Insurance & Banking Subcommittee

Wednesday, March 6, 2013
1:00 PM
404 HOB

Will Weatherford
Speaker

Bryan Nelson
Chair

The Florida House of Representatives

Regulatory Affairs Committee

Insurance & Banking Subcommittee

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AGENDA
Wednesday, March 6, 2013
404 HOB
1:00 p.m. – 3:30 p.m.

I. Call to Order

II. Roll Call

III. CS/HB 229 by *Rep. J. Rodriguez*
Land Trusts

IV. HB 509 by *Rep. Van Zant*
Financial Guaranty Insurance Corporations

V. HB 635 by *Rep. Edwards*
Insurance

VI. HB 665 by *Rep. La Rosa*
Licensure by Office of Financial Regulation

VII. HB 675 by *Rep. Ingram*
Health Insurance Marketing Materials

VIII. PCS for HB 573
Manufactured and Mobile Homes

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4873 Fax: (850) 413-0419

IX. PCS for HB 835
Citizens Property Insurance Corporation

X. PCB IBS 13-01
Citizens Property Insurance Corporation Clearinghouse Program

XI. PCB IBS 13-02
Public Records / Citizens Property Insurance Corporation Clearinghouse Program

XII. Adjournment

A bill to be entitled

An act relating to land trusts; creating s. 689.073, F.S., and transferring, renumbering, and amending s. 689.071(4) and (5), F.S.; providing requirements relating to vesting of ownership in a trustee; providing exclusion and applicability; amending s. 689.071, F.S.; revising and providing definitions; revising provisions relating to land trust transfers of real property and vesting of ownership in a trustee; prohibiting the operation of the statute of uses to execute a land trust or to vest the trust property under certain conditions; prohibiting the operation of the doctrine of merger to execute a land trust or to vest the trust property under certain conditions; providing conditions under which a beneficial interest is deemed real property; revising and providing rights, liabilities, and duties of land trust beneficiaries; authorizing certain beneficial ownership methods; providing for the perfection of security documents; providing that a trustee's legal and equitable title to the trust property is separate and distinct from the beneficiary's beneficial interest in the land trust and the trust property; prohibiting a lien, judgment, mortgage, security interest, or other encumbrance against one interest from automatically attaching to another interest; providing that the appointment of a guardian ad litem is not necessary in certain foreclosure litigation

affecting the title to trust property of a land trust; conforming provisions to changes made by the act; deleting provisions relating to the applicability of certain successor trustee provisions; providing notice requirements; providing for the determination of applicable law for certain trusts; providing for applicability relating to Uniform Commercial Code financing statements; providing requirements for recording effectiveness; amending s. 736.0102, F.S.; revising and providing scope of the Florida Trust Code; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Section 689.073, Florida Statutes, is created, and present subsections (4) and (5) of section 689.071, Florida Statutes, are transferred and renumbered as subsections (2) and (3), respectively, of section 689.073, Florida Statutes, and amended, to read:

689.073 Powers conferred on trustee in recorded instrument.—

(1) OWNERSHIP VESTS IN TRUSTEE.—Every conveyance, deed, mortgage, lease assignment, or other instrument heretofore or hereafter made, hereinafter referred to as the "recorded instrument," transferring any interest in real property, including, but not limited to, a leasehold or mortgagee interest, to any person or any corporation, bank, trust company,

or other entity duly formed under the laws of its state of qualification, which recorded instrument designates the person, corporation, bank, trust company, or other entity "trustee" or "as trustee" and confers on the trustee the power and authority to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument, is effective to vest, and is declared to have vested, in such trustee full power and authority as granted and provided in the recorded instrument to deal in and with such property, or interest therein or any part thereof, held in trust under the recorded instrument.

(2) ~~(4)~~ NO DUTY TO INQUIRE.—Any grantee, mortgagee, lessee, transferee, assignee, or person obtaining satisfactions or releases or otherwise in any way dealing with the trustee with respect to the real property or any interest in such property held in trust under the recorded instrument, as hereinabove provided for, is not obligated to inquire into the identification or status of any named or unnamed beneficiaries, or their heirs or assigns to whom a trustee may be accountable under the terms of the recorded instrument, or under any unrecorded separate declarations or agreements collateral to the recorded instrument, whether or not such declarations or agreements are referred to therein; or to inquire into or ascertain the authority of such trustee to act within and exercise the powers granted under the recorded instrument; or to inquire into the adequacy or disposition of any consideration, if any is paid or delivered to such trustee in connection with any interest so acquired from such trustee; or to inquire into

any of the provisions of any such unrecorded declarations or agreements.

(3) ~~(5)~~ BENEFICIARY CLAIMS.—All persons dealing with the trustee under the recorded instrument as hereinabove provided take any interest transferred by the trustee thereunder, within the power and authority as granted and provided therein, free and clear of the claims of all the named or unnamed beneficiaries of such trust, and of any unrecorded declarations or agreements collateral thereto whether referred to in the recorded instrument or not, and of anyone claiming by, through, or under such beneficiaries. However, this section does not prevent a beneficiary of any such unrecorded collateral declarations or agreements from enforcing the terms thereof against the trustee.

(4) EXCLUSION.—This section does not apply to any deed, mortgage, or other instrument to which s. 689.07 applies.

(5) APPLICABILITY.—The section applies without regard to whether any reference is made in the recorded instrument to the beneficiaries of such trust or to any separate collateral unrecorded declarations or agreements, without regard to the provisions of any unrecorded trust agreement or declaration of trust, and without regard to whether the trust is governed by s. 689.071 or chapter 736. This section applies both to recorded instruments that are recorded after the effective date of this act and to recorded instruments that were previously recorded and governed by similar provisions formerly contained in s. 689.071(3), and any such recorded instrument purporting to confer power and authority on a trustee under such formerly

effective provisions of s. 689.071(3) is valid and has the effect of vesting full power and authority in such trustee as provided in this section.

