recover their assessment payments. This excess surcharge account will maintain the funds until there are either no active title insurer receiverships for twelve consecutive months, or there are no payable claims for 60 consecutive months, at which time the excess surcharge funds will be deposited into the IRTF within the DFS.

2. Expenditures:

The bill potentially has a positive impact on state government expenditures to the extent that the state is a purchaser of title insurance and the value and term of surcharges will be minimized as a result of this legislation.

[21] Email correspondence with the Office of Insurance Regulation (March 12, 2015) on file with the Government Operations Appropriations Subcommittee.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill potentially has a positive impact on local government expenditures to the extent that they are purchasers of title insurance and the value and term of surcharges will be minimized as a result of this legislation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is expected to have an indeterminate but positive impact on the private sector. It will minimize the value of assessments and value and duration of surcharges to recover assessments that fund the claims and expenses of insolvent title insurers.

D. FISCAL COMMENTS:

The bill authorizes the receiver to expend excess surcharges remitted under the statute and bill for purposes specified by the bill. This includes distributing funds to title insurers that are not claimants to receivership estates. These expenditures are outside of and are not the asset of any insolvent estate. It is unclear if this activity is subject court order, or solely within the discretion of the receiver to expend.

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 an 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 a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants specific rulemaking authority to the Financial Services Commission, as agency head of the OIR, to establish the processes for collecting, using, and transferring surcharges, including excess surcharges. It also grants specific rulemaking authority to the DFS, Division of Rehabilitation and Liquidation, to establish a process to claim and distribute funds from the excess surcharge account established by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Insurance & Banking Subcommittee considered the bill, adopted three amendments and reported the bill favorably with a committee substitute. The amendments made the following changes:

- Revised a provision of the bill to allow the OIR to end the collection of assessment recovery surcharges once all active title insurers have recovered their assessment payment, rather than

continuing the surcharges until all title insurers that paid the assessment have recovered their payment.

- Restructured a provision to clarify that excess surcharges can only be used to fund the claims and expenses of insolvent title insurers or to fund the unpaid assessment recovery balance of title insurers that are slow to recover their assessment payments due to the nature of their business.

- Corrected the entity receiving rulemaking authority under the bill to reflect the Financial Services Commission as the agency head of the OIR; added rulemaking authority for the DFS, Division of Rehabilitation and Liquidation to allow it to create a process to claim against and distribute funds from the excess surcharge account created by the bill; and revised the condition precedent to paying the excess surcharges held by the receiver (DFS) into the Insurance Regulatory Trust Fund and clarifies rulemaking authority granted by the bill.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to title insurance; amending s. 631.401, F.S.; revising procedures and requirements relating to the recovery of assessments from title insurers through surcharges assessed on policies; revising provisions relating to surcharges collected in excess of the assessments paid by title insurers; revising requirements for the payment of excess surcharges to the Insurance Regulatory Trust Fund; authorizing the Financial Services Commission to adopt rules for certain purposes; authorizing the Division of Rehabilitation and Liquidation to adopt rules for certain purposes; providing an effective date.

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

Section 1. Section 631.401, Florida Statutes, is amended to read:

631.401 Recovery of assessments and assumed policy obligations.—

(1) Upon the making of any assessment allowed by s. 631.400, the office shall order a surcharge or, if a surcharge is currently in effect, an additional surcharge amount on each title insurance policy thereafter issued insuring an interest in real property in this state. The office shall set the per transaction surcharge at an amount estimated to generate

sufficient funds to recover the amount assessed over a period of not more than 7 years. The amount of the surcharge ordered under this section may not exceed $25 per transaction for each impaired title insurer. ~~If additional surcharges are occasioned by additional title insurers becoming impaired, the office shall order an increase in the amount of the surcharge to reflect the aggregate surcharge.~~

(2) The party responsible for the payment of title insurance premium, unless otherwise agreed between the parties, shall be responsible for the payment of the surcharge. No surcharge will be due or owing as to any policy of title insurance subject to ~~issued at~~ the simultaneous issue premium ~~rate~~. ~~For all other purposes,~~ The surcharge will be considered a governmental assessment to be separately stated on any settlement statement as a surcharge. The surcharge is not premium and is not subject to premium tax or reserve requirements under chapter 625.

(3) Title insurers doing business in this state which are not subject to a given assessment ~~writing no premiums in the prior calendar year~~ shall collect the same per transaction surcharge as provided by this section. Such surcharge collected shall be paid to the receiver within 60 days after receipt to be maintained in an excess surcharge account and used only as provided in subsection (6) ~~from the title agent or agency~~.

(4) Each title insurance agent, agency, or direct title operation shall collect the surcharge as to each title insurance

policy written and remit those surcharges ~~along with the policies and premiums~~ within 60 days to the title insurer on which ~~whom~~ the policy was written.

(5) A title insurer may not retain more in surcharges ~~for an ordered assessment~~ than the amount of aggregate assessments paid by the ~~assessment that~~ title insurer ~~paid~~. Any surcharges collected in excess of the amount of the aggregate assessments paid by a title insurer shall be paid as provided in subsection (6). As used in this section, the term "aggregate assessments" means the total amount of assessments ordered by the office under s. 631.400.

(6) Each title insurer collecting surcharges shall promptly notify the office when it has collected surcharges equal to the amount of the aggregate assessments ~~assessment~~ paid pursuant to s. 631.400. The office shall notify all companies, including those collecting surcharges as required by subsection (3), to cease collecting surcharges when notified that all aggregate assessments have been recovered by the title insurers that wrote policies in the state during the previous calendar year. Any surcharges collected by a title insurer in excess of the total amount it was assessed for aggregate assessments shall be paid quarterly to the receiver to be maintained in the excess surcharge account by the receiver. Excess surcharges may be used by the receiver for the following purposes only:

(a) To reduce or eliminate the amount of a future assessment for a title insurer in receivership at the time of

the assessment or that later enters receivership; or

(b) To reduce the amount of time that consumers in the state are subject to surcharges by transferring excess surcharges to title insurers that have not fully collected surcharges equal to the amount of the aggregate assessments paid by title insurers pursuant to s. 631.400.

(7) In conjunction with the filing of each quarterly financial statement, each title insurer shall provide the office with an accounting of assessments paid and surcharges collected during the period.

(8) If the receiver has no active title insurer receiverships for 12 consecutive months, or there have been no payable claims against any title insurer receivership for 60 consecutive months, all excess surcharges held by the receiver under this section ~~Any surcharges collected in excess of the amount assessed~~ shall be paid into ~~to~~ the Insurance Regulatory Trust Fund.

(9) The Financial Services Commission may adopt rules specifying procedures for the collection, use, and transfer of surcharges, including excess surcharges.

(10) The Division of Rehabilitation and Liquidation may adopt rules specifying procedures for claiming, distributing, and using excess surcharge account funds held by the receiver under this section and for the purposes specified in subsection (6).

Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 949 Regulation of Carbon Dioxide Emissions from Fossil Fuel-Fired Electric Generating Units
SPONSOR(S): Rodrigues and others
TIED BILLS: None. **IDEN./SIM. BILLS:** SM 1228

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	9 Y, 3 N	Keating	Keating
2) Local & Federal Affairs Committee	12 Y, 5 N	Kiner	Kiner
3) Regulatory Affairs Committee		Keating CK	Hamon K.W.H.

SUMMARY ANALYSIS

On June 18, 2014, the U.S. Environmental Protection Agency (EPA), pursuant to section 111(d) of the federal Clean Air Act (CAA), published a proposed rule to address greenhouse gas emissions from existing power plants (the "Clean Power Plan"). In its proposed rule, the EPA proposes state-specific, rate-based goals for carbon emissions from existing plants and guidelines for states to follow in developing plans to achieve the goals. The EPA is currently processing public comments on the proposed rule and plans to issue a final rule this summer (2015).

Under the proposed Clean Power Plan, each state, by June 30, 2016, must submit to the EPA a plan to implement the guidelines set forth in the rule. With respect to Florida, the EPA's proposed rule requires a 38 percent reduction in carbon emissions from 2012 rates by 2030, with much of the reduction required by 2020 to meet the EPA's interim compliance schedule. Under the proposed rule, a state may request a one-year extension if it demonstrates a need for additional time to submit a complete plan or a two-year extension to develop a multi-state plan. The provisions of the proposed rule are subject to change in the final rule.

This memorial urges the United States Congress to direct the EPA to revise its proposed Clean Power Plan as follows:

- Extend by 1 year the date by which states are required to submit a state plan to the EPA, thereby providing more time to finalize technical work and state legislative and rulemaking activities.
- Decrease the proposed interim and final state goals expressed as adjusted output for the weighted average emission rates for all affected electric generating units in Florida.
- Extend by 5 years the interim plan compliance schedule for meeting the proposed state goals for reductions in carbon dioxide emission rates.
- Extend by 5 years the date by which final goals for carbon dioxide emission rates must be reached.
- Prohibit retirement of an electric generating unit before the end of its engineering lifetime unless the affected utility has fully recovered the costs of construction and financing of the unit, the state has sufficient replacement capacity, and grid reliability is maintained.

Copies of the memorial must be dispatched to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Administrator of the EPA, and each member of the Florida delegation to the United States Congress.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The U.S. Environmental Protection Agency (EPA) regulates air emissions from stationary and mobile sources under the authority of the Clean Air Act (CAA).[1] Under section 109 of the CAA, the EPA must set National Ambient Air Quality Standards (NAAQS) for air pollutants deemed hazardous to the public health or welfare.[2] The EPA has set NAAQS for six common pollutants referred to as "criteria pollutants": ozone, particulate matter, carbon monoxide, sulfur dioxide, nitrogen dioxide, and lead.[3] Section 110 of the CAA requires each state to adopt a plan (state implementation plan or SIP) that provides for enforcement of the NAAQS.[4] In addition, Section 112 of the CAA authorizes the EPA to set emission standards for sources of specified pollutants referred to as "hazardous air pollutants."[5]

Section 111(b) of the CAA authorizes the EPA to establish standards of performance for a *new or modified* stationary source of air pollution that "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare."[6] Standards of performance are set by category of stationary sources, and each category is set by the EPA.[7] The standard for each category must be based on "the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the [EPA] determines has been adequately demonstrated."[8]

When the EPA establishes standards of performance for a new or modified source under section 111(b) of the CAA, each state must develop a plan for enforcing the standards for such new sources located in the state.[9] Further, section 111(d) of the CAA mandates that the EPA prescribe regulations that require each state to establish standards of performance for any *existing* source to which the EPA standards would apply if it were a new source, provided that the pollutant at issue is not already regulated as a criteria pollutant or a hazardous air pollutant.[10] Standards for existing sources are set through a process that includes the establishment of federal guidelines followed by the development of state plans to meet the federal guidelines.[11] To reflect technology differences between new and existing sources, the standards established by states for existing sources may be less stringent than those established by the EPA for new sources.[12] Further, the state may take into account, among other factors, the remaining useful life of the existing source to which the standard applies.[13] State standards and implementation plans are subject to EPA review and approval.[14]

---

[1] U.S. Environmental Protection Agency, Summary of the Clean Air Act, *available at* http://www2.epa.gov/laws-regulations/summary-clean-air-act (last accessed March 10, 2015).
[2] 42 U.S.C. § 7409.
[3] U.S. Environmental Protection Agency, Clean Air Act Requirements and History, *available at* http://www.epa.gov/air/caa/requirements.html (last accessed March 10, 2015).
[4] 42 U.S.C. § 7410. SIPs are subject to review and approval by the EPA. The Florida Department of Environmental Protection is responsible for implementing air pollution programs in Florida that are in compliance with federal requirements.
[5] 42 U.S.C. § 7412.
[6] 42 U.S.C. § 7411(b)(1).
[7] *Id.*
[8] 42 U.S.C. § 7411(a)(1).
[9] 42 U.S.C. § 7411(c).
[10] 42 U.S.C. § 7411(d).
[11] U.S Environmental Protection Agency, What EPA is Doing: Reducing carbon pollution from the power sector, *available at* http://www2.epa.gov/carbon-pollution-standards/what-epa-doing (last accessed March 10, 2015).
[12] *Id.*
[13] 42 U.S.C. § 7411(d).
[14] *Id.*

Under the authority granted in section 111(b) of the CAA,[15] the EPA, on April 13, 2012, proposed rules setting forth performance standards for carbon emissions[16] from new electric power plants.[17] The adoption of performance standards for this new source triggered the development of federal guidelines and state standards under section 111(d) of the CAA for carbon emissions from existing power plants.

On June 25, 2013, President Barack Obama issued a Presidential Memorandum which recognized that the EPA had begun rulemaking for new power plants and directed the EPA to issue standards, regulations, or guidelines, as appropriate, that address carbon emissions from existing power plants pursuant to its authority under the CAA.[18] The Presidential Memorandum requested that the EPA issue such guidelines for existing plants by June 1, 2014, issue final guidelines for existing plants by June 1, 2015, and require submission of state implementation plans and standards by June 30, 2016.

On June 18, 2014, the EPA published a proposed rule to address greenhouse gas emissions from existing power plants (the "Clean Power Plan").[19] In its proposed rule, the EPA proposes state-specific, rate-based goals for carbon emissions from existing plants and guidelines for states to follow in developing plans to achieve the goals. The proposed rule requires Florida to reduce carbon emissions from its 2012 rate of 1,238 pounds per megawatt-hour to a rate of 740 pounds per megawatt-hour by 2030, a 38 percent reduction. The proposed rule establishes an interim goal of 794 pounds per megawatt-hour, with much of the reduction required by 2020 to meet the EPA's interim compliance schedule.[20]

The EPA invited public comment on the proposed rule. The Public Service Commission, Department of Environmental Protection, Office of Public Counsel, Department of Agriculture and Consumer Services, and the Attorney General (jointly with other state attorneys general) each submitted comments in response to the proposed rule.[21] The EPA is currently processing these comments and all other public comments submitted on the proposed Clean Power Plan and plans to issue final rules this summer (2015) related to both new power plants and existing power plants.

Under the proposed rule, each state, by June 30, 2016, must submit to the EPA a plan to implement the guidelines set forth in the rule. The EPA intends to develop federal plans to apply to states that do not submit a state plan. Under the proposed rule, a state may request a one year extension if it needs additional time to submit a complete plan. To obtain an extension, the state must submit an initial plan by June 30, 2016, that contains certain required components. The initial state plan must also

---

[15] In Am. Elec. Power Co., Inc. v. Connecticut, 131 S. Ct. 2527 (2011), the U.S. Supreme Court affirmed the EPA's authority to regulate stationary sources of greenhouse gases (like electric power plants), so long as the EPA made an "endangerment finding" to justify the regulation.

[16] According to the EPA's website, carbon dioxide is a greenhouse gas that is naturally present in the atmosphere as part of the Earth's carbon cycle (the natural circulation of carbon among the atmosphere, oceans, soil, plants, and animals). The main human activity that emits carbon dioxide is the combustion of fossil fuels (coal, natural gas, and oil) for energy and transportation. The combustion of fossil fuels to generate electricity is the largest single source of carbon dioxide emissions in the nation, accounting for about 38 percent of total U.S. carbon dioxide emissions and 32 percent of total U.S. greenhouse gas emissions in 2011. The type of fossil fuel used to generate electricity will emit different amounts of carbon dioxide, but to produce a given amount of electricity, burning coal will produce more carbon dioxide than oil or natural gas. See http://www.epa.gov/climatechange/ghgemissions/gases/co2.html (last accessed March 10, 2015).

[17] Notice of Proposed Rulemaking entitled "Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units"; Docket ID No. EPA-HQ-OAR-2013-0495.

[18] Memorandum to the Environmental Protection Agency from President Barak Obama, (June 25, 2013), *available at* http://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards (last accessed March 10, 2015).

[19] "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units"; Docket ID No. EPA-HQ-OAR-2013-0602. See https://federalregister.gov/a/2014-13726 (last accessed March 10, 2015).

[20] Presentation by the Department of Environmental Protection to the Energy & Utilities Subcommittee, Florida House of Representatives, on March 4, 2015.

[21] Presentation by the Public Service Commission to the Energy & Utilities Subcommittee, Florida House of Representatives, on March 4, 2015.

document the reasons the state needs more time and include commitments to concrete steps that will ensure that the state will submit a complete plan by June 30, 2017. The proposed rule identifies the following "approvable" justifications for seeking an extension beyond 2016: a state's required schedule for legislative approval and administrative rulemaking; the need for multi-state coordination in the development of an individual state plan; or the process and coordination necessary to develop a multi-state plan. A state may request an extension through June 30, 2018, if it is working with other states to develop a multi-state plan.

As with other components of the proposed rule, the proposed timelines for development of state plans are subject to change in the final rule. The EPA notes in the proposed rule that its framework regulations (40 CFR 60.23) require that state plans be submitted to the EPA within nine months of promulgation of the emission guidelines, unless the EPA specifies otherwise.