Section 2. Section 689.071, Florida Statutes, as amended by this act, is amended to read:

689.071 Florida Land Trust Act.—

(1) SHORT TITLE.—This section may be cited as the "Florida Land Trust Act."

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

(a) "Beneficial interest" means any interest, vested or contingent and regardless of how small or minimal such interest may be, in a land trust which is held by a beneficiary.

(b) "Beneficiary" means any person or entity having a beneficial interest in a land trust. A trustee may be a beneficiary of the land trust for which such trustee serves as trustee.

~~(c) "Holder of the power of direction" means any person or entity having the authority to direct the trustee to convey property or interests, execute a mortgage, distribute proceeds of a sale or financing, and execute documents incidental to the administration of a land trust.~~

(c) ~~(d)~~ "Land trust" means any express written agreement or arrangement by which a use, confidence, or trust is declared of any land, or of any charge upon land, under which the title to real property, including, but not limited to, a leasehold or mortgagee interest, ~~both legal and equitable,~~ is vested in a trustee by a recorded instrument that confers on the trustee the power and authority prescribed in s. 689.073(1) and under which

the trustee has no duties other than the following:

1. The duty to convey, sell, lease, mortgage, or deal with the trust property, or to exercise such other powers concerning the trust property as may be provided in the recorded instrument, in each case as directed by the beneficiaries or by the holder of the power of direction;

2. The duty to sell or dispose of the trust property at the termination of the trust;

3. The duty to perform ministerial and administrative functions delegated to the trustee in the trust agreement or by the beneficiaries or the holder of the power of direction; or

4. The duties required of a trustee under chapter 721, if the trust is a timeshare estate trust complying with s. 721.08(2)(c)4. or a vacation club trust complying with s. 721.53(1)(e);

However, the duties of the trustee of a land trust created before the effective date of this act may exceed the limited duties listed in this paragraph to the extent authorized in subsection (12) ~~subsection (3). The recorded instrument does not itself create an entity, regardless of whether the relationship among the beneficiaries and the trustee is deemed to be an entity under other applicable law~~.

(d) "Power of direction" means the authority of a person, as provided in the trust agreement, to direct the trustee of a land trust to convey property or interests, execute a lease or mortgage, distribute proceeds of a sale or financing, and execute documents incidental to the administration of a land

trust.

(e) "Recorded instrument" has the same meaning as provided in s. 689.073(1).

(f) "Trust agreement" means the written agreement governing a land trust or other trust, including any amendments.

(g) "Trust property" means any interest in real property, including, but not limited to, a leasehold or mortgagee interest, conveyed by a recorded instrument to a trustee of a land trust or other trust.

(h) ~~(e)~~ "Trustee" means the person ~~or entity~~ designated in a recorded instrument or trust agreement ~~trust instrument~~ to hold ~~legal and equitable~~ title to the trust property of a land trust or other trust.

(3) OWNERSHIP VESTS IN TRUSTEE.—Every recorded instrument ~~conveyance, deed, mortgage, lease assignment, or other instrument heretofore or hereafter made, hereinafter referred to as the "recorded instrument,"~~ transferring any interest in real property to the trustee of a land trust and conferring upon the trustee the power and authority prescribed in s. 689.073(1), ~~in this state, including, but not limited to, a leasehold or mortgagee interest, to any person or any corporation, bank, trust company, or other entity duly formed under the laws of its state of qualification, in which recorded instrument the person, corporation, bank, trust company, or other entity is designated "trustee" or "as trustee,"~~ whether or not reference is made in the recorded instrument to the beneficiaries of such land trust or to the trust agreement or any separate collateral unrecorded declarations or agreements, is effective to vest, and is hereby

declared to have vested, in such trustee both legal and equitable title, and full rights of ownership, over the trust ~~real~~ property or interest therein, with full power and authority as granted and provided in the recorded instrument to deal in and with the trust property or interest therein or any part thereof. The recorded instrument does not itself create an entity, regardless of whether the relationship among the beneficiaries and the trustee is deemed to be an entity under other applicable law~~; provided, the recorded instrument confers on the trustee the power and authority to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument~~.

(4) STATUTE OF USES INAPPLICABLE.—Section 689.09 and the statute of uses do not execute a land trust or vest the trust property in the beneficiary or beneficiaries of the land trust, notwithstanding any lack of duties on the part of the trustee or the otherwise passive nature of the land trust.

(5) DOCTRINE OF MERGER INAPPLICABLE.—The doctrine of merger does not extinguish a land trust or vest the trust property in the beneficiary or beneficiaries of the land trust, regardless of whether the trustee is the sole beneficiary of the land trust.

(6) PERSONAL PROPERTY.—In all cases in which the recorded instrument or the trust agreement, as hereinabove provided, contains a provision defining and declaring the interests of beneficiaries of a land trust ~~thereunder~~ to be personal property only, such provision is ~~shall be~~ controlling for all purposes

when such determination becomes an issue under the laws or in the courts of this state. If no such personal property designation appears in the recorded instrument or in the trust agreement, the interests of the land trust beneficiaries are real property.

(7) TRUSTEE LIABILITY.—In addition to any other limitation on personal liability existing pursuant to statute or otherwise, the provisions of ss. 736.08125 and 736.1013 apply to the trustee of a land trust created pursuant to this section.

(8) LAND TRUST BENEFICIARIES.—

(a) Except as provided in this section, the beneficiaries of a land trust are not liable, solely by being beneficiaries, under a judgment, decree, or order of court or in any other manner for a debt, obligation, or liability of the land trust.

~~(b)~~ Any beneficiary acting under the trust agreement of a land trust is not liable to the land trust's trustee or to any other beneficiary for the beneficiary's good faith reliance on the provisions of the trust agreement. A beneficiary's duties and liabilities under a land trust may be expanded or restricted in a trust agreement or beneficiary agreement.

(b)1. If provided in the recorded instrument, in the trust agreement, or in a beneficiary agreement:

a. A particular beneficiary may own the beneficial interest in a particular portion or parcel of the trust property of a land trust;

b. A particular person may be the holder of the power of direction with respect to the trustee's actions concerning a particular portion or parcel of the trust property of a land

trust; and

c. The beneficiaries may own specified proportions or percentages of the beneficial interest in the trust property or in particular portions or parcels of the trust property of a land trust.

2. Multiple beneficiaries may own a beneficial interest in a land trust as tenants in common, joint tenants with right of survivorship, or tenants by the entireties.

(c) If a beneficial interest in a land trust is determined to be personal property as provided in subsection (6), chapter 679 applies to the perfection of any security interest in that ~~a~~ beneficial interest ~~in a land trust~~. If a beneficial interest in a land trust is determined to be real property as provided in subsection (6), then to perfect a lien or security interest against that beneficial interest, the mortgage, deed of trust, security agreement, or other similar security document must be recorded in the public records of the county that is specified for such security documents in the recorded instrument or in a declaration of trust or memorandum of such declaration of trust recorded in the public records of the same county as the recorded instrument. If no county is so specified for recording such security documents, the proper county for recording such a security document against a beneficiary's interest in any trust property is the county where the trust property is located. The perfection of a lien or security interest in a beneficial interest in a land trust does not affect, attach to, or encumber the legal or equitable title of the trustee in the trust property and does not impair or diminish the authority of the

trustee under the recorded instrument, and parties dealing with the trustee are not required to inquire into the terms of the unrecorded trust agreement or any lien or security interest against a beneficial interest in the land trust.

(d) The trustee's legal and equitable title to the trust property of a land trust is separate and distinct from the beneficial interest of a beneficiary in the land trust and in the trust property. A lien, judgment, mortgage, security interest, or other encumbrance attaching to the trustee's legal and equitable title to the trust property of a land trust does not attach to the beneficial interest of any beneficiary; and any lien, judgment, mortgage, security interest, or other encumbrance against a beneficiary or beneficial interest does not attach to the legal or equitable title of the trustee to the trust property held under a land trust, unless the lien, judgment, mortgage, security interest, or other encumbrance by its terms or by operation of other law attaches to both the interest of the trustee and the interest of such beneficiary. ~~A beneficiary's duties and liabilities may be expanded or restricted in a trust agreement or beneficiary agreement.~~

(e) Any subsequent document appearing of record in which a beneficiary of a land trust transfers or encumbers any ~~the~~ beneficial interest in the land trust does not transfer or encumber the legal or equitable title of the trustee to the trust property and does not diminish or impair the authority of the trustee under the terms of the recorded instrument. Parties dealing with the trustee of a land trust are not required to inquire into the terms of the unrecorded trust agreement.

(f) The ~~An unrecorded~~ trust agreement ~~giving rise to a recorded instrument~~ for a land trust may provide that one or more persons ~~or entities~~ have the power to direct the trustee to convey property or interests, execute a mortgage, distribute proceeds of a sale or financing, and execute documents incidental to administration of the land trust. The power of direction, unless provided otherwise in the ~~land~~ trust agreement of the land trust, is conferred upon the holders of the power for the use and benefit of all holders of any beneficial interest in the land trust. In the absence of a provision in the ~~land~~ trust agreement of a land trust to the contrary, the power of direction shall be in accordance with the percentage of individual ownership. In exercising the power of direction, the holders of the power of direction are presumed to act in a fiduciary capacity for the benefit of all holders of any beneficial interest in the land trust, unless otherwise provided in the ~~land~~ trust agreement. A beneficial interest in a land trust is indefeasible, and the power of direction may not be exercised so as to alter, amend, revoke, terminate, defeat, or otherwise affect or change the enjoyment of any beneficial interest in a land trust.

(g) A land trust ~~relating to real estate~~ does not fail, and any use relating to the trust property ~~real estate~~ may not be defeated, because beneficiaries are not specified by name in the recorded instrument ~~deed of conveyance~~ to the trustee or because duties are not imposed upon the trustee. The power conferred by any recorded instrument ~~deed of conveyance~~ on a trustee of a land trust to sell, lease, encumber, or otherwise

dispose of property described in the recorded instrument ~~deed~~ is effective, and a person dealing with the trustee of a land trust is not required to inquire any further into the right of the trustee to act or the disposition of any proceeds.

(h) The principal residence of a beneficiary shall be entitled to the homestead tax exemption even if the homestead is held by a trustee in a land trust, provided the beneficiary qualifies for the homestead exemption under chapter 196.

(i) In a foreclosure against trust property or other litigation affecting the title to trust property of a land trust, the appointment of a guardian ad litem is not necessary to represent the interest of any beneficiary.

(9) SUCCESSOR TRUSTEE.—

~~(a) The provisions of s. 736.0705 relating to the resignation of a trustee do not apply to the appointment of a successor trustee under this section.~~

(a) ~~(b)~~ If the recorded instrument and the unrecorded ~~land~~ trust agreement are silent as to the appointment of a successor trustee of a land trust in the event of the death, incapacity, resignation, or termination due to dissolution of a ~~land~~ trustee or if a ~~land~~ trustee is unable to serve as trustee of a land trust, one or more persons ~~or entities~~ having the power of direction ~~of the land trust agreement~~ may appoint a successor trustee or trustees of the land trust by filing a declaration of appointment of a successor trustee or trustees in the public records of ~~office of the recorder of deeds in~~ the county in which the trust property is located. The declaration must be signed by a beneficiary or beneficiaries of the land trust and

by the ~~each~~ successor trustee or trustees, must be acknowledged in the manner provided for acknowledgment of deeds, and must contain:

1. The legal description of the trust property.

2. The name and address of the former trustee.

3. The name and address of the ~~each~~ successor trustee or trustees.

4. A statement that ~~each successor trustee has been appointed by~~ one or more persons ~~or entities~~ having the power of direction of the land trust appointed the successor trustee or trustees, together with an acceptance of appointment by the ~~each~~ successor trustee or trustees.