As compared to other sections of the CAA, the EPA rarely has used section 111(d). Thus, there are limited precedents for how the EPA will or should implement performance standards for carbon emissions under section 111(d) of the CAA.[22]

Effect of Proposed Changes

This memorial urges the United States Congress to direct the EPA to revise its proposed Clean Power Plan as follows:

- Extend by 1 year the date by which states are required to submit a state plan to the EPA, thereby providing more time to finalize technical work and state legislative and rulemaking activities.
- Decrease the proposed interim and final state goals expressed as adjusted output for the weighted average emission rates for all affected electric generating units in Florida.
- Extend by 5 years the interim plan compliance schedule for meeting the proposed state goals for reductions in carbon dioxide emission rates.
- Extend by 5 years the date by which final goals for carbon dioxide emission rates must be reached.
- Prohibit retirement of an electric generating unit before the end of its engineering lifetime unless the affected utility has fully recovered the costs of construction and financing of the unit, the state has sufficient replacement capacity, and grid reliability is maintained.

The memorial provides that copies thereof be dispatched to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Administrator of the EPA, and each member of the Florida delegation to the United States Congress.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[22] Pew Center on Global Climate Change, GHG New Source Performance Standards for the Power Section: Options for EPA and the States, at p.5, *available at* http://www.c2es.org/docUploads/EPA-HQ-OAR-2011-0090-2950.1.pdf (last accessed March 10, 2015).

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

House Memorial

A memorial to the Congress of the United States, urging Congress to direct the United States Environmental Protection Agency to revise the proposed regulations that address carbon dioxide emissions from existing fossil fuel-fired electric generating units.

WHEREAS, a reliable and affordable electricity supply is vital to the economic growth, jobs, and overall well-being of the nation and the citizens of each state, and

WHEREAS, emanating from each state's sovereignty and the protections of the Tenth Amendment to the United States Constitution, each state has the exclusive authority to regulate the provision of electricity to ensure a reliable and affordable supply of electricity for its citizens, and

WHEREAS, environmental regulations should be based on sound science and a transparent and comprehensive program that addresses environmental issues, the nation's broader economic prosperity, and long-term energy affordability for citizens, and

WHEREAS, the regulation of the retail sale and local distribution of electricity is a function of sovereign states that federal agencies have a duty to respect and preserve, and

WHEREAS, on June 25, 2013, the President of the United States issued a memorandum to the Administrator of the United States Environmental Protection Agency (EPA) directing the EPA to develop guidelines to control greenhouse gas emissions from

existing fossil fuel-fired power plants under section 111(d) of the federal Clean Air Act and to seek input from the states, and

WHEREAS, pursuant to section 111(d) of the Clean Air Act, the EPA issued proposed regulations and guidelines limiting carbon dioxide emissions from existing fossil fuel-fired electric generating units (EGUs) on June 2, 2014, and published the regulations for comment in the Federal Register on June 18, 2014, and

WHEREAS, the EPA, by its proposed regulations and guidelines, has asserted authority over greenhouse gas emissions to regulate carbon dioxide performance standards for existing fossil fuel-fired EGUs despite that those plants are already regulated under the air toxics program under section 112 of the Clean Air Act, and

WHEREAS, since the Clean Air Act does not authorize the EPA to regulate emissions beyond the physical boundaries of an individual EGU, the EPA cannot mandate that EGUs reduce demand for electricity by customers and cannot require EGUs to increase their reliance on natural gas or renewable energy sources because each of those activities is exclusively within the police powers of the state, and

WHEREAS, the proposed regulations are based on the EPA's assessment of each state's ability to improve the efficiency of the existing fossil fuel-fired EGUs, revise operations or retire coal-fired EGUs, substantially increase the use of natural gas, significantly increase reliance on renewable energy sources, and

substantially reduce the use of electricity by consumers, all in a plan and on a schedule that are neither achievable nor workable, and

WHEREAS, the Attorney General of Florida, the Florida Public Service Commission, and the Florida Department of Environmental Protection have each sent comments to the EPA expressing concerns about implementation of the proposed regulations, and

WHEREAS, the proposed regulations, if enacted, would effectively amount to a federal takeover of the electricity generation system of the United States, and

WHEREAS, the proposed regulations, by the EPA's own estimates, would have a major impact on the economy of each state and significant consequences for electricity generation, transmission, distribution, and use within this state, NOW, THEREFORE,

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

That the United States Congress is urged to direct the United States Environmental Protection Agency to revise the proposed regulations to:

(1) Extend by 1 year the date by which states would be required to submit a state plan to the EPA, thereby providing more time to finalize technical work and state legislative and rulemaking activities.

(2) Decrease the proposed interim and final state goals expressed as adjusted output for the weighted average emission rates for all affected EGUs in Florida.

(3) Extend by 5 years the interim plan compliance schedule for meeting the proposed state goals for reductions in carbon dioxide emission rates.

(4) Extend by 5 years the date by which final goals for carbon dioxide emission rates must be reached.

(5) Prohibit retirement of an EGU before the end of its engineering lifetime unless the affected utility has fully recovered the costs of construction and financing of the EGU, the state has sufficient replacement capacity, and grid reliability is maintained.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to the Administrator of the United States Environmental Protection Agency, and to each member of the Florida delegation to the United States Congress.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1053 Motor Vehicle Insurance
SPONSOR(S): Insurance & Banking Subcommittee; Fant
TIED BILLS: **IDEN./SIM. BILLS:** SB 1250

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Lloyd	Cooper
2) Regulatory Affairs Committee		Lloyd	Hamon

SUMMARY ANALYSIS

Private passenger motor vehicle insurance is written to individuals, and family members in the same household, for coverage of automobiles that are not used for commercial purposes. The bill makes four changes regarding motor vehicle insurance.

The Florida Automobile Joint Underwriting Association (Auto JUA) provides motor vehicle insurance to individuals who cannot obtain coverage in the voluntary market. Motor vehicle insurers, including the Auto JUA, are limited regarding the cancellation of insurance policies. An insurer may not cancel a policy within 60 days of the effective date of the policy, except for non-payment of premium. The bill gives specific authority to the Auto JUA to cancel motor vehicle policies within the first 60 days for non-payment and prohibits an insured from cancelling their coverage in the first 90 days of the policy, except if the vehicle is destroyed, ownership of the insured vehicle is transferred, or upon the purchase of a policy elsewhere. This guarantees three month's premium revenue to the Auto JUA, while allowing cancellation of policies for non-payment.

Statute requires insurers who offer bodily injury liability coverage to also offer Uninsured Motorist (UM) coverage in the same amount as any policy limits applying to the bodily injury liability policy. However, an insured may waive UM coverage, select a lower limit, or select "non-stacking" UM coverage, upon signing a waiver form approved by the Office of Insurance Regulation. The form must include a specified warning statement in 12-point bold type. The bill allows the form to be presented and signed electronically. When it is provided electronically, the required statement will be larger than the surrounding text.

Florida's Motor Vehicle No-Fault Law requires motorists to carry at least $10,000 of personal injury protection (PIP) insurance. It provides medical, surgical, funeral, and disability insurance benefits without regard to who is at fault in a motor vehicle accident. Payments for PIP related medical services utilize the Medicare fee schedule in effect on March 1 of the year the service is rendered. The fee schedule in effect on March 1 applies for the remainder of that year. The bill aligns the period in which services were rendered with the year the applicable fee schedule is in effect and states precisely the beginning and end of the year (Mar 1 – Feb 29).

Under current law, motor vehicle insurers are required to conduct preinsurance motor vehicle inspections. There are exemptions from the preinsurance inspections for "purchased" cars, if certain documents are provided. The bill adds leased vehicles to the specified exemptions; allows insurers to elect to receive the documents, rather than requiring their delivery; revises the types of documents that insurers may require; and, limits claim reimbursement and coverage suspension based on the timing of document delivery.

The bill has no fiscal impact on state or local government expenditures. The bill should have a positive impact on the private sector.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Private passenger motor vehicle insurance[1] is casualty coverage[2] within the personal lines[3] segment of insurance business. Insurers issue it to individuals, or related individuals in the same household, for coverage of private passenger automobiles that are not used as public conveyances, for rental to others, or in the occupation, profession, or business of the insured (excluding farm business use).[4] Commercial motor vehicles are those that are not private passenger motor vehicles.[5] Motor vehicle[6] owners in the state are required to maintain proof of coverage for Personal Injury Protection[7] (PIP) under the Florida Motor Vehicle No-Fault Law[8] and financial responsibility, under the Financial Responsibility Law,[9] for damages arising due to the operation of a motor vehicle.

Cancellation of Florida Automobile Joint Underwriting Association Policies

Insurers[10] that offer motor vehicle insurance in the state must participate in the Florida Automobile Joint Underwriting Association (Auto JUA).[11] The Auto JUA exists to provide motor vehicle insurance to individuals who cannot obtain such coverage in the voluntary insurance market. The Auto JUA distributes this risk among its members. It is subject to various limitations regarding issuance and cancellation of coverage, and provision of premium credits/discounts to protect its solvency, the coverage of its insureds, and to avoid Auto JUA policies being competitive with the voluntary market.

Motor vehicle insurers, including the Auto JUA, are limited regarding the cancellation of insurance policies.[12] An insurer may not cancel a policy within 60 days of the effective date of the policy, except for non-payment of premium.[13] The bill gives the Auto JUA the specific authority to cancel private passenger and commercial motor vehicle policies within the first 60 days of coverage for non-payment, if the reason is the payment check is dishonored for any reason or if any other payment type is rejected or deemed invalid (e.g., credit or debit card transactions). The bill also prohibits someone covered by the Auto JUA from cancelling their coverage in the first 90 days of the policy period, unless the vehicle is destroyed, they transfer ownership of the insured vehicle, or they purchase a voluntary market policy for the insured vehicle.[14] This provision guarantees the Auto JUA a minimum of three months of premium revenue on each policy, while allowing the cancellation of policies for non-payment.

Electronic Delivery/Signature of Uninsured Motorist Insurance Waivers

Uninsured Motorist (UM) coverage protects insureds against injuries caused by owners or operators of uninsured or underinsured motor vehicles. The law requires insurers who offer bodily injury liability coverage to also offer UM coverage in the same amount as any policy limits applying to the bodily injury liability policy.[15]

---

[1] Section 627.041, F.S.
[2] Section 627.021(3), F.S.
[3] Personal lines insurance is property and casualty insurance sold to individuals and families for non-commercial purposes. S. 626.015(15), F.S.
[4] Sections 627.041(8) and 627.728(1)(a), F.S.
[5] Section 627.732(3)(a), F.S.
[6] Section 627.732(3), F.S.
[7] Section 627.736, F.S.
[8] Sections 627.730-627.7405, F.S.
[9] Chapter 324, F.S.
[10] Section 624.03, F.S.
[11] Section 627.311, F.S.
[12] Section 627.7295 and 627.728, F.S.
[13] Section 627.7295(4), F.S.
[14] Proof of such coverage is required by statute. Section 627.311(3)(l), F.S.
[15] Section 627.727(1), F.S.

Conventional UM insurance is "stackable." This means that if one family member purchases one UM policy for one vehicle, that coverage extends to every resident and every vehicle in the household, whether or not those residents or vehicles are covered by their own UM policies. Moreover, if a family purchases UM coverage for multiple vehicles, any resident in the household may "stack" the UM benefits and recover the combined policy limits from each insured vehicle.

However, s. 627.727, F.S., allows an insured individual to waive this insurance, select a lower limit, or select "non-stacking" UM coverage if the named insured signs a policy waiver form approved by the Office of Insurance Regulation (OIR). The approved form must include a heading in 12-point bold type stating, "You are electing not to purchase certain valuable coverage which protects you and your family or you are purchasing uninsured motorist limits less than your bodily injury liability limits when you sign this form. Please read carefully."[16]

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.[17] Insurance is specifically included in E-SIGN.[18] E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

In addition, s. 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), is similar to the federal E-SIGN law. UETA specifically applies to insurance and provides a requirement in statute that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

The bill allows electronic presentation and signature of the required UM waiver form. If it is presented electronically, the required header statement must be greater in size than the surrounding text, rather than in 12-point bold.[19] The OIR has the authority to approve the form, including the electronic version, and has the obligation to ensure that the consumer has ready and reasonable access to the required notification based on the display characteristics of the electronic form being approved.

Personal Injury Protection Insurance

Florida's Motor Vehicle No-Fault Law (No-Fault Law)[20] requires motorists to carry at least $10,000 of no-fault insurance, known as personal injury protection (PIP) coverage. The purpose of PIP insurance under the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to who is responsible for a motor vehicle accident. In return for assuring payment of

---

[16] Id.

[17] Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.

[18] Id.

[19] The specified point size of type is a measure of physical size on a printed page. It is related to typeface printing and the characteristics of type set text. It does not necessarily identify the physical size of the character itself. Rather, it describes a maximum height parameter within the complete font type collection. One point in physical type face is 1/72 of an inch, thus 12-point font is 12/72 of an inch. Point size does not directly translate to graphical display size in electronics. Electronic display size is measured in picture elements, popularly known as pixels. Different size displays contain different numbers of pixels. Accordingly, specifying the point size of electronic text presents challenges that can require a high degree of technical precision. See http://www.thomasphinney.com/2011/03/point-size/. (Last accessed March 13, 2015.)

[20] Sections 627.730-627.7405, F.S.

these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Florida motorists are required to carry a minimum of $10,000 of PIP insurance.[21]

PIP insurance benefits are payable as follows.

- Up to a limit of $10,000, 80 percent of reasonable medical expenses for:
  1) Initial services and care lawfully provided, supervised, ordered or prescribed by a medical doctor, osteopathic physician, chiropractic physician or that are provided in a hospital or in a facility that owns, or is wholly owned by a hospital. Initial services and care may also be provided for emergency transport and treatment.
  2) Upon referral by any of the above-listed providers, follow-up services and care consistent with the underlying medical diagnosis, which may be provided, supervised, ordered, or prescribed only by a medical doctor, osteopathic physician, chiropractic physician, or dentist, or, to the extent permitted under applicable law and under the supervision of such provider, by a physician assistant or advanced registered nurse practitioner. Follow-up services and care may also be provided by:
     a) A licensed hospital or ambulatory surgical center.
     b) An entity wholly owned[22] by a medical doctor, osteopathic physician, chiropractic physician, or by such practitioner(s) and specified family members.
     c) An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals.
     d) A licensed physical therapist, based upon a referral by a provider listed in 2).
     e) A licensed health care clinic that meets specified criteria.
  3) Reimbursement for services and care pursuant to 1) or 2) of up to $10,000 if a medical doctor, osteopathic physician, dentist, physician assistant, or an advanced registered nurse practitioner determines that the injured person had an emergency medical condition.
- Up to a limit of $2,500, 80 percent of reasonable medical expenses when a provider listed in 1) or 2) determines that the injured person did not have an emergency medical condition.

Medical benefits do not include massages or acupuncture, regardless of the provider that performs the service. Massage therapists and acupuncturists are not eligible for reimbursement under PIP.

Medical providers and entities may charge the insurer and injured party only a reasonable amount for services and care rendered. Insurers that provide reimbursement under the schedule of charges may use all Medicare coding policies and CMS payment methodologies, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care, if such coding policy or payment methodology does not constitute a utilization limit. Effective July 1, 2012, insurers that want to utilize the PIP schedule of maximum charges must amend their forms to include the schedule.

House Bill 119, the personal injury protection insurance (PIP) reform bill enacted in 2012,[23] amended s. 627.736(5)(a)2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The legislation provides in part that:

> [T]he applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered...*and the applicable fee schedule or payment limitation applies throughout the remainder of that year* [italics added for emphasis]. . . ."

---

[21] Section 627.7275, F.S. Under Florida's Financial Responsibility Law (ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for bodily injury and property damage liability at the time of motor vehicle accidents or when serious traffic violations occur. The Financial Responsibility Law requires $10,000, per person, and $20,000, per incident, of bodily injury coverage, and $10,000 of property damage liability coverage.

[22] As defined in the bill, "entity wholly owned" means a proprietorship, group practice, partnership, or corporation that provides health care services rendered by licensed health care practitioners and in which licensed health care practitioners are the business owners of all aspects of the business entity. . . .

[23] Ch. 2012-151, L.O.F.

The above-emphasized language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied through the end of the calendar year (through December 31st) or whether it applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,[24] stating that the plain language of the section requires the fee schedule in place on March 1st to apply throughout the following 365 days, or until the following March 1st.

The bill amends s. 627.736(5)(a)2., F.S., to define a "service year" for rendered services, supplies, or care. For this purpose, a "service year" is from March 1 through the end of the following February. The period for the applicable Medicare fee schedule is then applied to this same period. This provides certainty that reimbursement for any medical services, supplies, or care under PIP will be reimbursed based on the applicable Medicare fee schedule in effect on the preceding March 1.

Preinsurance Inspection of Private Passenger Motor Vehicles

Section 627.744, F.S., requires insurers to perform preinsurance inspections of private passenger motor vehicles. It also provides various exemptions from the required preinsurance inspection, including for new, unused motor vehicles "purchased" from a licensed motor vehicle dealer or leasing company when the insurer is provided with the bill of sale, buyer's order, or copy of the title and certain other documentation.