(b) ~~(c)~~ If the recorded instrument is silent as to the appointment of a successor trustee or trustees of a land trust but an unrecorded ~~land~~ trust agreement provides for the appointment of a successor trustee or trustees in the event of the death, incapacity, resignation, or termination due to dissolution of the ~~land~~ trustee~~,~~ of a land trust, then upon the appointment of any successor trustee pursuant to the terms of the unrecorded ~~land~~ trust agreement, the ~~each~~ successor trustee or trustees shall file a declaration of appointment of a successor trustee in the public records of ~~office of the recorder of deeds in~~ the county in which the trust property is located. The declaration must be signed by both the former trustee and the ~~each~~ successor trustee or trustees, must be acknowledged in the manner provided for acknowledgment of deeds, and must contain:

1. The legal description of the trust property.

2. The name and address of the former trustee.

3. The name and address of the successor trustee or trustees.

4. A statement of resignation by the former trustee and a statement of acceptance of appointment by the ~~each~~ successor trustee or trustees.

5. A statement that the ~~each~~ successor trustee or trustees were ~~was~~ duly appointed under the terms of the unrecorded ~~land~~ trust agreement.

If the appointment of any successor trustee of a land trust is due to the death or incapacity of the former trustee, the declaration need not be signed by the former trustee and a copy of the death certificate or a statement that the former trustee is incapacitated or unable to serve must be attached to or included in the declaration, as applicable.

(c) ~~(d)~~ If the recorded instrument provides for the appointment of any successor trustee of a land trust and any successor trustee is appointed in accordance with the recorded instrument, no additional declarations of appointment of any successor trustee are required under this section.

(d) ~~(c)~~ Each successor ~~land~~ trustee appointed with respect to a land trust is fully vested with all the estate, properties, rights, powers, trusts, duties, and obligations of the predecessor ~~land~~ trustee, except that any successor ~~land~~ trustee of a land trust is not under any duty to inquire into the acts or omissions of a predecessor trustee and is not liable for any act or failure to act of a predecessor trustee. A person dealing

with any successor trustee of a land trust pursuant to a declaration filed under this section is not obligated to inquire into or ascertain the authority of the successor trustee to act within or exercise the powers granted under the recorded instruments or any unrecorded trust agreement ~~declarations or agreements~~.

(e) ~~(f)~~ A ~~land~~ trust agreement may provide that the trustee of a land trust, when directed to do so by the holder of the power of direction or by the beneficiaries of the land trust or legal representatives of the beneficiaries, may convey the trust property directly to another trustee on behalf of the beneficiaries or to another representative named in such directive ~~others named by the beneficiaries~~.

(10) TRUSTEE AS CREDITOR.—

(a) If a debt is secured by a security interest or mortgage against ~~in~~ a beneficial interest in a land trust or by a mortgage on ~~land~~ trust property of a land trust, the validity or enforceability of the debt, security interest, or mortgage and the rights, remedies, powers, and duties of the creditor with respect to the debt or the security are not affected by the fact that the creditor and the trustee are the same person ~~or entity~~, and the creditor may extend credit, obtain any necessary security interest or mortgage, and acquire and deal with the property comprising the security as though the creditor were not the trustee.

(b) A trustee of a land trust does not breach a fiduciary duty to the beneficiaries, and it is not evidence of a breach of any fiduciary duty owed by the trustee to the beneficiaries for

a trustee to be or become a secured or unsecured creditor of the land trust, the beneficiary of the land trust, or a third party whose debt to such creditor is guaranteed by a beneficiary of the land trust.

(11) NOTICES TO TRUSTEE.—Any notice required to be given to a trustee of a land trust regarding trust property by a person who is not a party to the trust agreement must identify the trust property to which the notice pertains or include the name and date of the land trust to which the notice pertains, if such information is shown on the recorded instrument for such trust property.

(12) DETERMINATION OF APPLICABLE LAW.—Except as otherwise provided in this section, chapter 736 does not apply to a land trust governed by this section.

(a) A trust is not a land trust governed by this section if there is no recorded instrument that confers on the trustee the power and authority prescribed in s. 689.073(1).

(b) For a trust created before the effective date of this act:

1. The trust is a land trust governed by this section if a recorded instrument confers on the trustee the power and authority described in s. 689.073(1) and if:

a. The recorded instrument or the trust agreement expressly provides that the trust is a land trust; or

b. The intent of the parties that the trust be a land trust is discerned from the trust agreement or the recorded instrument;

without regard to whether the trustee's duties under the trust agreement are greater than those limited duties described in s. 689.071(2)(c).

2. The trust is not a land trust governed by this section if:

a. The recorded instrument or the trust agreement expressly provides that the trust is to be governed by chapter 736, or by any predecessor trust code or other trust law other than this section; or

b. The intent of the parties that the trust be governed by chapter 736, or by any predecessor trust code or other trust law other than this section, is discerned from the trust agreement or the recorded instrument;

without regard to whether the trustee's duties under the trust agreement are greater than those limited duties listed in s. 689.071(2)(c), and without consideration of any references in the trust agreement to provisions of chapter 736 made applicable to the trust by chapter 721, if the trust is a timeshare estate trust complying with s. 721.08(2)(c)4. or a vacation club trust complying with s. 721.53(1)(e).

3. Solely for the purpose of determining the law governing a trust under subparagraph 1. or subparagraph 2., the determination shall be made without consideration of any amendment to the trust agreement made on or after the effective date of this act, except as provided in paragraph (d).

4. If the determination of whether a trust is a land trust governed by this section cannot be made under either

subparagraph 1. or subparagraph 2., the determination shall be made under paragraph (c) as if the trust was created on or after the effective date of this act.

(c) If a recorded instrument confers on the trustee the power and authority described in s. 689.073(1) and the trust was created on or after the effective date of this act, the trust shall be determined to be a land trust governed by this section only if the trustee's duties under the trust agreement, including any amendment made on or after such date, are greater than those limited duties described in s. 689.071(2)(c).

(d) If the trust agreement for a land trust created before the effective date of this act is amended on or after such date to add to or increase the duties of the trustee beyond the duties provided in the trust agreement as of the effective date of this act, the trust shall remain a land trust governed by this section only if the additional or increased duties of the trustee implemented by the amendment are greater than those limited duties described in s. 689.071(2)(c).

(13) UNIFORM COMMERCIAL CODE TRANSITION RULE.—This section does not render ineffective any effective Uniform Commercial Code financing statement filed before July 1, 2014, to perfect a security interest in a beneficial interest in a land trust that is determined to be real property as provided in subsection (6), but such a financing statement ceases to be effective at the earlier of July 1, 2019, or the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed, and the filing of a Uniform Commercial Code continuation statement after July 1, 2014, does

not continue the effectiveness of such a financing statement. The recording of a mortgage, deed of trust, security agreement, or other similar security document against such a beneficial interest that is real property in the public records specified in subsection (8)(c) continues the effectiveness and priority of a financing statement filed against such a beneficial interest before July 1, 2014, if:

(a) The recording of the security document in that county is effective to perfect a lien on such beneficial interest under subsection (8)(c);

(b) The recorded security document identifies a financing statement filed before July 1, 2014, by indicating the office in which the financing statement was filed and providing the dates of filing and the file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(c) The recorded security document indicates that such financing statement filed before July 1, 2014, remains effective.

If no original security document bearing the debtor's signature is readily available for recording in the public records, a secured party may proceed under this subsection with such financing statement filed before July 1, 2014, by recording a copy of a security document verified by the secured party as being a true and correct copy of an original authenticated by the debtor. This subsection does not apply to the perfection of a security interest in any beneficial interest in a land trust

that is determined to be personal property under subsection (6).

(14) ~~(11)~~ REMEDIAL ACT.—This act is remedial in nature and shall be given a liberal interpretation to effectuate the intent and purposes hereinabove expressed.

(15) ~~(12)~~ EXCLUSION.—This act does not apply to any deed, mortgage, or other instrument to which s. 689.07 applies.

Section 3. Section 736.0102, Florida Statutes, is amended to read:

736.0102 Scope.—

(1) Except as otherwise provided in this section, this code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a law, judgment, or decree that requires the trust to be administered in the manner of an express trust.

(2) This code does not apply to constructive or resulting trusts; conservatorships; custodial arrangements pursuant to the Florida Uniform Transfers to Minors Act; business trusts providing for certificates to be issued to beneficiaries; common trust funds; ~~land trusts under s. 689.071, except to the extent provided in s. 689.071(7);~~ trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(3) This code does not apply to any land trust under s.

689.071, except to the extent provided in s. 689.071(7), s. 721.08(2)(c)4. or s. 721.53(1)(e). A trust governed at its creation by chapter 736, former chapter 737, or any prior trust statute superseded or replaced by any provision of former chapter 737, is not a land trust regardless of any amendment or modification of the trust, any change in the assets held in the trust, or any continuing trust resulting from the distribution or retention in further trust of assets from the trust.

Section 4. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with such date.

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 229 Land Trusts
SPONSOR(S): Civil Justice Subcommittee, Rodríguez
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 0 N, As CS	Ward	Bond
2) Insurance & Banking Subcommittee		Bauer GB	Cooper TC
3) Judiciary Committee			

SUMMARY ANALYSIS

A land trust is a form of ownership of real property in which a trustee holds legal title to the land and a beneficiary retains the power of direction over the trustee and thus retains the power to direct the trustee to sell or mortgage the real property. This bill:

- Better defines the difference between a land trust and a general trust, defining a land trust by the largely ministerial duties of the trustee.
- Codifies in the Florida Land Trust Act a number of land trust practices commonly used in Florida and Illinois and derived from judicial precedents or land trust treatises.
- Includes improvements based on the experience of Florida land trust practitioners that are intended to facilitate and encourage the use of land trusts in Florida real property transactions.

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

This bill has an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida law recognizes a number of types of trusts. In most instances a trustee is obligated to use a high standard of care in investing and handling assets. There is a duty to account to the beneficiary and the assets of a trust might change. In contrast, the trustee of a land trust has legal title to a single asset for purposes of marketability, makes almost no discretionary decisions, and takes direction from the beneficiary regarding that asset. Thus, there is a distinct body of law that applies to land trusts already established, which this bill seeks to codify and standardize in Florida.

Land trusts were developed first in Illinois, which remains the model for the standard arrangement, in order to create a vehicle for simple transfer of title to property owned by a number of people. As opposed to other types of trusts in Florida, the trustee is a place-holder for ease of transfer and marketability of title. The trustee takes direction from the beneficiaries, and therefore has few if any fiduciary duties, nor any duties to account to the beneficiaries beyond sales transactions. This distinction is significant since Florida also has enacted the Florida Trust Code,[1] which imposes significant duties upon other types of trustees which have no real relevance to the duties of the land trust trustee described in the Florida Land Trust Act.[2]

Section 689.071, F.S., was enacted in 1963 as the Florida Land Trust Act, to validate the use of Illinois land trusts in Florida and to confirm the marketability of real property titles derived through a land trustee. Accordingly, this statute has always focused primarily on the authority of the land trustee to convey good title to third parties if the prior deed to the land trustee granted to the trustee certain powers to deal with and dispose of the property, commonly referred to as "deed powers."[3] Acting primarily as a "title estoppel"[4] statute, s. 689.071, F.S., protects third party grantees, mortgagees and lessees who rely on the statutory authority of the trustee based on those recorded deed powers, without requiring them to inquire into the identity of the beneficiaries or the terms of the unrecorded trust agreement.