Despite the exemptions, an insurer may require a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage. Physical damage coverage may not be suspended during the policy period due to the applicant's failure to provide the required documents. However, claim payments are conditioned upon, and are not payable until, the required documents are received by the insurer. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed five dollars.

The bill adds an exemption from preinsurance inspection for new, unused "leased" motor vehicles to the existing exemption for "purchased" vehicles, if the vehicle is leased from a licensed motor vehicle dealer or leasing company. If the insurer waives its right to a preinsurance inspection, it also provides an insurer the discretion to require persons who purchase or lease a new, unused motor vehicle to submit certain documents. Currently, such documents are required to be provided whenever the exemption is utilized. Persons who do not submit the required documentation, upon request, at the time the policy is issued are required to submit the document before any physical damage loss is payable under the policy. The bill amends the list of documents that an insurer may require to include the vehicle registration in addition to the existing option of providing the vehicle title along with the window sticker and deletes from the list of documents the detailed dealer's invoice. Failure of the insurer to request the documentation is added to the prohibition on suspending coverage due to the insured's failure to provide documentation. Finally, the condition on claim payment pending receipt of documentation is revised to apply only if the carrier exercised its option to require the documentation.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.727, F.S., relating to motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.

Section 2: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 3: Amends s. 627.744, F.S., relating to required preinsurance inspection of private passenger motor vehicles.

Section 4: Provides an effective date of July 1, 2015.

[24] Available at http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx (last accessed: January 23, 2015).

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:

The bill should have a positive impact on the private sector by creating savings through the use of electronic notifications and allowing the insurer to limit costs related to preinsurance inspections that they may elect to forego. The extent of this benefit has not been calculated. However, any savings realized by insurers should be passed through to policyholders.

D. FISCAL COMMENTS:

None.

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 an 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 a 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

On March 18, 2015, the Insurance & Banking Subcommittee considered the bill, adopted two amendments and reported the bill favorably with a committee substitute. The amendments made the following changes:

- Revised a provision to provide that the applicable Medicare schedule in effect on March 1 would apply to PIP medical services, supplies, and care rendered from March 1 through the end of February of the following year and to provide a definition of "service year" to facilitate reimbursements, and

- Added a new section to the bill revising s. 627.311, F.S., related to the Automotive Joint Underwriters Association (Auto JUA), to allow the Auto JUA to cancel personal or commercial motor vehicle policies in the first 60 days of coverage, in certain circumstances, and to prohibit the insured from cancelling the coverage within the first 90 days, except in certain circumstances.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to motor vehicle insurance; amending s. 627.311, F.S.; authorizing a joint underwriting plan and the Florida Automobile Joint Underwriting Association to cancel certain insurance policies within a specified period under certain circumstances; prohibiting an insured from canceling certain insurance policies within a specified period; providing exceptions; amending s. 627.727, F.S.; authorizing insurers to electronically provide a form to reject, or select lower coverage amounts of, uninsured motorist vehicle coverage to an insurance applicant; authorizing the applicant to sign the form electronically; amending s. 627.736, F.S.; revising the period during which the applicable fee schedule or payment limitation under Medicare applies with respect to certain personal injury protection insurance coverage; defining "service year"; deleting an obsolete date; amending s. 627.744, F.S.; revising the exemption from the preinsurance inspection requirements for private passenger motor vehicles to include certain leased vehicles; revising the list of documents that an insurer may require for purposes of the exemption; prohibiting the physical damage coverage on a motor vehicle from being suspended during the term of a policy due to the insurer's

option not to require certain documents; authorizing a payment of a claim to be conditioned if the insurer requires a document under certain circumstances; providing an effective date.

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

Section 1. Paragraph (m) is added to subsection (3) of section 627.311, Florida Statutes, to read:

627.311 Joint underwriters and joint reinsurers; public records and public meetings exemptions.—

(3) The office may, after consultation with insurers licensed to write automobile insurance in this state, approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance, as an alternate to the plan required in s. 627.351(1). All insurers authorized to write automobile insurance in this state shall subscribe to the plan and participate therein. The plan shall be subject to continuous review by the office which may at any time disapprove the entire plan or any part thereof if it determines that conditions have changed since prior approval and that in view of the purposes of the plan changes are warranted. Any disapproval by the office shall be subject to the provisions of chapter 120. The Florida Automobile Joint Underwriting Association is created under the plan. The plan and the association:

(m) May cancel personal lines or commercial policies issued by the plan within the first 60 days after the effective date of the policy or binder for nonpayment of premium if the reason for cancellation is the issuance of a check for the premium that is dishonored for any reason or any other type of premium payment that is rejected or deemed invalid. An insured may not cancel a policy or binder within the first 90 days, or within a lesser period as required by the plan, after the effective date of the policy or binder, except:

1. Upon total destruction of the insured motor vehicle;

2. Upon transfer of ownership of the insured motor vehicle; or

3. After purchase of another policy or binder covering the motor vehicle that was covered under the policy being canceled.

Section 2. Subsection (1) of section 627.727, Florida Statutes, is amended to read:

627.727 Motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.—

(1) A ~~No~~ motor vehicle liability insurance policy that ~~which~~ provides bodily injury liability coverage may not ~~shall~~ be delivered or issued for delivery in this state with respect to a ~~any~~ specifically insured or identified motor vehicle registered or principally garaged in this state unless uninsured motor vehicle coverage is provided therein or supplemental thereto for the protection of persons insured by the policy ~~thereunder~~ who are legally entitled to recover damages from owners or operators

of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. However, the coverage required under this section is not applicable if ~~when, or to the extent that,~~ an insured named in the policy makes a written rejection of the coverage on behalf of all insureds under the policy. If ~~When~~ a motor vehicle is leased for a period of 1 year or longer and the lessor of the ~~such~~ vehicle, by the terms of the lease contract, provides liability coverage on the leased vehicle, the lessee of the ~~such~~ vehicle has ~~shall have~~ the sole privilege to reject uninsured motorist coverage or to select lower limits than the bodily injury liability limits, regardless of whether the lessor is qualified as a self-insurer pursuant to s. 324.171. Unless an insured, or lessee having the privilege of rejecting uninsured motorist coverage, requests such coverage or requests higher uninsured motorist limits in writing, the coverage or the ~~such~~ higher uninsured motorist limits are ~~need~~ not required to be provided in or supplemental to any other policy that ~~which~~ renews, extends, changes, supersedes, or replaces an existing policy with the same bodily injury liability limits when an insured or lessee had rejected the coverage. If ~~When~~ an insured or lessee ~~has~~ initially selected limits of uninsured motorist coverage lower than her or his bodily injury liability limits, higher limits of uninsured motorist coverage are ~~need~~ not required to be provided in or supplemental to any other policy that ~~which~~ renews, extends, changes, supersedes, or replaces an existing policy with the

same bodily injury liability limits unless an insured requests higher uninsured motorist coverage in writing. The rejection or selection of lower limits must ~~shall~~ be made on a form approved by the office. The form must ~~shall~~ fully advise the applicant of the nature of the coverage and must ~~shall~~ state that the coverage is equal to bodily injury liability limits unless lower limits are requested or the coverage is rejected. The heading of the form shall be in 12-point bold type and shall state: "You are electing not to purchase certain valuable coverage which protects you and your family or you are purchasing uninsured motorist limits less than your bodily injury liability limits when you sign this form. Please read carefully." If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of coverage or election of lower limits on behalf of all insureds. The form may be provided electronically to and may be signed electronically by the applicant. If the form is provided electronically, the requirement for 12-point bold type does not apply but the heading of the form must be of greater size than the surrounding text. The insurer must ~~shall~~ notify the named insured at least annually of her or his options as to the coverage required by this section. Such notice must ~~shall~~ be part of, and attached to, the notice of premium, must ~~shall~~ provide for a means to allow the insured to request such coverage, and must ~~shall~~ be given in a manner approved by the office. Receipt of this notice does not constitute an affirmative waiver of the insured's right

to uninsured motorist coverage where the insured has not signed a selection or rejection form. The coverage described under this section must ~~shall~~ be over and above, but may ~~shall~~ not duplicate, the benefits available to an insured under any workers' compensation law, personal injury protection benefits, disability benefits law, or similar law; under any automobile medical expense coverage; under any motor vehicle liability insurance coverage; or from the owner or operator of the uninsured motor vehicle or any other person or organization jointly or severally liable together with such owner or operator for the accident; and such coverage must ~~shall~~ cover the difference, if any, between the sum of such benefits and the damages sustained, up to the maximum amount of such coverage provided under this section. The amount of coverage available under this section may ~~shall~~ not be reduced by a setoff against any coverage, including liability insurance. Such coverage may ~~shall~~ not inure directly or indirectly to the benefit of a ~~any~~ workers' compensation or disability benefits carrier or a ~~any~~ person or organization qualifying as a self-insurer under a ~~any~~ workers' compensation or disability benefits law or similar law.

Section 3. Paragraph (a) of subsection (5) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(a) A physician, hospital, clinic, or other person or

institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered, and the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment if the insured receiving such treatment or his or her guardian has countersigned the properly completed invoice, bill, or claim form approved by the office upon which such charges are to be paid for as having actually been rendered, to the best knowledge of the insured or his or her guardian. However, such a charge may not exceed the amount the person or institution customarily charges for like services or supplies. In determining whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, reimbursement levels in the community and various federal and state medical fee schedules applicable to motor vehicle and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service, treatment, or supply.

1. The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:

a. For emergency transport and treatment by providers licensed under chapter 401, 200 percent of Medicare.

b. For emergency services and care provided by a hospital licensed under chapter 395, 75 percent of the hospital's usual and customary charges.

c. For emergency services and care as defined by s. 395.002 provided in a facility licensed under chapter 395 rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community.

d. For hospital inpatient services, other than emergency services and care, 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.

e. For hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services.

f. For all other medical services, supplies, and care, 200 percent of the allowable amount under:

(I) The participating physicians fee schedule of Medicare Part B, except as provided in sub-sub-subparagraphs (II) and (III).

(II) Medicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical laboratories.

(III) The Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B, in the case of

durable medical equipment.

However, if such services, supplies, or care is not reimbursable under Medicare Part B, as provided in this sub-subparagraph, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

2. For purposes of subparagraph 1., the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the service year in which the services, supplies, or care is rendered and for the area in which such services, supplies, or care is rendered, and the applicable fee schedule or payment limitation applies to services, supplies, or care rendered during ~~throughout the remainder of~~ that service year, notwithstanding any subsequent change made to the fee schedule or payment limitation, except that it may not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B. For purposes of this subparagraph, the term "service year" means the period from March 1 through the end of February of the following year.

3. Subparagraph 1. does not allow the insurer to apply any limitation on the number of treatments or other utilization limits that apply under Medicare or workers' compensation. An insurer that applies the allowable payment limitations of subparagraph 1. must reimburse a provider who lawfully provided care or treatment under the scope of his or her license, regardless of whether such provider is entitled to reimbursement under Medicare due to restrictions or limitations on the types or discipline of health care providers who may be reimbursed for particular procedures or procedure codes. However, subparagraph 1. does not prohibit an insurer from using the Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care if the coding policy or payment methodology does not constitute a utilization limit.

4. If an insurer limits payment as authorized by subparagraph 1., the person providing such services, supplies, or care may not bill or attempt to collect from the insured any amount in excess of such limits, except for amounts that are not covered by the insured's personal injury protection coverage due to the coinsurance amount or maximum policy limits.

5. ~~Effective July 1, 2012,~~ An insurer may limit payment as authorized by this paragraph only if the insurance policy includes a notice at the time of issuance or renewal that the insurer may limit payment pursuant to the schedule of charges

specified in this paragraph. A policy form approved by the office satisfies this requirement. If a provider submits a charge for an amount less than the amount allowed under subparagraph 1., the insurer may pay the amount of the charge submitted.

Section 4. Paragraphs (a) and (b) of subsection (2) of section 627.744, Florida Statutes, are amended to read:

627.744 Required preinsurance inspection of private passenger motor vehicles.—

(2) This section does not apply:

(a) To a policy for a policyholder who has been insured for 2 years or longer, without interruption, under a private passenger motor vehicle policy that ~~which~~ provides physical damage coverage for any vehicle, if the agent of the insurer verifies the previous coverage.

(b) To a new, unused motor vehicle purchased or leased from a licensed motor vehicle dealer or leasing company.~~, if~~ The insurer may require ~~is provided with~~:

1. A bill of sale, ~~or~~ buyer's order, or lease agreement that ~~which~~ contains a full description of the motor vehicle~~, including all options and accessories~~; or

2. A copy of the title or registration that ~~which~~ establishes transfer of ownership from the dealer or leasing company to the customer and a copy of the window sticker ~~or the dealer invoice showing the itemized options and equipment and the total retail price of the vehicle~~.

For the purposes of this paragraph, the physical damage coverage on the motor vehicle may not be suspended during the term of the policy due to the applicant's failure to provide or the insurer's option not to require the required documents. However, if the insurer requires a document under this paragraph at the time the policy is issued, payment of a claim may be ~~is~~ conditioned upon the receipt by the insurer of the required documents, and no physical damage loss occurring after the effective date of the coverage is payable until the documents are provided to the insurer.

Section 5. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1087 Operations of Citizens Property Insurance Corporation
SPONSOR(S): Insurance & Banking Subcommittee; Bileca
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 0 N, As CS	Peterson	Cooper
2) Regulatory Affairs Committee		Peterson KP	Hamon K.W.H.

SUMMARY ANALYSIS

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

By law, Citizens is required to adopt programs to reduce the number of new and renewal policies it writes. The depopulation program, as it is known, encourages insurance companies licensed in Florida to assume policies currently covered by Citizens, thus reducing Citizens' policy count and exposure. During the three-year period beginning January 1, 2012 and ending December 31, 2014, more than 1 million policies insuring properties valued at more than $300 billion have been taken out of Citizens through the depopulation program.

The bill requires a series of reforms to the depopulation program to increase consumer choice; provide consumers and agents with more information regarding takeout offers and standardize the information; and improve consumer satisfaction with the depopulation process.

- *Consumer Choice*
  The bill requires that the consumer, working with the agent of record, be given the option to choose from among competing offers. This applies to takeouts occurring after January 1, 2016.

- *Transparency*
  The bill prohibits any policy from being taken out from Citizens after January 1, 2016 unless the agent of record receives an offer of insurance containing the amount of the estimated renewal premium, the renewal coverage, and a comparison of both the premium and coverage to the premium and coverage of the Citizens renewal policy. The agent is required to communicate the offer to the policyholder. Citizens is directed to develop a uniform format for required communications, which would include information related to premium, coverage, and policies on a takeout company's wish list.

- *Consumer Satisfaction*
  Effective July 1, 2015, the bill allows a consumer to elect not to be solicited for takeout more than once in a six-month period. In addition, the bill allows a consumer to retain eligibility for Citizens insurance through the Clearinghouse if the insurer increases its initial premium more than 10 percent above its original estimate or increases the rate on the policy more than 10 percent per year during the 36 months following takeout.

Citizens operates under the direction of a nine-member Board of Governors (board). By law, board members with the required insurance expertise can maintain employment in the private sector in jobs involving business with Citizens without violating the conflict of interest statute because the board member is required by law to have insurance expertise in order to sit on the board. There is also a consumer representative on the board who is appointed by the Governor. The bill provides the consumer representative on the Citizens' board with the same exemption from the conflict of interest statute as is provided in current law to the board members with insurance expertise.

The bill has no fiscal impact on state or local government expenditures and should have a positive impact on the private sector. The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Citizens Property Insurance Corporation

Background

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

As of March 12, 2015, Citizens is the largest property insurer in Florida with over 630,000 policies extending approximately $197 billion of property coverage to Floridians.[1] Citizens insures over 278,000 residential and commercial policies in Florida's coastal areas and over 350,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas.

Citizens was created in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (FRPCJUA) and the Florida Windstorm Underwriting Association (FWUA). The FRPCJUA provided full-coverage personal and commercial residential property policies in all counties of Florida, while the FWUA provided personal and commercial residential property wind-only coverage in designated territories.

Citizens writes property insurance in three separate accounts:[2]

- Personal Lines Account – personal residential[3] multiperil[4] policies.
  - With wind coverage, on properties located outside the Coastal Account area; and
  - Without wind coverage, on properties located within the Coastal Account Area.
- Commercial Lines Account – commercial residential[5] and commercial non-residential policies.
  - With wind coverage, on properties located outside the Coastal Account area; and
  - Without wind coverage, on properties located within the Coastal Account Area.
- Coastal Account – personal residential, commercial residential, and commercial non-residential wind-only[6] and multiperil policies[7] for properties in limited eligible coastal areas.[8]

At the time of its creation, Citizens handled approximately 602,000 policies. The policy count peaked in November 2012 at nearly 1.5 million—about 26% of the Florida residential market.[9] Factors that drove the increase included the catastrophic hurricane season of 2004-2005;[10] subsequent changes in law authorizing broader coverage and expanded eligibility for Citizens coverage (thereby placing it in more

---

[1] CITIZENS PROPERTY INSURANCE CORPORATION, *Book of Business: Policies in Force*, https://www.citizensfla.com/about/bookofbusiness/ (last visited March 20, 2015).

[2] s. 627.351(6)(b)2., F.S.

[3] Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

[4] A multiperil policy is defined as a package policy, such as a homeowners or business insurance policy, that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. Multiperil property insurance policies may include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

[5] Commercial residential policies include condominium association, apartment building, and homeowner's association policies

[6] A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

[7] Effective July 1, 2014, Citizens may no longer offer new commercial residential policies providing multiperil coverage, but may continue to renew existing policies. (s. 627.351(6)(b)2.a.(III), F.S.)

[8] These include areas eligible for coverage by the FWUA as those areas were defined on January 1, 2002. (s. 627.351(6)(a)2., F.S.)

[9] CITIZENS PROPERTY INSURANCE CORPORATION, *Press Release: How low can it go? Citizens is at its smallest since its creation in 2002* (March 18, 2015) (on file with the House Insurance & Banking Subcommittee).

[10] Four hurricanes hit Florida in each year resulting in $39 billion in estimated gross losses.

direct competition with the voluntary market)[11] and granting agents and policyholders greater control in programs implemented by Citizens to reduce its policy count; and a court order requiring Citizens to assume policies from three insolvent companies.

Citizens Clearinghouse

The Legislature created the Clearinghouse in 2013[12] to ensure that new applications for insurance through Citizens and policies that are coming up for renewal are assessed to determine if appropriate coverage is available in the private market. By law, a new policy is ineligible for coverage in Citizens if a private company offers comparable coverage with a premium that is up to 15% higher than the Citizens premium. A policy is ineligible for renewal coverage through Citizens if a private company offers comparable coverage at or below Citizens' premium. A policy that is taken out of Citizens at renewal through the Clearinghouse is eligible to return through the Clearinghouse if, during the 36 months after takeout, the new insurer increases the policyholder's rate more than 10% in any year. Under this provision, a policyholder would then return to Citizens, unless the policyholder receives a new offer in the private market at or below Citizens' rate.

History of Depopulation[13]

By law, Citizens is required to adopt programs to reduce the number of insured properties and to decrease its financial exposure.[14] The depopulation program, as it is known, encourages insurance companies licensed in Florida to assume policies currently covered by Citizens, thus reducing Citizens' policy count and exposure.[15]

Initially, the Citizens depopulation program paid insurers either dollar amount or percentage bonuses for the removal of policies. The bonus program ended in 2006, however, when the Legislature restricted the bonus amount to $100 per policy and required the insurer to renew the policy for at least five years. In 2007, the Legislature amended the law to allow policyholders to remain eligible for coverage with Citizens, even if they received an offer of coverage from another insurer. As a result, a policyholder remains eligible for coverage through the end of the assumption period, which enables the policyholder, in effect, to "opt-out" of any assumption.[16] The 2007 Legislature also clarified the authority of a policyholder to retain his or her agent regardless of any takeout offer.[17] An agent must be appointed by the insurer for the insurer to assume a policy. If a policyholder's agent declines appointment, the policy cannot be assumed.

The depopulation programs for personal and commercial residential policies in place now were adopted by the Citizens board and approved by the Office of Insurance Regulation (OIR) in 2008.[18] A program for commercial nonresidential was adopted in 2012. All programs are non-bonus and specify the number of policies an insurer must takeout during the contract period and require the insurer to retain the policy for a minimum of three years. To create further incentive for insurers to participate in the program, Citizens revised the plans in 2012 to remove the requirement that insurers pay Citizens the 16% ceding commission.[19]

---

[11] FLORIDA HOUSE OF REPRESENTATIVES, *Staff Analysis HB 7077*, 7 (March 26, 2007), *available at* http://myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=36814 (last visited March 20, 2015).

[12] *See* ch. 2013-60, s. 10, Laws of Fla.

[13] CITIZENS PROPERTY INSURANCE CORPORATION, *History of Depopulation* (Feb. 2012), *available at* https://www.citizensfla.com/about/mDetails_boardmtgs.cfm?show=PDF&link=/bnc_meet/docs/431/01A_Historical_Report_of_Depopulation_Activity.pdf&event=431&when=Past (last visited March 20, 2015).

[14] s. 627.351(q)3.a., F.S.

[15] *See generally* s. 627.3511, F.S.

[16] *See* ch. 2007-90, s. 11, Laws of Fla.; s. 627.351(6)(c)5., F.S.

[17] *See* ch. 2007-90, s. 14, Laws of Fla.; s. 627.3517, F.S.

[18] The OIR has responsibility for the financial oversight and regulation of assumptions and the approval of new insurers to assume policies.

[19] A fee charged by a reinsurance company to the original issuer of a policy or group of policies being ceded to the reinsurer to cover business and administrative costs and a percentage of the profits from the premiums collected. INVESTORWORDS, *Ceding Commission* http://www.investorwords.com/19018/ceding_commission.html (last visited March 20, 2015).

The following reflects the history of policies removed since 2003.

Citizens Depopulation
Policy Types and Exposure Removed
(2003 – to present*)

	PLA PRM	Coastal PRM	Coastal PRW	CLA CRM	Coastal CNRW, CRW	Total # of Policies	
Year	# of Policies	# of Policies	# of Policies	# of Policies	# of Policies	# of Policies	Exposure Removed
2003	28,219		-			28,219	$ 8,140,681,906
2004	145,959		12,457			158,416	$ 30,663,076,480
2005	218,128		75,556			293,684	$ 53,658,840,059
2006	26,225		41,628			67,853	$ 15,637,589,369
2007	247,887		-			247,887	$ 68,259,426,361
2008	362,964	21,519	-	601		385,084	$ 106,870,490,165
2009	132,803	16,842	-	-		149,645	$ 37,784,506,743
2010	57,561	2,231	-	-		59,792	$ 13,888,913,857
2011	45,827	7,750	-	-		53,577	$ 14,473,700,490
2012	252,968	24,034	-	-		277,002	$ 75,927,165,347
2013	301,383	37,368	19,567	-	7,449	365,767	$ 112,265,410,122
2014	323,167	44,779	43,686	2,493	2,498	416,623	$ 117,530,082,371
*2015	66,785	14,867	13,368	387	-	95,407	$ 19,186,004,850
TOTAL	2,209,876	169,390	206,262	3,481	9,947	2,598,956	$ 674,285,888,120

*As of February 19, 2015

Depopulation Procedure

The depopulation programs are administered on a monthly cycle according to the following sequence of events:

- The OIR issues a consent order approving authorized admitted carriers to participate in a specific assumption.[20]
- Citizens provides a data file of policies in force to an approved carrier (takeout company or TOC) to use to select policies for assumption.
- The TOC solicits new agent appointments or notifies appointed agents if the TOC wishes to assume any of an agent's policies.[21]
- The TOC provides Citizens with the list of policies it has selected to assume and a list of policies assigned to agents who did not respond to the TOC's solicitation or declined to be appointed.
- Citizens reviews the takeout lists of the participating TOCs and sends each TOC the policy selections it is assigned to assume. If more than one TOC has selected the same policy for removal, Citizens uses an algorithm[22] to assign the duplicate selections.
- Each TOC reviews and may reweight[23] its list. The TOC sends the reweighted list to Citizens.

[20] To assume policies from Citizens, admitted carriers must submit documentation to the OIR verifying that they meet required standards and have the financial resources and business plan in place to properly pay claims.

[21] Agents are not required to contact the policyholder regarding the offer and are not permitted to opt out of an assumption on the policyholder's behalf.

[22] The depopulation algorithm attempts to allocate the policies to the various takeout companies by a methodology that groups the duplicates based on the number of companies that has selected them; sorts the policies within each batch by policy form, zip code, and total premium; and assigns each policy to one of the TOCs that has selected it in a way that equitably allocates premium among the companies. (CITIZENS PROPERTY INSURANCE COMPANY, *Depopulation Algorithm Allocation* (Nov. 15, 2013), *available at* *https://www.citizensfla.com/about/depopinfo.cfm?type=links&show=pdf&link=/shared/depop/documents/AlgorithmAllocationExplanation.pdf* (last visited March 20, 2015).

- Citizens then sends a letter of encouragement[24] to all policyholders on a TOC's final mailing list and notifies those policyholders whose agents did not respond to the TOC's solicitation or declined to be appointed.
- The TOC then sends a letter in a form approved by the OIR to policyholders indicating that the TOC is extending an offer to assume the policyholder's coverage and notifying the policyholder of the right to reject or opt out of the offer. The letter may include a link to a coverage comparison chart on the OIR's website.

A policyholder selected for a takeout does not need to take any additional action to be assumed by the takeout company. If the policyholder takes no action, the policyholder and the policyholder's mortgage company, if any, will receive a Notice of Assumption and Nonrenewal and Certificate of Assumption verifying that the policy has been assumed by the takeout company and that the takeout company will make a renewal offer before the current policy expires. Currently, 59 percent of private-market offers are accepted for takeout.

A policyholder who wishes to remain with Citizens must take action to opt out of the assumption by returning the opt out form provided with the takeout offer to the TOC. A policyholder has 30 days prior to and following an assumption to complete the opt out process.

A Citizens policy that is assumed by a TOC is, as of the date of assumption, direct insurance issued by the TOC. The TOC is liable to pay any claims that may arise, although Citizens continues to service the policy. During the period before the policy expires, Citizens pays to the TOC unearned premiums on the policy that it has received adjusted to reflect any changes in coverage or conditions as may occur during the period. Forty-five days before the Citizens policy expires, the TOC issues the initial offer on renewal coverage with the premium amount. At this time (or any time after the assumption and prior to the policy's expiration) the policyholder may return to Citizens, unless the Clearinghouse presents an offer of coverage with a premium equal to or less than the Citizens renewal premium.[25]

The TOC is required to offer renewals with substantially similar coverage as the assumed policies. The TOC's renewal rate must be filed and approved by the OIR and may be higher than what Citizens charged for the assumed policy. Citizens encourages TOCs "to assume policies for which the renewal rate is expected to be at or lower than the [Citizens] rate; thereby increasing insured participation in the assumption."[26]

Consumer Complaints Related to Depopulation[27]

In 2014, 595,738 takeout offer letters were mailed to consumers. During the same time period Citizens received 10,195 depopulation related phone calls from consumers, 242 written complaints and 1,072 written inquiries (not expressing dissatisfaction, which is the statutory definition of a complaint). The result is a total of 11,510 consumer contacts in response to 595,738 offers mailed. This represents less than a 2% complaint/inquiry ratio on the takeout offers made.

---

[23] If the list does not have a desirable ratio of policies, for example is too heavily weighted in one geographic area, the TOC may remove policies from the list. This process is called reweighting.

[24] Prior to February 2015, Citizens sent the letter of encouragement after the TOC had sent its offer letter. When some policyholders received the offer letter, they discarded the letter without reading it, since the letter was not from a person or company familiar to the policyholder. In other cases, the policyholder may have read the TOC letter, but not understood the significance of the opt out requirement. As a result, Citizens changed the timing of its letter of encouragement.

[25] CITIZENS PROPERTY INSURANCE CORPORATION, *Agent Technical Bulletin: New Process for Returning a Risk to Citizens After Assumption/Depopulation/Takeout*, ATB # 014-14 (September 16, 2014), *available at* https://www.citizensfla.com/agent/ac_techbulletins.cfm?show=pdf&year=2014&link=/shared/IE/IE002-14.pdf (last visited March 21, 2015).

[26] CITIZENS PROPERTY INSURANCE CORPORATION, *Depopulation Guide for Takeout Companies*, (Feb. 20, 2013) (on file with the House Insurance & Banking Subcommittee).

[27] E-mail from Christine Turner Ashburn, Vice President for Communications, Legislative and External Affairs, Citizens Property Insurance Corporation, RE: Takeout complaints (March 18, 2015) (on file with the House Insurance & Banking Subcommittee).

Depopulation Work Group

In December 2014, Citizens established a depopulation work group as one of a series of changes to the depopulation program to provide policyholders with more information in deciding whether to accept a TOC offer or to remain with Citizens. The work group includes representatives from the OIR, insurance agents, private insurers, and consumer advocates. In its preliminary meeting, the work group discussed options for increasing consumer choice; providing consumers and agents with more information regarding takeout offers and standardizing the information; and improving consumer satisfaction.

Effect of the Bill on Depopulation

The bill requires Citizens to revise the depopulation program to address a series of issues identified by the work group and others which are aimed at maximizing the free market principles of competition and consumer choice and encouraging full participation by insurers, policyholders, and agents.

- *Transparency*

Currently, TOCs are required to provide consumers with information about the premium amount, but may do so either by including the estimate in the takeout letter or providing the consumer with a telephone number to call for more information. Coverage information is made available through links to the OIR website. Currently, the information TOCs provide to agents about policies they may wish to assume is not provided in a standard format.

The bill prohibits any policy from being taken out from Citizens after January 1, 2016 unless the agent of record receives an offer of insurance containing the amount of the estimated renewal premium, the renewal coverage, and a comparison of both the premium and coverage to the premium and coverage of the Citizens renewal policy. The agent is required to communicate the offer to the policyholder. Citizens is directed to develop a uniform format for required communications, which would include information related to premium, coverage, and policies on a TOC's wish list.

- *Consumer Choice*

Currently, a consumer is not given the opportunity to choose from among TOCs when more than one has indicated an interest in assuming the consumer's policy. Instead, Citizens assigns the policy to one TOC using an algorithm and only that company solicits the consumer.

The bill requires that the consumer, working with the agent of record, be given the option to choose from among competing offers. This applies to takeouts occurring after January 1, 2016.

- *Consumer Satisfaction*

Because the depopulation process cycles each month, a single policyholder may receive more than one offer from different companies in any given year. This can be confusing and can result in "takeout fatigue," thereby reducing the chances that a consumer who has opted out once will accept a subsequent takeout offer. In addition, some reported takeout offers are substantially higher than Citizens renewal rates. A consumer who fails to opt out, particularly a consumer whose insurance is paid from escrow by a mortgage holder, may lose Citizens coverage and incur substantial costs for some period of time before realizing the full consequences of what has happened.

Effective July 1, 2015, the bill allows a consumer to elect not to be solicited for takeout more than once in a six-month period. In addition, the bill allows a consumer to retain eligibility for Citizens insurance through the Clearinghouse if the insurer increases its initial premium more than 10 percent above its original estimate or increases the rate on the policy more than 10 percent during the 36 months following takeout. The effect is to extend the same rate protection that applies to takeouts through the Clearinghouse to takeouts through the depopulation program.

Board of Governors of Citizens Property Insurance Corporation

Citizens operates under the direction of a nine-member Board of Governors (board). The board members are not Citizens' employees and are not paid. The Governor, Chief Financial Officer, Senate President, and Speaker of the House of Representatives each appoint two members of the board, with one member appointed chair by the Chief Financial Officer. Board members serve three-year staggered terms.

At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. By law, board members with the required insurance expertise fall within the exemption in the conflicting employment or contractual relationship statute that applies to public officers and agency employees.[28] Thus, these board members can maintain employment in the private sector in jobs involving business with Citizens without violating the conflict of interest statute because the board member is required by law to have insurance expertise in order to sit on the board.

There is also a consumer representative on the board that is appointed by the Governor.

The Impact of the Bill on the Composition of the Citizens Board

The bill provides the consumer representative on the Citizens' board with the same exemption from the conflicting employment or contractual relationship statute for public officers and agency employees as is provided in current law to the board members with insurance expertise.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 2: Provides an effective date of July 1, 2015.

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:

[28] Board members of Citizens fall under the definition of "public officer" in s. 112.313(1), F.S., because that definition includes any person appointed to hold office in any agency, including serving on an advisory board. "Agency" is defined in s. 112.312, F.S.

The provision in the bill that allows properties to remain eligible for Citizens coverage if a TOC increases its initial premium more than 10% above its original estimate or increases its rate more than 10% during the 36 months after takeout will limit the risk of consumers experiencing substantial and unanticipated rate increases in their insurance coverage.

D. FISCAL COMMENTS:
None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an 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 a 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

On March 25, 2015, the Insurance & Banking Subcommittee considered a proposed committee substitute, and reported the bill favorably as a committee substitute. The committee substitute reflects multiple changes, as follows:

- Removed a provision that required Citizens to obtain written consent from a policyholder before a policy may be assumed by a private carrier.
- Required that the information related to premium and coverage be provided to the agent of record, then transmitted to the consumer.
- Added language that allows a policyholder to select from among competing offers.
- Added language that allows a policyholder to elect not to be solicited more than once every six months.
- Added a provision that allows properties to remain eligible for Citizens coverage if the insurer increases the initial premium more than 10% above its original estimate or increases its rate more than 10% during the 36 months after takeout.