Although the words "land trust" appear in the section caption, the operation and effect of the deed powers provisions are not expressly limited to trusts based on the Illinois land trust model. Rather, the title provisions of the statute operate with respect to any recorded instrument to a trustee containing deed powers. As a result, it became a common practice in Florida to include s. 689.071, F.S., deed powers in conveyances to all trustees even if the trust was not intended to be a land trust in order to obtain the title estoppel benefits of the statute.

Over the years, s. 689.071, F.S., was amended to include other provisions pertaining to land trusts, such as expanding former s. 737.306, F.S., (limitation on personal liability of trustees) to cover land trustees in response to a case holding that those protections were not available to land trustees. In 2006 and 2007, s. 689.071, F.S., was expanded to add rudimentary governance provisions for land trusts and a procedure for appointing successor land trustees, and the expanded section was renamed the "Florida Land Trust Act." The definition of the term "land trust" by reference to inclusion of deed powers in the conveyance deed to the trustee appeared in the statute for the first time in 2007.

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[1] Chapter 736, F.S.
[2] Section 689.071, et seq., F.S.
[3] *See* s. 679.071(3), F.S.
[4] "Title estoppel" is the representation to a bona fide purchaser by a land trustee that he or she is fully able to transfer the legal title to the subject property, that the transferee is protected from title assaults by the beneficiaries of the trust, that the beneficiaries need not be disclosed, that the trust document need not be disclosed, and other assurances that the purchaser and others may safely deal with the trustee.

Effect of the Bill

A. General Overview

This bill clarifies the distinction between a land trust governed by s. 689.071, F.S., and other express trusts governed by the Florida Trust Code,[5] yet preserves the title estoppel benefits of the existing statute for any conveyance to a trustee containing deed powers. To accomplish this objective, this bill:

- Defines land trusts based on the functional scope of the land trustee's duties, although deed powers would remain an essential element of a Florida land trust; and
- Relocates all the title estoppel provisions of s. 689.071, F.S., to a newly created section[6] which will remain equally applicable to any conveyance containing deed powers[7] to a trustee of any trust.

A transitional provision makes the new functional land trust definition apply only to trusts created on or after the effective date of the bill, and a trust existing before the effective date is classified as a land trust based on the intentions of the parties as expressed in or discerned from the existing trust agreement.

The relocated title estoppel provisions in the new section apply to any real property conveyed to a trustee at any time by an instrument containing deed powers, regardless of whether the trust is a land trust or not. By separating the title estoppel statute from the land trust statute in this way, this bill does not change the results intended by the parties to any trust agreement existing on the date that the bill becomes effective.

In addition to transferring the title estoppel provisions to a new section,[8] the bill also codifies in amended s. 689.071, F.S., a number of land trust practices and principles commonly used in Florida and Illinois and derived from judicial precedents or land trust treatises.

B. Point by Point Analysis

1. Title Estoppel Provisions - Creation of s. 689.073, F.S.

The marketability of title, and sometimes anonymity of the beneficial owner, are the primary reasons for a land trust. Anyone who deals with the trustee must be assured that the trustee has legal ownership and full authority to deal with the property, and must also be assured that any claims between the land trustee and the beneficiaries will not affect the transaction or the grantee.

Currently these assurance provisions, called "title estoppel" provisions are set out in ss. 689.071(3), (4), and (5), F.S. The bill relocates the title estoppel provisions to a new section entitled, "Powers conferred on trustee in recorded instrument,"[9] and creates a new subsection, s. 689.073, F.S.

In moving the provisions to the new statute,[10] changes were made to:

- Remove language regarding the vesting of both "legal and equitable title" in the trustee;

[5] Chapter 736, F.S.
[6] Section 689.073, F.S., is created.
[7] "Deed powers," as used in this analysis refer to the language of s. 689.071(3), F.S, which is, "to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument."
[8] Section 689.073, F.S.
[9] Section 1 of the bill relocates and slightly revises ss. 689.071(3), (4) and (5), F.S., moving them to a new s. 689.073, F.S. Subsections (4) and (5) are simply relocated as-is and renumbered s. 689.073(2) and (3), F.S.
[10] As revised, s. 689.071(3), F.S., becomes s. 689.073(1), F.S.

- Remove the reference to real property "in this state;"[11]
- Relocate to s. 689.073(5), F.S., certain existing criteria for applicability; and
- Simplify the remaining language.

The bill continues to vest in a trustee full power and authority to deal with the property as provided in the deed powers granted in the deed. The exclusion for instruments governed by s. 689.07, F.S. [existing s. 689.071(12), F.S.], is relocated to s. 689.073(4), F.S., changing only the words "this act" to "this section."

Currently, the title estoppel provisions are operative whether or not the conveyance deed refers to the beneficiaries or any unrecorded trust agreement.[12] The bill creates s. 689.073(5), F.S., which:

- Carries forward the provision that conveyance by the trustee is free of claims of beneficiaries;
- Expressly provides that the title estoppel provisions work regardless of the provisions of any unrecorded trust agreement and regardless of whether the trust is a land trust or an express trust; and
- Clarifies that the title estoppel section applies both to deeds recorded after the effective date of the proposed amendments and to deeds recorded under the present statute.[13]

This provision confirms that the relocation of the title estoppel section is not intended to change the legal effect of any previous conveyances under the present statute, and for good measure all such previous conveyances are validated as vesting the trustee with the requisite deed powers.

2. Definition of "Land Trust" - Revisions to s. 689.071(2), F.S.

The bill revises the remaining provisions of s. 689.071, F.S., which were not moved to the new section.[14] The revised definition of "land trust"[15] still requires a conveyance to a trustee by a recorded instrument containing deed powers, but beginning with the effective date of the bill this definition focuses on the key functional distinction between a land trust and other express trusts: that a land trustee functions almost entirely as the agent of the beneficiaries or the person holding the power of direction under the trust agreement, whereas a trustee who is subject to the Florida Trust Code in ch. 736, F.S., has more extensive fiduciary duties and responsibilities to the trust beneficiaries, along with more extensive potential liability if the trustee fails to perform the trustee's discretionary duties prudently.

A land trustee has a fiduciary relationship to the land trust beneficiaries and the persons holding the "power of direction" over the actions of the land trustee, just as any agent is bound as a fiduciary to the principal for whom the agent acts.[16] However, in practice, land trustees are rarely delegated discretionary duties under a land trust agreement, beyond ministerial and administrative matters.[17] This lack of duties is a logical parallel to the exemption that land trustees enjoy from ch. 736, F.S., responsibilities and liabilities. The bill makes clear this practical distinction in the revised definition of a land trust[18] by stating that the trustee has limited duties as set out in the statute.

For trusts created on or after the effective date of the bill, the revised definition will limit the duties of a trustee of a "land trust" to the following:

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[11] This provision confirms that out-of-state lands may be held in Florida land trust regimes.
[12] Section 689.071(3), F.S.
[13] Id.
[14] Section 689.073, F.S.
[15] Section 689.071(2)(c), F.S.
[16] *Raborn v. Menotte*, 974 So.2d 328 (Fla. 2008).
[17] "The trustee is a mere vessel of title." *Brigham v. Brigham*, 11 So.3d 374 (Fla. 3d DCA 2009).
[18] Section 689.071(2)(c), F.S.

- The duty to exercise the trustee's deed powers as directed by the beneficiary or by the holder of the power of direction (i.e., this is the agent's fiduciary duty to follow the principal's directions);
- The duty to dispose of the trust property at the termination of the trust (i.e., the classic "active" duty that historically saved Illinois land trusts from the statute of uses);
- The duty to perform ministerial and administrative functions delegated to the trustee; and
- The duties required of certain timeshare trustees by ch. 721, F.S.[19]

If the trustee's duties exceed the foregoing limited duties and the trust is created after the effective date of the proposed amendment, then the trust will not be treated as a land trust and will not be excluded from the operation of ch. 736, F.S.[20]

Because the title estoppel provisions of the statute operate on any conveyance containing deed powers, the classification of the trust as a "land trust" will have no effect on the title to any real property held by the trustee.

3. Other Definitions - Revisions to s. 689.071(2), F.S.

Besides revising the definition of "land trust," section 2 of the bill adds and clarifies some other definitions of lesser significance in s. 689.071(2), F.S:

- The definition for "holder of the power of direction" was revised and shortened to "power of direction" because "holder of" is not used consistently in the statute;

- The phrase "person or entity" is shortened to "person" in numerous places (beginning with the definition of "beneficiary") because the statutory definition of "person" includes entities;

- New definitions are created for some basic trust concepts, such as "trust agreement," "trust property" and "recorded instrument" (the latter being a cross-reference to the relocated deed powers provision now found in s. 689.073(1), F.S.); and

- "Trustee" is redefined so that the term will work in the "switchbox" provision to mean the trustee of a land trust or the trustee of another trust. For this reason, numerous references to "trustee" in revised s. 689.071, F.S., will be changed to "trustee of a land trust" where that meaning is intended.

4. Vesting of "Legal and Equitable Title" Revisions to s. 689.071(3), F.S.

The bill continues the existing statutory statement that a land trustee is vested with both legal and equitable title to the trust property. This vesting of "legal and equitable title" provision is a land trust characteristic imported from Illinois, and therefore it does not appear in the relocated title estoppel provisions in s. 689.073, F.S., that universally apply to any type of trust with deed powers. Although the "legal and equitable" language has been excised from a number of other subsections of s. 689.071, F.S., to avoid potential circularity, s. 689.071(3), F.S., will continue to contain the operative language regarding vesting of legal and equitable title in the land trustee.

The bill makes technical revisions to s. 689.071(3), F.S:

- Because new s. 689.073, F.S., now defines the requirements for a "recorded instrument" containing deed powers, the bill does not repeat this in the new s. 689.071(3), F.S;
- The statement that the recorded instrument does not by itself create an entity has been relocated to the end of s. 689.071(3), F.S., instead of appearing in the definition of "land trust."

[19] Section 721.08, F.S., provides that time share accommodations may be placed into a trust. This will be addressed in detail below, in regard to the effect of this statute.
[20] Chapter 736, F.S., is the Florida Trust Code and applies to express trusts.

- Other housekeeping edits to s. 689.071(3), F.S., concern the consistent use of defined terms such as "land trust," "trust agreement" and "trust property."

5. Statute of Uses and Doctrine of Merger - Revisions to ss. 689.071(4) and (5), F.S.

When s. 689.071, F.S., was first enacted for the purpose of validating the use of Illinois land trusts in Florida, one commonly assumed result was that land trusts would not be executed as "passive trusts" or "dry trusts" by the statute of uses, which is codified in Florida in s. 689.09, F.S. The bill makes that result explicit with respect to a land trust, overriding not only s. 689.09, F.S., but also the common-law statute of uses.

New subsection 689.071(5), F.S., overrides the doctrine of merger with respect to a land trust, so that a land trust will not be extinguished if the trustee is the sole beneficiary. Former s. 689.071(5), F.S., is one of the title estoppel provisions relocated verbatim to s. 689.073, F.S.