- Added a provision that extends to the consumer representative on the Citizens board the same exemption from the conflict of interest statute that applies to the board members with insurance expertise.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to operations of the Citizens Property Insurance Corporation; amending s. 627.351, F.S.; specifying that a consumer representative appointed by the Governor to the Citizens Property Insurance Corporation's board of governors is not prohibited from practicing in a certain profession if required or permitted by law or ordinance; prohibiting a policy, after a specified date, from being taken out from the corporation unless an agent of record receives certain information; requiring that all offers of coverage be provided to such agent; providing policyholder procedures for accepting or rejecting take-out offers; requiring the corporation to develop uniform formats for certain information; allowing a policyholder to elect to limit the frequency of solicitations for take-out offers; providing circumstances under which a policyholder whose policy was taken out to be considered a renewal policyholder for certain rate increase purposes; providing an effective date.

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

Section 1. Paragraph (c) of subsection (6) of section 627.351, Florida Statutes, is amended and paragraph (ii) is added to that subsection, to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred

to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share

primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the

corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to

issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting

of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this

subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the

Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain such offer, the

risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the

policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for

a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy,

for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the

premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and

procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the

applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited

apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who also hold an appointment as defined in s. 626.015(3) with an insurer who at the time of the agent's initial appointment by the corporation is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling

rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to

appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES

ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(ii) For the depopulation programs adopted pursuant to sub-subparagraph (q)3.a:

1. After January 1, 2016, a policy may not be taken out from the corporation unless the agent of record receives an offer of insurance containing the amount of the estimated premium, a description of the coverage, and a comparison of the premium and coverage offered by the insurer to the premium and coverage provided by the corporation. If more than one insurer makes an offer for coverage, all offers shall be provided to the agent of record. The agent of record shall communicate to the

policyholder all offers received. The policyholder may accept an offer or reject all offers. If the policyholder takes no action, the policy may be taken out by an insurer according to the depopulation procedure. The corporation shall develop a uniform format for the premium and coverage information required by this subparagraph.

2. Effective July 1, 2015, a policyholder may elect to not be solicited for take-out offers more than once in a 6-month period. A policyholder whose policy was taken out by an insurer in the previous 36 months is considered a renewal policyholder under s. 627.3518 if the corporation determines that the insurer continues to insure the policyholder and that the first offer exceeded the estimated premium by more than 10 percent or the insurer has increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)6.

Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1133 Division of Insurance Agent and Agency Services
SPONSOR(S): Insurance & Banking Subcommittee; Fant
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1222

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Lloyd	Cooper
2) Regulatory Affairs Committee		Lloyd	Hamon

SUMMARY ANALYSIS

The Department of Financial Services is the state agency responsible for regulation and licensure of insurance agents and agencies. The bill amends the insurance agent and agency licensure laws. The following changes are among the major provisions of the bill:

- removing the general lines agent's limitation to only sell health insurance when that health insurance is from an insurer that the agent represents for property and casualty insurance. An agent can now transact health insurance with any health insurer under the agent's general lines license.
- reducing the number of lines that the agent in charge must be licensed to transact. The agent in charge is required to be licensed in at least two of the location's lines, rather than all of the location's lines, except that if the location only handles one line, the agent in charge must be licensed in that line of insurance.
- eliminating the examination for customer representative licensing. Applicants for such licensure will qualify if they have achieved certain specified professional designations or a qualifying academic degree within 4 years prior to application.
- allowing the general lines agent, personal lines agent, and all-lines adjuster license applicants an exemption from the required examination, upon certain conditions, including obtaining certain professional designations or a qualifying academic degree.
- removing any examination exemption limitations applicable to license transferees from other states.
- allowing non-resident agent applicants to receive an examination exemption if they hold a comparable license in another state with similar examination requirements.
- requiring attendees to complete 75 percent of course hours in prelicensure courses for applicants to receive credit. This replaces a rule requirement that was repealed for lack of rulemaking authority.
- revising various knowledge, experience, or instruction requirements governing applicants for licensure as a general lines agent, personal lines agent, life agent, or health agent.
- establishing a mandatory five year records retention requirement for insurance agents following expiration of a policy.
- defining the term "surrender" for purposes of agent recommended surrenders of an annuity or life insurance policy; requiring issuance of the statutory informational notice 14-days before the surrender occurs; and eliminating a required form concerning the information notice required prior to agent recommended annuity surrender, while revising, but maintaining, statutory notice criteria.
- removing or revising various terminologies to adjust to current usage in the insurance industry.
- deleting references to correspondence courses to allow a greater variety of instruction methods.

The bill does not impact state or local government revenues or expenditures. The bill has an indeterminate positive impact on the private sector.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Lines Agent

A general lines agent[1] is one who sells the following lines of insurance: property;[2] casualty,[3] including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,[4] or a workers' compensation self-insurance fund;[5] surety;[6] health;[7] and, marine.[8] The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance. If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.[9]

The bill removes the general lines agent's limitation to only sell health insurance under their general lines license when that health insurance is from an insurer that the agent represents for property and casualty insurance. An agent can transact health insurance under the agent's general lines license with any health insurer that appoints them for this purpose.

Agent in Charge

In 2014, HB 633[10] created s. 626.0428(4), F.S., defining the term "agent in charge"[11] and establishing the agent in charge's role, duties, and accountability. An insurance agency[12] must designate an agent in charge for each location where it conducts business.[13] An agency may designate the same agent in charge for multiple locations. The agency must file with the Department of Financial Services (DFS) the name and license number of the agent in charge and physical location of the place(s) of business that the designated agent in charge will have the responsibility for overseeing. With proper notice to the DFS, the agency can change its designation at will. If an agency has not designated an agent in charge for a location, or comes to lack such a designated agent, the location cannot conduct business until this condition is corrected. The agent in charge is responsible for violations of the Insurance Code[14] committed by licensees, agents, and any person under their supervision.[15]

An agent in charge must be licensed for each line of insurance that the particular location of the agency handles.[16] Prior to the 2014 law change, the agent in charge was not required to maintain a license in

---

[1] Section 626.015(5), F.S.
[2] Section 624.604, F.S.
[3] Section 624.605, F.S.
[4] As defined in s. 624.462, F.S.
[5] Pursuant to s. 624.4621, F.S.
[6] Section 626.606, F.S.
[7] Sections 624.603 and 627.6482, F.S.
[8] Section 624.607, F.S.
[9] Section 626.829, F.S.
[10] Chapter No. 2014-123, L.O.F.
[11] An "agent in charge" is the licensed and appointed agent who is responsible for the supervision of all individuals within an insurance agency location, regardless of whether the agent in charge handles a specific transaction or deals with the general public in the solicitation or negotiation of insurance contracts or the collection or accounting of moneys. Section 626.0428(4)(d), F.S.
[12] "Insurance agency" means a business location at which an individual, firm, partnership, corporation, association, or other entity, other than an employee of the individual, firm, partnership, corporation, association, or other entity and other than an insurer as defined by s. 624.03 or an adjuster as defined by subsection (1), engages in any activity or employs individuals to engage in any activity which by law may be performed only by a licensed insurance agent. Section 626.015(8), F.S.
[13] Section 626.0428(4), F.S.
[14] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code." Section 624.01, F.S.
[15] An agent in charge is only criminally liable for violations occurring under their supervision if they personally committed the act or knew or should have known of the act and related facts amounting to a violation of Ch. 626, F.S. Section 626.0428(4)(e), F.S.
[16] Section 626.0428(4)(a), F.S.

every line that the location was handling. The DFS reports that this requirement has proven unrealistic and unnecessary. The bill reduces the number of lines that the agent in charge must be licensed to transact in order to qualify for the designation. The agent in charge is required to be licensed in at least two of the location's lines, except that if the location only handles one line, the agent in charge must be licensed in that line of insurance. The bill results in a larger number of insurance agents eligible to fulfill the agent in charge role.

Customer Representatives

The customer representative license is unique to our state. A "customer representative" is an individual appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency.[17] Customer representatives are not agents.[18] They must be licensed[19] by the DFS and appointed by an insurer or employer.[20] Since this license is unique to Florida, there is no licensing reciprocity for this credential with other states.

An individual can become licensed as a customer representative upon application to the DFS either though satisfactory performance on an examination[21] or by achieving a professional designation specified in statute.[22] The following designations facilitate licensure as a customer representative without examination:

- Chartered Property and Casualty Underwriter (CPCU) from the American Institute for Property and Liability Underwriters,
- Accredited Advisor in Insurance (AAI) from the Insurance Institute of America,
- Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors,
- Accredited Customer Service Representative (ACSR) from the Independent Insurance Agents of America,
- Certified Professional Service Representative (CPSR) from the National Foundation for Certified Professional Service Representatives,
- Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives, or
- Certified Insurance Representative (CIR) from the National Association of Christian Catastrophe Insurance Adjusters.

Also, an examination exemption is available to an applicant for license as a customer representative who has earned an associate degree or bachelor's degree from an accredited college or university and has completed at least 9 academic hours of property and casualty insurance curriculum, or the equivalent, or has earned one of the following the designations:

- Certified Customer Service Representative (CCSR) from the Florida Association of Insurance Agents,
- Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in this state, or
- Professional Customer Service Representative (PCSR) from the Professional Career Institute.

The DFS reports that 99.85 percent[23] of customer representative licenses issued in 2014 were attained by achieving one of the designations listed above.

---

[17] Section 626.015(4), F.S.
[18] Section 626.015(2), F.S.
[19] Section 626.112, F.S.
[20] Section 626.112(3), F.S. "Appointment" means the authority given by an insurer or employer to a licensee to transact insurance or adjust claims on behalf of an insurer or employer. Section 626.015(3), F.S.
[21] The scope of the examination is described in s. 626.241, F.S.
[22] Section 626.221, F.S.
[23] There were 3,979 customer representative applicants in 2014 and only 6 qualified by examination. (3,973 / 3,979 = 99.85 percent)

The bill eliminates the examination for customer representative licensing. Applicants for such licensure will qualify if they have achieved the following designations within 4 years prior to application:

- from the Insurance Institute of America:
  - Accredited Advisor in Insurance (AAI),
  - Associate in General Insurance (AINS), or
  - Accredited Customer Service Representative (ACSR);
- Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors;
- Certified Professional Service Representative (CPSR) from the National Foundation for CPSR;
- Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives;
- Certified Insurance Representative (CIR) from All-Lines Training;
- Professional Customer Service Representative (PCSR) from the Professional Career Institute; or
- Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in the state whose curriculum is approved by the department and includes comprehensive analysis of basic property and casualty lines of insurance and testing which demonstrates mastery of the subject.

The applicant can also satisfy the designation requirement with a degree from an accredited institution of higher learning, approved by the department, when the degree includes a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance.

The bill also corrects the names of credentialing entities specified in statute that have changed their names since they were named therein.

Exemptions from Examination

As mentioned above, an applicant may attain licensure without examination upon attainment of certain designations. This is true for applicants for life and health agents,[24] general lines agents,[25] adjusters,[26] resident or nonresident all-lines adjusters,[27] license transferees from another state,[28] and non-resident agents,[29] too. The bill allows the following license applicants to qualify for an exemption from the required examination, upon the conditions specified below:

- general lines agents, personal lines agents,[30] or all-lines adjusters who receive the CPCU designation from the American Institute for Chartered Property Casualty Underwriters.
- general lines agents or all-lines adjusters earning a degree in insurance from an accredited institution of higher learning approved by the department. Qualifying degrees must indicate a minimum of 18 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, health, and commercial insurance.
- personal lines agents earning a degree from an accredited institution of higher learning approved by the department. Qualifying degrees must indicate a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance.

[24] Section 626.221(g), F.S.
[25] Section 626.221(h), F.S.
[26] Id.
[27] Section 626.221(j), F.S.
[28] Section 626.221(k), F.S.
[29] Section 626.211(l), F.S.
[30] "Personal lines agent" means a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes. Section 626.015(15), F.S.

The bill removes any examination exemption limitations applicable to license transferees from other states. Also, non-resident agent applicants receive an examination exemption if they hold a comparable license in another state with similar examination requirements.

Examination Requirements

Currently, there is not a minimum course completion requirement to qualify for educational course credit. In 2014, the DFS repealed a rule, for lack of rulemaking authority, that required prelicensure course attendees to complete 75 percent of the course hours to receive credit. The bill places this former rule requirement into statute. It requires attendees to complete 75 percent of course hours in required prelicensure courses for applicants to receive credit. This provides a uniform course completion standard for course providers.

Knowledge, Experience, or Instruction Requirements

General Lines Agent and Personal Lines Agent Applicants

Currently, general lines agent applicants must meet specified knowledge and experience requirements within the four years preceding their application. These requirements are waived if the applicant holds the CPCU designation. The bill eliminates some requirements and revises others. The bill requires general lines agent applicants that satisfy their knowledge requirement through coursework to complete 200 aggregate hours of DFS approved coursework in the following areas of insurance: property, casualty, surety, health, and marine. These subjects are consistent with the areas of insurance business that a general lines agent may transact. The DFS asserts that this conforms to current administrative requirements for coursework hours applicable to this license. The bill eliminates the option to meet this requirement by correspondence course and six-months of relevant work experience. General lines agent applicants can claim experience credit if they have 1 year of relevant experience as service representative[31] or personal lines agent.

Similarly, personal lines agent applicants must meet specified knowledge and experience requirements within the four years preceding their application. These requirements are waived if the applicant holds the CPCU designation. The bill eliminates some requirements and revises others. The bill requires personal lines agent applicants that satisfy their knowledge requirement through coursework to complete 60 aggregate hours, rather than 52 hours, of DFS approved coursework in the following areas of insurance: property, casualty, and inland marine. These subjects are consistent with the areas of insurance business that a personal lines agent may transact. The bill eliminates the option to meet this requirement by correspondence course and six-months of relevant work experience. Personal lines agent applicants can claim experience credit if they have six months of relevant experience as a service representative.

Life Agent Applicants

Currently, life agent[32] applicants must meet specified knowledge and experience requirements within the four years preceding their application. These requirements are waived if the applicant holds the Chartered Life Underwriter (CLU) designation. The bill eliminates some requirements and revises others. It specifies that whoever satisfies their knowledge requirement through coursework must do so in the subjects of life insurance, annuities, and variable contracts, rather than simply insurance. A life

[31] "Service representative" means an individual employed by an insurer or managing general agent for the purpose of assisting a general lines agent in negotiating and effecting insurance contracts when accompanied by a licensed general lines agent. A service representative shall not be simultaneously licensed as a general lines agent in this state. This subsection does not apply to life insurance. Section 626.015(17), F.S.

[32] "Life agent" means an individual representing an insurer as to life insurance and annuity contracts, or acting as a viatical settlement broker as defined in s. 626.9911, including agents appointed to transact life insurance, fixed-dollar annuity contracts, or variable contracts by the same insurer. Section 626.015(10), F.S.

agent applicant may satisfy their knowledge requirement by earning or maintaining one of the following designations in the four years prior to application:

- Chartered Financial Consultant (ChFC) from the American College of Financial Services,
- Fellow, Life Management Institute (FLMI) from the Life Management Institute, or
- Certified Financial Planner (CFP) from the Certified Financial Planner Board of Standards.

The bill permits a life agent applicant to qualify for licensure if they have completed at least 60 hours of coursework in multiple lines of insurance, including life insurance, annuities, and variable contracts.[33] The coursework must include instruction in unauthorized insurance entities and three hours of ethics training. The bill also allows those applicants that rely on prior employment with the DFS or the Office of Insurance Regulation (OIR) to claim credit for their employment experience for four years following their separation from employment, rather than only 90 days.

Health Agent Applicants

Currently, health agent[34] applicants must meet specified knowledge and experience requirements within the four years preceding their application. These requirements are waived if the applicant holds the Chartered Life Underwriter (CLU) designation. The bill eliminates some requirements and revises others. It specifies that whoever satisfies their knowledge requirement through coursework must do so in the subject of health insurance, rather than simply insurance. A health agent applicant may satisfy their knowledge requirement by earning or maintaining one of the following designations in the four years prior to application:

- from the American College of Financial Services:
  - Registered Health Underwriter (RHU),
  - Chartered Healthcare Consultant (ChHC), or
  - Registered Employee Benefits Consultant (REBC),
- Certified Employee Benefit Specialist (CEBS) from the Wharton School of the University of Pennsylvania,
- Health Insurance Associate (HIA) from America's Health Insurance Plans, or
- Certified Financial Planner (CFP) from the Certified Financial Planner Board of Standards.

The bill permits a health agent applicant to qualify for licensure if they have completed at least 60 hours of coursework in multiple areas of insurance, including health insurance. The coursework must include instruction in unauthorized insurance entities and three hours of ethics training. The bill also allows those applicants that rely on prior employment with the DFS or the OIR to claim credit for their employment experience for four years following their separation from employment, rather than only 90 days.

Retention of Records by Agents

Currently, there is no records retention requirement applicable to insurance agents. The bill requires agents to retain records for at least five years following policy expiration.

Recommendations to Surrender Annuities

Under current law, an insurance agent or insurance agency (if no agent is involved), including persons performing agent activities under a licensing exemption, is required to provide certain information to persons surrendering an annuity or life insurance policy (i.e., cashing out the value of the annuity or life insurance policy) on the recommendation of the agent or agency. The law applies if the agent or agency is not recommending that the annuity proceeds be used to purchase another annuity or a life

[33] "Variable contracts" means indeterminate value contracts for which assets are held in a separate account. Section 627.8015(2), F.S.
[34] "Health agent" means an agent representing a health maintenance organization or, as to health insurance only, an insurer transacting health insurance. Section 626.015(6), F.S.

insurance policy. Upon the occurrence of these conditions, the required information notice must be provided to the annuity owner or life insurance owner before the annuity is surrendered. The agent must disclose information including the amount of the surrender charge, the loss of minimum interest rate guarantees, the tax consequences, the amount of the forfeited death benefit, and the value of any other investment performance guarantees that result from the surrender of the annuity. This information is required to be presented on a form that meets informational standards established by rule.

The bill eliminates DFS rulemaking authority concerning the content of the form used to deliver the required information. The required notice will solely be governed by the standards specified in s. 627.4553, F.S. The bill requires the notice to be in writing, but does not remove or increase any of the elements already specified in law. The bill requires the agent to maintain a record of the notice that it delivers to the surrendering annuity owner.

The bill also requires the informational notice to be provided at least 14-days before the surrender occurs and that the surrender be terminated, if requested by the owner. It defines the term "surrender."[35]

Miscellaneous

The bill:

- strikes a defunct term from s. 626.2817, F.S., which regulates educational courses and providers.
- eliminates a DFS prescribed affidavit form. Interested parties will now provide an attestation in the format of their choosing.
- deletes out of date educational course subject matter requirements.[36]
- removes references to correspondence courses that currently satisfy knowledge requirements so that various methods of course delivery may be used for these purposes.
- revises the provision allowing the collection of the exact amount of a credit card facility fee to make the provision applicable without regard to any other provision of law. This is out of the apparent concern that the prohibition in s. 501.0117, F.S., on collecting a surcharge for accepting payment by credit card is a limitation on an agent's authority to collect the credit card facility fee allowed to agents under s. 626.9541(o), F.S.
- allows electronic return receipt delivery of required insurer insolvency notices to policy holders. This required notice is triggered when an agent is unable to replace a policyholder's coverage upon the insolvency of their insurer.
- makes various technical and grammatical changes to accommodate changes in terminologies presently used in the insurance industry.

B. SECTION DIRECTORY:

Section 1: Amends s. 626.015, F.S., relating to definitions applicable to the Licensing Procedures Law.

Section 2: Amends s. 626.0428, F.S., relating to agency personnel powers, duties, and limitations.

---

[35] "Surrender" is defined as "the voluntary total surrender, by the owner's request, of the annuity or life insurance policy before its maturity date, in exchange for the policy's current total cash surrender value which results in termination of the policy or contract. The term excludes any involuntary termination that is otherwise required by the terms of the policy contract and excludes all transactions other than a total surrender, such as maturity, policy loan, lapse for nonpayment of premium, partial surrender, or partial withdrawal of policy or contract values, annuitization, or exercise of reduced-paid-up or extended-term nonforfeiture options." CS/HB 1133, lines 866-878.

[36] Specifically, coursework concerning the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the provision and regulation of health insurance by employers is eliminated.

Section 3: Amends s. 626.221, F.S., relating to examination requirement; exemptions.

Section 4: Amends s. 626.241, F.S., relating to scope of examination.

Section 5: Amends s. 626.2817, F.S., relating to regulation of course providers, instructors, and school officials, and monitor groups involved in prelicensure education for insurance agents and other licensees.

Section 6: Amends s. 626.311, F.S., relating to scope of license.

Section 7: Amends s. 626.732, F.S., relating to requirement as to knowledge, experience, or instruction.

Section 8: Amends s. 626.7351, F.S., relating to qualifications for customer representative's license.

Section 9: Amends s. 626.748, F.S., relating to agent's records.

Section 10: Amends s. 626.7851, F.S., relating to requirement as to knowledge, experience, or instruction.

Section 11: Amends s. 626.8311, F.S., relating to requirement as to knowledge, experience, or instruction.

Section 12: Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.

Section 13: Amends s. 627.4553, F.S., relating to recommendations to surrender.

Section 14: Amends s. 631.341, F.S., relating to notice of insolvency to policyholders by insurer, general agent, or agent.

Section 15: Provides an effective date of July 1, 2015.

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:

The bill will have a positive impact on insurance agents and agencies by increasing the pool of agents that qualify for agent in charge designations and facilitating the licensure of qualified applicants. It will have a negative impact on them by requiring record retention for five years following the expiration of a policy.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This PCS does not appear to: require counties or municipalities to spend funds or take an 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 a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not grant any new rulemaking authority. The bill eliminates DFS rulemaking authority to implement the requirements of s. 627.4553, F.S., by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2015, the Insurance & Banking Subcommittee considered the bill, adopted two amendments and reported the bill favorably with a committee substitute. The amendments made the following changes:

- Created examination exemptions for personal lines agent, life agent, and health agent applicants with qualifying academic degrees and restores current law regarding the examination exemption for all-lines adjusters.
- Revised the knowledge, experience, or instruction requirements applicable to life agent and health agent applicants and deleted section 12 of the bill, which would have created knowledge, experience, or instruction requirements applicable to all-lines adjusters.
- Created a definition of the term "surrender" for purposes of the surrender of an annuity or life insurance policy and established a 14-day notice period prior to effectuating surrenders.
- Removed sections 16 and 17 of the bill that revised training requirements for bail bond agents.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to the Division of Insurance Agent and Agency Services; amending s. 626.015, F.S.; revising the definition of "general lines agent," to remove certain restrictions regarding health insurance; amending s. 626.0428, F.S.; revising licensure requirements of certain agents in charge of an agency's place of business; amending s. 626.221, F.S.; revising examination requirements for applicants for a license as a general lines agent, personal lines agent, or all-lines adjuster; creating examination requirements and qualifications for exemption from examinations for personal lines agents, life agents, and health agents; revising examination requirements for applicants qualifying for license transfer and applicants that hold a comparable license in another state; amending s. 626.241, F.S.; revising the scope of license examinations for agents and adjusters; amending s. 626.2817, F.S.; revising requirements of certain prelicensure education courses for insurance agents and other licensees; amending s. 626.311, F.S.; conforming provisions to changes made by the act; amending s. 626.732, F.S.; revising requirements relating to knowledge, experience, and instruction for applicants for a license as a general lines or personal lines agent; amending s. 626.7351, F.S.;

revising qualifications for a customer representative's license; amending s. 626.748, F.S.; requiring agents to maintain certain records for a specified time period after policy expiration; amending ss. 626.7851 and 626.8311, F.S.; revising requirements relating to the knowledge, experience, or instruction for life agents and health agents, respectively; amending s. 626.9541, F.S.; providing that certain provisions relating to illegal dealings in premiums are applicable notwithstanding any other provision of law; amending s. 627.4553, F.S.; requiring an insurance agent to provide and retain certain information upon surrender of an annuity or life insurance policy under certain circumstances; prohibiting surrender under certain circumstances; defining the term "surrender"; amending s. 631.341, F.S.; authorizing certain notices of insolvency to be delivered to policyholders by certain methods; providing an effective date.

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

Section 1. Paragraph (d) of subsection (5) of section 626.015, Florida Statutes, is amended to read:

626.015 Definitions.—As used in this part:

(5) "General lines agent" means an agent transacting any

one or more of the following kinds of insurance:

(d) Health insurance~~, when transacted by an insurer also represented by the same agent as to property or casualty or surety insurance~~.

Section 2. Paragraph (a) of subsection (4) of section 626.0428, Florida Statutes, is amended to read:

626.0428 Agency personnel powers, duties, and limitations.—

(4)(a) Each place of business established by an agent or agency, firm, corporation, or association must be in the active full-time charge of a licensed and appointed agent holding the required agent licenses to transact at least two of the lines of insurance being handled at the location. If only one line of insurance is handled at the location, the agent in charge must hold the required agent license to transact that line of insurance.

Section 3. Paragraphs (k) and (l) of subsection (2) of section 626.221, Florida Statutes, are redesignated as paragraphs (n) and (o), respectively, and amended, subsection (1) and paragraphs (g) through (l) of subsection (2) are amended, and new paragraphs (k), (l), and (m) are added to subsection (2) of that section, to read:

626.221 Examination requirement; exemptions.—

(1) The department shall not issue any license as agent~~, customer representative,~~ or adjuster to any individual who has not qualified for, taken, and passed to the satisfaction of the

department a written examination of the scope prescribed in s. 626.241.

(2) However, an examination is not necessary for any of the following:

(g) An applicant for a license as a life or health agent who has received the designation of chartered life underwriter (CLU) from the American College of Financial Services ~~Life Underwriters and has been engaged in the insurance business within the past 4 years~~, except that the applicant may be examined on pertinent provisions of this code.

(h) An applicant for license as a general lines agent, personal lines agent, or all-lines ~~customer representative, or~~ adjuster who has received the designation of chartered property and casualty underwriter (CPCU) from the American Institute for Chartered Property Casualty ~~and Liability~~ Underwriters ~~and has been engaged in the insurance business within the past 4 years~~, except that the applicant may be examined on pertinent provisions of this code.

(i) An applicant for license as a general lines agent or an all-lines adjuster who has received a degree in insurance from an accredited institution of higher learning approved by the department, except that the applicant may be examined on pertinent provisions of this code. Qualifying degrees must indicate a minimum of 18 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, health, and commercial insurance ~~customer~~

~~representative who has earned the designation of Accredited Advisor in Insurance (AAI) from the Insurance Institute of America, the designation of Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors, the designation of Accredited Customer Service Representative (ACSR) from the Independent Insurance Agents of America, the designation of Certified Professional Service Representative (CPSR) from the National Foundation for Certified Professional Service Representatives, the designation of Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives, or the designation of Certified Insurance Representative (CIR) from the National Association of Christian Catastrophe Insurance Adjusters. Also, an applicant for license as a customer representative who has earned an associate degree or bachelor's degree from an accredited college or university and has completed at least 9 academic hours of property and casualty insurance curriculum, or the equivalent, or has earned the designation of Certified Customer Service Representative (CCSR) from the Florida Association of Insurance Agents, or the designation of Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in this state, or the designation of Professional Customer Service Representative (PCSR) from the Professional Career Institute, whose curriculum has been approved by the department and which includes comprehensive analysis of basic property and casualty~~

~~lines of insurance and testing at least equal to that of standard department testing for the customer representative license. The department shall adopt rules establishing standards for the approval of curriculum~~.

(j) An applicant for license as an ~~a resident or nonresident~~ all-lines adjuster who has the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state, Associate in Claims (AIC) from the Insurance Institute of America, Professional Claims Adjuster (PCA) from the Professional Career Institute, Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy, Certified Adjuster (CA) from ALL LINES Training, or Certified Claims Adjuster (CCA) from AE21 incorporated ~~the Association of Property and Casualty Claims Professionals~~ whose curriculum has been approved by the department and which includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license. The department shall adopt rules establishing standards for the approval of curriculum.

(k) An applicant for license as a personal lines agent who has received a degree from an accredited institution of higher learning approved by the department, except that the applicant may be examined on pertinent provisions of this code. Qualifying degrees must indicate a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of

property, casualty, and inland marine insurance.

(l) An applicant for license as a life agent who has received a degree from an accredited institution of higher learning approved by the department, except that the applicant may be examined on pertinent provisions of this code. Qualifying degrees must indicate a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of life insurance, annuities, and variable insurance products.

(m) An applicant for license as a health agent who has received a degree from an accredited institution of higher learning approved by the department, except that the applicant may be examined on pertinent provisions of this code. Qualifying degrees must indicate a minimum of 9 credit hours of insurance instruction, including specific instruction in the area of health insurance products.

(n) ~~(k)~~ An applicant qualifying for a license transfer under s. 626.292 ~~if the applicant:~~

~~1. Has successfully completed the prelicensing examination requirements in the applicant's previous home state which are substantially equivalent to the examination requirements in this state, as determined by the department;~~

~~2. Has received the designation of chartered property and casualty underwriter (CPCU) from the American Institute for Property and Liability Underwriters and been engaged in the insurance business within the past 4 years if applying to transfer a general lines agent license; or~~

~~3. Has received the designation of chartered life underwriter (CLU) from the American College of Life Underwriters and been engaged in the insurance business within the past 4 years if applying to transfer a life or health agent license~~.

(o) ~~(1)~~ An applicant for a license as a nonresident agent if the applicant holds a comparable license in another state with similar examination requirements as this state~~:~~

~~1. Has successfully completed prelicensing examination requirements in the applicant's home state which are substantially equivalent to the examination requirements in this state, as determined by the department, as a requirement for obtaining a resident license in his or her home state;~~

~~2. Held a general lines agent license, life agent license, or health agent license before a written examination was required;~~

~~3. Has received the designation of chartered property and casualty underwriter (CPCU) from the American Institute for Property and Liability Underwriters and has been engaged in the insurance business within the past 4 years, if an applicant for a nonresident license as a general lines agent; or~~

~~4. Has received the designation of chartered life underwriter (CLU) from the American College of Life Underwriters and been in the insurance business within the past 4 years, if an applicant for a nonresident license as a life agent or health agent~~.

Section 4. Subsections (1), (2), (3), and (8) of section

626.241, Florida Statutes, are amended to read:

626.241 Scope of examination.—

(1) Each examination for a license as an agent~~, customer representative,~~ or adjuster shall be of such scope as is deemed by the department to be reasonably necessary to test the applicant's ability and competence and knowledge of the kinds of insurance and transactions to be handled under the license applied for, of the duties and responsibilities of such a licensee, and of the pertinent provisions of the laws of this state.

(2) Examinations given applicants for license as a general lines agent ~~or customer representative~~ shall cover all property, casualty, and surety insurances, except as provided in subsection (5) relative to limited licenses.

(3) Examinations given applicants for a life agent's license shall cover life insurance, annuities, and variable contracts ~~annuities~~.

(8) An examination for licensure as a personal lines agent ~~shall consist of 100 questions and~~ shall be limited in scope to the kinds of business transacted under such license.

Section 5. Section 626.2817, Florida Statutes, is amended to read:

626.2817 Regulation of course providers, instructors, and school officials~~, and monitor groups~~ involved in prelicensure education for insurance agents and other licensees.—

(1) Any course provider, instructor, or school official~~,~~

~~or monitor group~~ must be approved by and registered with the department before offering prelicensure education courses for insurance agents and other licensees.

(2) The department shall adopt rules establishing standards for the approval, registration, discipline, or removal from registration of course providers, instructors, and school officials~~, and monitor groups~~. The standards must be designed to ensure that such persons have the knowledge, competence, and integrity to fulfill the educational objectives of the prelicensure requirements of this chapter and chapter 648 and to assure that insurance agents and licensees are competent to engage in the activities authorized under the license.

(3) A course provider shall not grant completion credit to any student who has not completed at least 75 percent of the required course hours of a department approved prelicensure course.

(4) The department shall adopt rules to establish a process for determining compliance with the prelicensure requirements of this chapter and chapter 648. The department shall adopt rules prescribing the forms necessary to administer the prelicensure requirements.

Section 6. Subsection (1) of section 626.311, Florida Statutes, is amended to read:

626.311 Scope of license.—

(1) Except as to personal lines agents and limited licenses, a general lines agent or customer representative shall

qualify for all property, marine, casualty, and surety lines except bail bonds which require a separate license under chapter 648. The license of a general lines agent ~~may~~ also covers ~~cover~~ health insurance ~~if health insurance is included in the agent's appointment by an insurer as to which the licensee is also appointed as agent for property or casualty or surety insurance~~. The license of a customer representative shall provide, in substance, that it covers all of such classes of insurance that his or her appointing general lines agent or agency is currently so authorized to transact under the general lines agent's license and appointments. No such license shall be issued limited to particular classes of insurance except for bail bonds which require a separate license under chapter 648 or for personal lines agents. Personal lines agents are limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes.

Section 7. Subsections (1) through (5) of section 626.732, Florida Statutes, are amended to read:

626.732 Requirement as to knowledge, experience, or instruction.—

(1) Except as provided in subsection (4), an applicant for a license as a general lines agent, except for a chartered property and casualty underwriter (CPCU), may not be qualified or licensed unless, within the 4 years immediately preceding the date the application for license is filed with the department, the applicant has:

(a) Taught or successfully completed 200 hours of coursework in property, casualty, surety, health, and marine insurance approved by the department ~~classroom courses in insurance~~, 3 hours of which must be on the subject matter of ethics~~, at a school, college, or extension division thereof, approved by the department~~;

~~(b) Completed a correspondence course in insurance, 3 hours of which must be on the subject matter of ethics, which is regularly offered by accredited institutions of higher learning in this state or extensions thereof and approved by the department, and have at least 6 months of responsible insurance duties as a substantially full-time bona fide employee in all lines of property and casualty insurance set forth in the definition of general lines agent under s. 626.015;~~

(b) ~~(c)~~ Completed at least 1 year in responsible insurance duties as a substantially full-time bona fide employee in all lines of property and casualty insurance as set forth in the definition of a general lines agent under s. 626.015, but without the education requirement described in paragraph (a) ~~or paragraph (b)~~; or

(c) ~~(d)~~ Completed at least 1 year of responsible insurance duties as a licensed and appointed customer representative, service representative, or personal lines agent ~~or limited customer representative in commercial or personal lines of property and casualty insurance~~ and 40 hours of coursework ~~classroom courses~~ approved by the department covering the areas

of property, casualty, surety, health, and marine insurance~~; or~~

~~(c) Completed at least 1 year of responsible insurance duties as a licensed and appointed service representative in commercial or personal lines of property and casualty insurance and 80 hours of classroom courses approved by the department covering the areas of property, casualty, surety, health, and marine insurance~~.

(2) Except as provided under subsection (4), an applicant for a license as a personal lines agent, except for a chartered property and casualty underwriter (CPCU), may not be qualified or licensed unless, within the 4 years immediately preceding the date the application for license is filed with the department, the applicant has:

(a) Taught or successfully completed 60 hours of coursework in property, casualty, and inland marine insurance approved by the department ~~classroom courses in insurance~~, 3 hours of which must be on the subject matter of ethics~~, at a school, college, or extension division thereof, approved by the department. To qualify for licensure, the applicant must complete a total of 52 hours of classroom courses in insurance~~;

~~(b) Completed a correspondence course in insurance, 3 hours of which must be on the subject matter of ethics, which is regularly offered by accredited institutions of higher learning in this state or extensions thereof and approved by the department, and completed at least 3 months of responsible insurance duties as a substantially full-time employee in the~~

~~area of property and casualty insurance sold to individuals and families for noncommercial purposes;~~

(b) ~~(c)~~ Completed at least 6 months of responsible insurance duties as a substantially full-time employee in the area of property and casualty insurance sold to individuals and families for noncommercial purposes, but without the education requirement described in paragraph (a) ~~or paragraph (b)~~; or

(c) ~~(d)~~ Completed at least 6 months of responsible insurance duties as a licensed and appointed customer representative, ~~or~~ limited customer representative, or service representative in property and casualty insurance ~~sold to individuals and families for noncommercial purposes and 20 hours of classroom courses approved by the department which are related to property and casualty insurance sold to individuals and families for noncommercial purposes;~~

~~(e) Completed at least 6 months of responsible insurance duties as a licensed and appointed service representative in property and casualty insurance sold to individuals and families for noncommercial purposes and 40 hours of classroom courses approved by the department related to property and casualty insurance sold to individuals and families for noncommercial purposes; or~~

~~(f) Completed at least 3 years of responsible duties as a licensed and appointed customer representative in property and casualty insurance sold to individuals and families for noncommercial purposes~~.

(3) If an applicant's qualifications as required under subsection (1) or subsection (2) are based in part upon periods of employment in responsible insurance duties, the applicant shall submit with the license application~~, on a form prescribed by the department,~~ an attestation ~~affidavit~~ of his or her employment ~~employer~~ setting forth the period of such employment~~,~~ ~~that the employment was substantially full-time,~~ and giving a brief abstract of the nature of the duties performed ~~by the applicant~~.

(4) An individual who was or became qualified to sit for an agent's~~, customer representative's,~~ or adjuster's examination at or during the time he or she was employed by the department or office and who, while so employed, was employed in responsible insurance duties as a full-time bona fide employee may take an examination if application for such examination is made within 4 years ~~90 days~~ after the date of termination of employment with the department or office.

(5) ~~Classroom and correspondence~~ Courses under subsections (1) and (2) must include instruction on the subject matter of unauthorized entities engaging in the business of insurance. ~~The scope of the topic of unauthorized entities must include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the provision of health insurance by employers and the regulation thereof.~~

Section 8. Subsections (3) and (7) of section 626.7351,

Florida Statutes, are amended to read:

626.7351 Qualifications for customer representative's license.—The department shall not grant or issue a license as customer representative to any individual found by it to be untrustworthy or incompetent, or who does not meet each of the following qualifications:

(3) Within 4 ~~the 2~~ years ~~next~~ preceding the date that the application for license was filed with the department, the applicant has earned the designation of Accredited Advisor in Insurance (AAI), Associate in General Insurance (AINS), or Accredited Customer Service Representative (ACSR) from the Insurance Institute of America; the designation of Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors; the designation of Certified Professional Service Representative (CPSR) from the National Foundation for CPSR; the designation of Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives; the designation of Certified Insurance Representative (CIR) from All-Lines Training; the designation of Professional Customer Service Representative (PCSR) from the Professional Career Institute; the designation of Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in the state whose curriculum is approved by the department and includes comprehensive analysis of basic property and casualty lines of insurance and testing which demonstrates mastery of the subject;

or a degree from an accredited institution of higher learning approved by the department when the degree includes a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance. The department shall adopt rules establishing standards for the approval of curriculum ~~completed a course in insurance, 3 hours of which shall be on the subject matter of ethics, approved by the department or has had at least 6 months' experience in responsible insurance duties as a substantially full-time employee. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance. The scope of the topic of unauthorized entities shall include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as such acts relate to the provision of health insurance by employers and the regulation of such insurance~~.

~~(7) The applicant has passed any required examination for license required under s. 626.221.~~

Section 9. Section 626.748, Florida Statutes, is amended to read:

626.748 Agent's records.—Every agent transacting any insurance policy must maintain in his or her office, or have readily accessible by electronic or photographic means, for a period of at least 5 years after policy expiration, such records of policies transacted by him or her as to enable the

policyholders and department to obtain all necessary information, including daily reports, applications, change endorsements, or documents signed or initialed by the insured concerning such policies.

Section 10. Section 626.7851, Florida Statutes, is amended to read:

626.7851 Requirement as to knowledge, experience, or instruction.—An ~~No~~ applicant for a license as a life agent, except for a chartered life underwriter (CLU), shall not be qualified or licensed unless within the 4 years immediately preceding the date the application for a license is filed with the department he or she has:

(1) Successfully completed 40 hours of coursework ~~classroom courses~~ in life insurance, annuities, and variable contracts approved by the department, 3 hours of which shall be on the subject matter of ethics~~, satisfactory to the department at a school or college, or extension division thereof, or other authorized course of study, approved by the department~~. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance~~, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the provision of life insurance by employers to their employees and the regulation thereof~~;

(2) Successfully completed a minimum of 60 hours of coursework in multiple areas of insurance, which included life

insurance, annuities, and variable contracts, approved by the department, 3 hours of which shall be on the subject matter of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;

(3) Earned or maintained an active designation as Chartered Financial Consultant (ChFC) from the American College of Financial Services; or Fellow, Life Management Institute (FLMI) from the Life Management Institute ~~Successfully completed a correspondence course in insurance, 3 hours of which shall be on the subject matter of ethics, satisfactory to the department and regularly offered by accredited institutions of higher learning in this state or by independent programs of study, approved by the department. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the provision of life insurance by employers to their employees and the regulation thereof~~;

(4) ~~(3)~~ Held an active license in life~~, or life and health,~~ insurance in another state. This provision may not be used ~~utilized~~ unless the other state grants reciprocal treatment to licensees formerly licensed in the state ~~Florida~~; or

(5) ~~(4)~~ Been employed by the department or office for at least 1 year, full time in life ~~or life and health~~ insurance regulatory matters and who was not terminated for cause, and

application for examination is made within 4 years ~~90 days~~ after the date of termination of his or her employment with the department or office.

Section 11. Section 626.8311, Florida Statutes, is amended to read:

626.8311 Requirement as to knowledge, experience, or instruction.—An ~~No~~ applicant for a license as a health agent, except for a chartered life underwriter (CLU), shall not be qualified or licensed unless within the 4 years immediately preceding the date the application for license is filed with the department he or she has:

(1) Successfully completed 40 hours of coursework ~~classroom courses~~ in health insurance, approved by the department, 3 hours of which shall be on the subject matter of ethics~~, satisfactory to the department at a school or college, or extension division thereof, or other authorized course of study, approved by the department~~. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the provision of health insurance by employers to their employees and the regulation thereof;

(2) Successfully completed a minimum of 60 hours of coursework in multiple areas of insurance, which included health insurance, approved by the department, 3 hours of which shall be

on the subject matter of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;

(3) Earned or maintained an active designation as a Registered Health Underwriter (RHU), Chartered Healthcare Consultant (ChHC), or Registered Employee Benefits Consultant (REBC) from the American College of Financial Services; Certified Employee Benefit Specialist (CEBS) from the Wharton School of the University of Pennsylvania; or Health Insurance Associate (HIA) from America's Health Insurance Plans

~~Successfully completed a correspondence course in insurance, 3 hours of which shall be on the subject matter of ethics, satisfactory to the department and regularly offered by accredited institutions of higher learning in this state or by independent programs of study, approved by the department. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the provision of health insurance by employers to their employees and the regulation thereof~~;

(4) ~~(3)~~ Held an active license in health~~, or life and health,~~ insurance in another state. This provision may not be utilized unless the other state grants reciprocal treatment to licensees formerly licensed in Florida; or

(5)~~(4)~~ Been employed by the department or office for at least 1 year, full time in health insurance regulatory matters and who was not terminated for cause, and application for examination is made within 4 years ~~90 days~~ after the date of termination of his or her employment with the department or office.

Section 12. Paragraph (o) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(o) Illegal dealings in premiums; excess or reduced charges for insurance.—

1. Knowingly collecting any sum as a premium or charge for insurance, which is not then provided, or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as permitted by this code.

2. Knowingly collecting as a premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, in accordance with the applicable classifications and rates as filed with and approved by the office, and as specified in the policy; or, in cases when classifications, premiums, or rates are not required by this

code to be so filed and approved, premiums and charges collected from a Florida resident in excess of or less than those specified in the policy and as fixed by the insurer. Notwithstanding any other provision of law, this provision shall not be deemed to prohibit the charging and collection, by surplus lines agents licensed under part VIII of this chapter, of the amount of applicable state and federal taxes, or fees as authorized by s. 626.916(4), in addition to the premium required by the insurer or the charging and collection, by licensed agents, of the exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card, as authorized by subparagraph (q)3., in addition to the premium required by the insurer. This subparagraph shall not be construed to prohibit collection of a premium for a universal life or a variable or indeterminate value insurance policy made in accordance with the terms of the contract.

3.a. Imposing or requesting an additional premium for a policy of motor vehicle liability, personal injury protection, medical payment, or collision insurance or any combination thereof or refusing to renew the policy solely because the insured was involved in a motor vehicle accident unless the insurer's file contains information from which the insurer in good faith determines that the insured was substantially at fault in the accident.

b. An insurer which imposes and collects such a surcharge or which refuses to renew such policy shall, in conjunction with

the notice of premium due or notice of nonrenewal, notify the named insured that he or she is entitled to reimbursement of such amount or renewal of the policy under the conditions listed below and will subsequently reimburse him or her or renew the policy, if the named insured demonstrates that the operator involved in the accident was:

(I) Lawfully parked;

(II) Reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such person;

(III) Struck in the rear by another vehicle headed in the same direction and was not convicted of a moving traffic violation in connection with the accident;

(IV) Hit by a "hit-and-run" driver, if the accident was reported to the proper authorities within 24 hours after discovering the accident;

(V) Not convicted of a moving traffic violation in connection with the accident, but the operator of the other automobile involved in such accident was convicted of a moving traffic violation;

(VI) Finally adjudicated not to be liable by a court of competent jurisdiction;

(VII) In receipt of a traffic citation which was dismissed or nolle prossed; or

(VIII) Not at fault as evidenced by a written statement from the insured establishing facts demonstrating lack of fault which are not rebutted by information in the insurer's file from

which the insurer in good faith determines that the insured was substantially at fault.

c. In addition to the other provisions of this subparagraph, an insurer may not fail to renew a policy if the insured has had only one accident in which he or she was at fault within the current 3-year period. However, an insurer may nonrenew a policy for reasons other than accidents in accordance with s. 627.728. This subparagraph does not prohibit nonrenewal of a policy under which the insured has had three or more accidents, regardless of fault, during the most recent 3-year period.

4. Imposing or requesting an additional premium for, or refusing to renew, a policy for motor vehicle insurance solely because the insured committed a noncriminal traffic infraction as described in s. 318.14 unless the infraction is:

a. A second infraction committed within an 18-month period, or a third or subsequent infraction committed within a 36-month period.

b. A violation of s. 316.183, when such violation is a result of exceeding the lawful speed limit by more than 15 miles per hour.

5. Upon the request of the insured, the insurer and licensed agent shall supply to the insured the complete proof of fault or other criteria which justifies the additional charge or cancellation.

6. No insurer shall impose or request an additional

premium for motor vehicle insurance, cancel or refuse to issue a policy, or refuse to renew a policy because the insured or the applicant is a handicapped or physically disabled person, so long as such handicap or physical disability does not substantially impair such person's mechanically assisted driving ability.

7. No insurer may cancel or otherwise terminate any insurance contract or coverage, or require execution of a consent to rate endorsement, during the stated policy term for the purpose of offering to issue, or issuing, a similar or identical contract or coverage to the same insured with the same exposure at a higher premium rate or continuing an existing contract or coverage with the same exposure at an increased premium.

8. No insurer may issue a nonrenewal notice on any insurance contract or coverage, or require execution of a consent to rate endorsement, for the purpose of offering to issue, or issuing, a similar or identical contract or coverage to the same insured at a higher premium rate or continuing an existing contract or coverage at an increased premium without meeting any applicable notice requirements.

9. No insurer shall, with respect to premiums charged for motor vehicle insurance, unfairly discriminate solely on the basis of age, sex, marital status, or scholastic achievement.

10. Imposing or requesting an additional premium for motor vehicle comprehensive or uninsured motorist coverage solely

because the insured was involved in a motor vehicle accident or was convicted of a moving traffic violation.

11. No insurer shall cancel or issue a nonrenewal notice on any insurance policy or contract without complying with any applicable cancellation or nonrenewal provision required under the Florida Insurance Code.

12. No insurer shall impose or request an additional premium, cancel a policy, or issue a nonrenewal notice on any insurance policy or contract because of any traffic infraction when adjudication has been withheld and no points have been assessed pursuant to s. 318.14(9) and (10). However, this subparagraph does not apply to traffic infractions involving accidents in which the insurer has incurred a loss due to the fault of the insured.

Section 13. Section 627.4553, Florida Statutes, is amended to read:

627.4553 Recommendations to surrender.—

(1) If an insurance agent recommends the surrender of an annuity or life insurance policy containing a cash value and does not recommend that the proceeds from the surrender be used to fund or purchase another annuity or life insurance policy, before execution of the surrender, the insurance agent~~, or insurance company if no agent is involved,~~ shall provide written ~~, on a form that satisfies the requirements of the rule adopted by the department,~~ information relating to the annuity or policy to be surrendered. The written information must be delivered at

or after the time of the recommendation but no later than 14 days before the surrender of the annuity or life insurance policy. If the owner requests to terminate the surrender before the surrender being effectuated, the surrender must be cancelled. Such information shall include, but is not limited to, the amount of any estimated surrender charge, the loss of any minimum interest rate guarantees, the possibility ~~amount~~ of ~~any~~ tax consequences ~~resulting from the transaction~~, the estimated amount of any forfeited death benefit, and a description of ~~the value of~~ any other investment performance guarantees being forfeited as a result of the transaction. The agent shall maintain a copy of the information and the date that the information was provided to the owner. This section also applies to a person performing insurance agent activities pursuant to an exemption from licensure under this part.

(2) For purposes of this section, the term "surrender" means the voluntary total surrender, by the owner's request, of the annuity or life insurance policy before its maturity date, in exchange for the policy's current total cash surrender value which results in termination of the policy or contract. The term excludes any involuntary termination that is otherwise required by the terms of the policy contract and excludes all transactions other than a total surrender, such as maturity, policy loan, lapse for nonpayment of premium, partial surrender, or partial withdrawal of policy or contract values,

annuitization, or exercise of reduced-paid-up or extended-term nonforfeiture options.

Section 14. Subsection (2) of section 631.341, Florida Statutes, is amended to read:

631.341 Notice of insolvency to policyholders by insurer, general agent, or agent.—

(2) Unless, within 15 days subsequent to the date of such notice, all agents referred to in subsection (1) have either replaced or reinsured in a solvent authorized insurer the insurance coverages placed by or through such agent in the delinquent insurer, such agents shall then, by registered or certified mail, or by e-mail with delivery receipt required, send to the last known address of any policyholder a written notice of the insolvency of the delinquent insurer.

Section 15. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1151 Residential Master Building Permit Programs
SPONSOR(S): Business & Professions Subcommittee; Ingoglia
TIED BILLS: **IDEN./SIM. BILLS:** SB 1486

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Brown-Blake	Luczynski
2) Regulatory Affairs Committee		Brown-Blake	Hamon

SUMMARY ANALYSIS

The bill creates s. 553.794, F.S., which provides that if a local building code administrator licensed pursuant to ch. 468, Part XII, F.S., receives a written request from a general, building, or residential contractor licensed pursuant to ch. 489, F.S., requesting the creation of a master building permit program, the local government that employs the recipient building code administrator shall create a residential master building permit program within 6 months of receipt of the written request. The program is designed to achieve standardization and reduce the time spent by local building departments during the site-specific building permit application process.

In order to obtain a master building permit, builders must submit certain documents, including a general construction plan, to the local building department for review and approval. The local building department must review the general construction plan to determine compliance with the building code and approve or deny the master building permit application within 120 days after receiving a complete application.

If the master building permit application is approved, the builder shall receive a master building permit and permit number. To build one of the buildings approved under the master building permit, the builder must apply for a site-specific building permit and include the master building permit number with the application. The builder may submit the master building permit number an unlimited number of times with the site-specific building permit applications so long as the builder uses the model design contained in the master building permit and the permit is valid. Approved master building permits are valid until the Florida Building Code is updated as provided in s. 553.73, F.S.

The governing bodies of local governments shall set fees pursuant to s. 553.80(7), F.S.

A builder or design professional who willfully violates this provision shall be fined $10,000 for each dwelling or townhome built under the master building permit that does not conform to the master building permit on file with the local building department.

The bill permits local government to adopt procedures to provide master building permit program guidelines and requirements.

The bill is expected to have a minimal fiscal impact on counties depending upon what the county chooses to charge for fees, which should be absorbed with existing resources and no fiscal impact on state government.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act (Act)." The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code. The Florida Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public's health, safety, and welfare.

Section 553.79(1), F.S., provides that it is unlawful for any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building without first obtaining a permit from the appropriate enforcing agency or from such persons delegated the authority to issue permits, upon the payment of fees adopted by the enforcing agency. Typically the appropriate enforcing agency is the local building department in the county or municipality in which the property is located. The builder is required to obtain a site-specific building permit for each individual site-specific building intended to be constructed, even if the builder expects to build multiple identical structures on a repetitive basis.

A builder is required to provide building plans and specifications at the time of application[1] for site-specific building permit, along with a structural inspection plan[2] and additional supporting documents sufficient for the building code administrator or inspector to determine whether the building will be built according to the Florida Building Code. The specific documents required to be submitted with the site-specific building permit application can vary depending upon the county or municipality reviewing the documents. The City of Tallahassee requests the following documents with the application for site-specific building permit:

- Completed permit application, signed by the contractor;
- Affidavit of the owner, designating contractor as the agent;
- Disclosure statement if the owner is acting as his or her own contractor;
- Affidavit of occupancy;
- Florida Lien law form if the owner is acting as his or her own contractor;
- Certified copy of recorded Notice of Commencement;
- Two sets of construction plans, including floor plan, elevations, foundation plan or floor framing plan, wall sections, roof plan, two gas diagrams, manufacturer's truss layout, and fire resistance framing plan;
- Two engineered wind analyses, if the structure is over 400 square feet, has openings within three feet of a corner, or is two stories; The engineer must have the subdivision name, lot, and block or complete address;
- Environmental information, including a site plan, information regarding whether the property is located in a FIRM flood zone "A", street name, lot dimensions, setback dimensions, north arrow, easements and restrictions, location and size of all protected trees, limits of clearing and location for placement of sediment and erosion control measures, clearly labeled existing and proposed structures, existing and proposed two-foot contour lines labeled accordingly; all grading or other methods of storm-water conveyance; and finished floor elevation;
- 2010 Florida Building Code, Energy Conservation Form 402 or 405;
- EPL Display card signed by the builder with the date and address of the home;

[1] *See* s. 553.79(1), F.S.
[2] s. 553.79(2), F.S.

- Manual J form with the HVAC load sizing summary for residential buildings signed by the preparer;
- Soil test, signed by an engineer with subdivision name, lot and block or complete address; and
- Completed driveway connection application.[3]

Along with the application and listed documents, the builder submits a fee to cover both the review of the submitted documents and any inspection costs. The fees are based on a schedule adopted by the local government pursuant to s. 553.80(7), F.S., which provides:

> The governing bodies of local governments may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part. These fees, and any fines or investment earnings related to the fees, shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances shall be carried forward to future years for allowable activities or shall be refunded at the discretion of the local government. The basis for a fee structure for allowable activities shall relate to the level of service provided by the local government and shall include consideration for refunding fees due to reduced services based on services provided as prescribed by s. 553.791, but not provided by the local government. Fees charged shall be consistently applied.
>
> (a) As used in this subsection, the phrase "enforcing the Florida Building Code" includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing; building code enforcement; and fire inspections associated with new construction. The phrase may also include training costs associated with the enforcement of the Florida Building Code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

Effect of the Bill

The bill creates s. 553.794, F.S., which provides that if a local building code administrator licensed pursuant to ch. 468, Part XII, F.S., receives a written request from a general, building, or residential contractor licensed pursuant to ch. 489, F.S., requesting the creation of a master building permit program, the local government that employs the recipient building code administrator shall create a residential master building permit program within 6 months of receipt of the written request. The program is designed to achieve standardization and reduce the time spent by local building departments during the site-specific building permit application process.

In order to obtain a master building permit, builders must submit the following to the local building department:

- A completed master building permit application;
- A general construction plan that complies with the requirements of subsection (4) of the bill;
- All general construction plan pages, documents, and drawings, including structural calculations if required by the local building department, signed and sealed by the licensed architect or engineer;
- Written acknowledgement from the licensed architect or engineer that the plan pages, documents, and drawings contained within the application will be used for future site-specific building permit applications;

[3] City of Tallahassee Applications and Forms, *Combination Residential Building, Environmental & Driveway Permit Application* (Oct. 17, 2012) http://www.talgov.com/Uploads/Public/Documents/growth/pdf/forms/combo_residential_bldg_env_permit_appl.pdf .

- Truss specifications signed and sealed by the engineer; and
- An energy performance calculation for all building orientations that considers the worst-case scenarios for the relevant climate zone and includes component and cladding product approvals for windows, pedestrian and garage doors, glazed opening impact protection devices, truss anchors, roof underlayments, and roof coverings.

The bill provides that the general construction plan:

- May be submitted in electronic or paper format, as required by the local building department; paper plans must be 36 inches by 48 inches or must comply with local building department requirements;
- Shall include left-hand and right-hand building orientations including floor plans;
- Shall include a model design with up to four exterior elevations; the model design:
    - May not contain more than three alternate garage layouts, with each garage limited to accommodating no more than three cars;
    - Must include a foundation plan;
    - Must contain a truss layout sheet for each exterior elevation compatible with the roof plan;
- Must show typical wall sections from the foundation to the roof;
- Must contain a complete set of applicable electrical, plumbing, fuel gas, and mechanical plans;
- Must contain window, door, and glaze opening impact protection device schedules, if applicable; and
- Must meet any other local building department requirements.

The local building department must review the general construction plan to determine compliance with the building code. The local building department must approve or deny the master building permit application within 120 days after receiving a completed application, unless waived by the applicant.

If the local building department approves the general building plan and all documents provided with the master building permit application are verified, the builder shall receive a master building permit and permit number.

In order to build one of the buildings approved under the master building permit, the builder must apply for a site-specific building permit and include the master building permit number with the application. The bill provides that the local building department may only require the builder to submit the following documents for a site-specific building permit for a single-family or two-family dwelling or townhome after approving a master building permit application:

- A complete site-specific building permit application with the master building permit number, identifying the model design to be built, including elevation and garage style;
- Three signed and sealed copies of the lot or parcel survey or site plan, indicating the Federal Emergency Management Agency flood zone, based flood elevation, and minimum finish floor elevation. The survey or site plan must conform to local zoning regulations and lot or parcel drainage indicators must be shown with site elevations;
- An affidavit by the licensed engineer of record affirming the master building permit is a true and correct copy of the master building permit on file with the local building department, referencing the master building permit number and affirming that the master building permit will conform to soil conditions on the specific site;
- Complete mechanical drawings of the model design, including HVAC heating and cooling load calculations and equipment specifications; and
- Specific information not included in the master building permit application addressing the HVAC system design, including duct design and heating and cooling load calculations.

The builder may submit the master building permit number an unlimited number of times with the site-specific building permit applications so long as the builder uses the model design contained in the master building permit and the permit is valid. Approved master building permits are valid until the Florida Building Code is updated as provided in s. 553.73, F.S.

Once a local building department has approved a master building permit, the local building department may:

- Not allow structural revisions to the building;
- Allow limited nonstructural revisions to the building so long as any revised floor plan is submitted to and approved by the local building department;
- Accept limited field revisions, as determined by the local building department.

The governing bodies of local governments shall set fees pursuant to s. 553.80(7), F.S.

A builder or design professional who willfully violates this provision shall be fined $10,000 for each dwelling or townhome built under the master building permit that does not conform to the master building permit on file with the local building department.

The bill permits local government to adopt procedures to provide master building permit program guidelines and requirements.

B. SECTION DIRECTORY:

Section 1 creates s. 553.794, F.S., directing each local government to create a residential master building permit program, if a written request is received from certain types of licensed contractors, by a specific date to assist builders who construct certain dwellings and townhomes on a repetitive basis.

Section 2 provides an effective date of July 1, 2015.

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:

   The bill requires local governments to determine what the fees will be; therefore, whether revenues increase or decrease will be determined by the local government.

2. Expenditures:

   Any cost in developing the program and reviewing master building permit applications should be offset by the reduced requirements for reviewing site-specific building permit applications.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The building permit program should reduce the time spent by local building departments during the site-specific building permit application process, which should result in faster permit review times for all builders. This should make Florida more attractive for development and could result in increased private economic activity.

D. FISCAL COMMENTS

None.

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 expenditures 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:

No rulemaking. Local governments are directed to adopt procedures to provide master building permit program guidelines and requirements for the submission and approval of materials and applications.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Business & Professions Subcommittee considered and adopted two amendments. These amendments:

- Provided that if a local building official licensed pursuant to ch. 468, Part XII, F.S., receives a written request from a general, building, or residential contractor licensed pursuant to ch. 489, F.S., requesting the creation of a master building permit program, the local government that employs the recipient building official shall create a residential master building permit program within 6 months of receipt of the written request; and
- Required the governing bodies of local governments to set fees pursuant to s. 553.80(7), F.S.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to residential master building permit programs; creating s. 553.794, F.S.; requiring local governments to create master building permit programs in certain circumstances to assist builders who expect to construct specific dwellings and townhomes on a repetitive basis; defining terms; providing requirements for submitting master building permit applications, general construction plans, and site-specific building permit applications; specifying documents that must be provided with the applications and plans; requiring master building permit applications to be approved or denied within a time certain; authorizing builders to submit master building permit numbers an unlimited number of times for specific dwellings and townhomes under certain conditions; providing duration of validity of approved master building permits; limiting revisions to approved master building permits; requiring the governing body of the applicable local government to provide a schedule of reasonable fees; providing for penalties under certain circumstances; authorizing local governments to adopt procedures to effectuate master building permit programs; providing an effective date.

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

Section 1. Section 553.794, Florida Statutes, is created to read:

553.794 Local government residential master building permit program.—

(1) MASTER BUILDING PERMIT PROGRAM CREATION.—If a local building code administrator licensed under part XII of chapter 468 receives a written request from a general, building, or residential contractor licensed under chapter 489 requesting the creation of a master building permit program, the applicable local government shall create such program within 6 months after receipt of the written request. The master building permit program is intended for use by builders who expect to construct identical single-family or two-family dwellings or townhomes on a repetitive basis. The master building permit program must be designed to achieve standardization and consistency during the permitting process and to reduce the time spent by local building departments during the site-specific building permit application process.

(2) DEFINITIONS.—For purposes of this section, the term:

(a) "Building orientation" means the placement of a building on a parcel of land with respect to weathering elements such as sun, wind, and rain and environmental factors like topography.

(b) "Elevation" means a construction drawing that is drawn

to scale and depicts the external face of the dwelling or townhome to be constructed.

(3) MASTER BUILDING PERMIT APPLICATION.—To obtain a master building permit, a builder must submit the following information to the local building department:

(a) A completed master building permit application.

(b) A general construction plan that complies with subsection (4).

(c) All general construction plan pages, documents, and drawings, including structural calculations if required by the local building department, signed and sealed by the design professional of record, along with a written acknowledgement from the design professional that the plan pages, documents, and drawings contained within the master building permit application will be used for future site-specific building permit applications. The design professional of record must be a licensed engineer or architect.

(d) Truss specifications, signed and sealed by the truss design engineer. The design professional of record must stamp and sign the truss layout sheet as reviewed and approved for each model design.

(e) Energy performance calculations for all building orientations. The calculations must consider worst-case scenarios for the relevant climate zone and must include component and cladding product approvals for all windows, pedestrian doors, garage doors, glazed opening impact protection

devices, truss anchors, roof underlayments, and roof coverings. The design professional of record must stamp and sign all product approvals as reviewed and approved for use with each model design.

(4) GENERAL CONSTRUCTION PLAN.—The general construction plan submitted as part of a master building permit application:

(a) May be submitted in electronic or paper format, as required by the local building department. A plan submitted in paper format must be a minimum of 36 inches by 48 inches or must comply with requirements of the local building department.

(b) Shall include left-hand and right-hand building orientations, including floor plans.

(c) Shall include a model design which may include up to four alternate exterior elevations, each containing the same living space footprint. The model design:

1. May not contain more than three alternate garage layouts, with each garage layout limited to accommodating no more than three cars.

2. Must include a foundation plan.

3. Must contain a truss layout sheet for each exterior elevation that is compatible with the roof plan.

(d) Must show typical wall sections from the foundation to the roof.

(e) Must contain a complete set of applicable electrical, plumbing, fuel gas, and mechanical plans.

(f) Must contain window, door, and glazed opening impact

protection device schedules, if applicable.

(g) Must meet any other requirements of the local building department.

(5) MASTER BUILDING PERMIT APPLICATION APPROVAL PROCESS.—

(a) A builder may submit to the local building department a master building permit application that contains the information identified in subsection (3). Once a master building permit application is approved as provided in this subsection, the local building department may only require the builder to submit the documents identified in subsection (7) for each site-specific building permit application for a single-family or two-family dwelling or townhome.

(b) The local building department shall review the general construction plan submitted as part of the master building permit application to determine compliance with existing building code requirements. If the general construction plan is approved and all documents provided pursuant to subsections (3) and (4) are verified, the builder shall receive a master building permit and permit number.

(c) The local building department must approve or deny a master building permit application within 120 days after the local building department receives a completed application, unless the applicant agrees to a longer period.

(d) A builder may submit the master building permit number an unlimited number of times, and such number applies to each subsequent dwelling or townhome to be built as long as the

builder uses the model design contained in the master building permit and meets the requirement of paragraph (e).

(e) An approved master building permit remains valid until the Florida Building Code is updated as provided in s. 553.73.

(6) REVISIONS TO MASTER BUILDING PERMIT.—Once a master building permit has been approved, a local building department:

(a) May not allow structural revisions to the master building.

(b) May allow limited nonstructural revisions to the master building so long as any revised floor plan is submitted to and approved by the local building department.

(c) May accept limited field revisions, as determined by the local building department.

(7) SITE-SPECIFIC BUILDING PERMIT APPLICATIONS.—Once a master building permit is approved, the builder is only required to submit the following information for each site-specific building permit application for a single-family or two-family dwelling or townhome:

(a) A completed site-specific building permit application that includes the master building permit number and identifies the model design to be built, including elevation and garage style.

(b) Three signed and sealed copies of the lot or parcel survey or site plan, as applicable. The survey or site plan must indicate the Federal Emergency Management Agency flood zone, base flood elevation, and minimum finished floor elevation and

must conform to local zoning regulations. Lot or parcel drainage indicators must be shown along with site elevations.

(c) An affidavit by the licensed engineer of record affirming that the master building permit is a true and correct copy of the master building permit on file with the local building department. The affidavit must reference the master building permit number. The licensed engineer of record must affirm that the master building permit will conform to soil conditions on the specific site.

(d) Complete mechanical drawings of the model design, including HVAC heating and cooling load calculations and equipment specifications.

(e) Specific information that was not included in the master building permit application addressing the HVAC system design, including duct design and heating and cooling load calculations.

(8) FEES.—The governing body of the applicable local government shall set fees pursuant to s. 553.80(7).

(9) PENALTIES.—In addition to any other penalty provided by law, a builder or design professional who willfully violates this section shall be fined $10,000 for each dwelling or townhome that is built under the master building permit that does not conform to the master building permit on file with the local building department.

(10) PROGRAM GUIDELINES.—Each local government may adopt procedures to provide master building permit program guidelines

and requirements for the submission and approval of materials and applications.

Section 2. This act shall take effect July 1, 2015.