6. Personal Property Option-- Revisions to s. 689.071(6), F.S.

Currently, section 689.071, F.S., provides that the recorded instrument may define and declare the interests of land trust beneficiaries as personal property under Florida law.[21] The bill clarifies that this designation of personal property must be made in the recorded instrument or the trust agreement, or it will be considered real property.

Subsection 689.071(6), F.S., is changed in one regard: the optional personal property declaration can be made in the recorded instrument or in the trust agreement. This change is consistent with the relocation of the title estoppel provisions to new s. 689.073, F.S., which governs title matters that depend on the contents of the recorded instrument. Whether the beneficial interests are real property or personal property does not affect the nature of the title vested in the trustee or the ability of third parties to acquire good title to the trust property from the trustee in accordance with the powers contained in the recorded instrument.

As noted above, revised s. 689.071(6), F.S., contains edits for the consistent usage of defined terms such as "land trust" and "trust agreement."

7. Beneficiary Provisions-- Revisions to s. 689.071(8), F.S.

Currently, customary provisions in land trusts are based upon treatises by Illinois land trust authorities, particularly *Kenoe on Land Trusts*.[22] The bill revises 689.071(8), F.S., in a number of respects to codify these land trust practices.

Revised s. 689.071(8)(a), F.S., is a non-substantive combination of former paragraphs (a), (b) and (d), intended to consolidate similar provisions and make paragraph numbers (b) and (d) available for other new provisions. The bill adds s. 689.071(8)(b), F.S., as a statutory endorsement of flexible beneficial ownership techniques described in the Kenoe treatise. The purpose of including these provisions directly in the Land Trust Act is to increase public awareness that such techniques are available without making reference to the treatise, thereby promoting the usage of land trusts in Florida generally.

The bill revises s. 689.071(8)(c), F.S., to reconcile the Land Trust Act with the U.C.C. Article 9 exclusion of interests in real property.[23] Case law[24] holds that a beneficial interest in a land trust is a general intangible within the scope of the Florida Uniform Commercial Code, and this result is codified in the present version of s. 689.071(8)(c), F.S., which provides that U.C.C. Article 9 governs the

[21] Except of course for the stamp tax provision in s. 201.02(4), F.S.
[22] The author, Henry W. Kenoe, wrote a number of treatises on land trusts which are now out of print.
[23] These provisions are found in s. 679.1091(4)(k), F.S.
[24] *In re Cowsert*, 14 B.R. 335 (Bankr.S.D.Fla. 1981).

perfection of a security interest in a beneficial interest in a land trust. However, if the beneficial interest is defined as real property under s. 689.071(6), F.S., then there is a possible contradiction between the Land Trust Act (which says Article 9 applies to beneficial interests) and the U.C.C. (which says Article 9 excludes real property interests).

Currently, ch. 721, F.S. (the Florida Vacation Plan and Timeshare Act), authorizes the creation and marketing of timeshare estates through trusts.[25] Because timeshare estates are defined as real property,[26] the purchasers of Florida timeshare estates typically finance their purchase with a mortgage recorded against the timeshare estate. However, if the timeshare estate is created as a beneficial interest in a timeshare trust, a land trust is created. As a result, two different statutes prescribe two different methods of perfection, causing possible confusion in the mechanics of perfecting the lien.[27]

The bill revises s. 689.071(8)(c), F.S., to resolve this apparent contradiction by clarifying that the U.C.C. governs perfection if the beneficial interest in a land trust is declared to be personal property (as was the case in *Cowsert*), but that a mortgage instrument recorded in the real estate records is the proper method of perfection if the beneficial interest in a land trust is declared to be real property. In the latter case, the proper county for recording the mortgage may be specified in the recorded instrument or in a declaration of trust or memorandum that is recorded in the same county as the recorded instrument; otherwise the location of the trust property determines the proper county for recording the mortgage. The bill provides a transition rule[28] to provide for the continuation of perfection for any U.C.C. financing statement that may have been filed before the effective date of this clarification. It is an abbreviated version of the transition rules that were included in Revised U.C.C. Article 9 in 2001.

The bill revises the existing last sentence of s. 689.071(8)(c), F.S., to state more clearly that a lien or security interest perfected against a beneficial interest in a land trust does not affect in any way the legal or equitable title of the land trustee to the trust property. New s. 689.071(8)(d), F.S., makes explicit a concept that is inherent in a beneficiary's ability to encumber a beneficial interest as described in existing s. 689.071(8)(c), F.S: the trustee's legal and equitable title to the trust property is separate and distinct from the beneficiary's beneficial interest in the land trust and the trust property. A lien, judgment, mortgage, security interest or other encumbrance against one interest does not automatically attach to the other interest. Section 689.071(8)(e), F.S., is also revised to clarify this same point: documents recorded by a beneficiary to transfer or encumber a beneficial interest do not affect the legal and equitable title of the trustee or the deed powers granted to the trustee in the recorded instrument.

Sections 689.071(8)(f) and (g), F.S., as well as other parts of s. 689.071(8), F.S., have been edited for consistent usage of the defined terms "land trust," "recorded instrument," "trust agreement," and "trust property."

The bill adds s. 689.071(8)(i), F.S., which is intended to end the reported occasional practice by some judges of appointing a guardian ad litem to represent the interests of land trust beneficiaries in a foreclosure or other litigation affecting title to the trust property. Because a land trustee is vested with both legal and equitable title to the trust property, joinder of the land trustee in the action is sufficient without incurring the additional expense of a guardian ad litem.

8. Successor Trustee Provisions-- Revisions to s. 689.071(9), F.S.

Most of the revisions to s. 689.071(9), F.S., are non-substantive edits for consistent usage of defined terms and modernization of language (e.g., replacing "office of the recorder of deeds" with "public

[25] *See* s. 721.08(2)(c)4, F.S.
[26] *See* s. 721.05(34), F.S.
[27] The conflict exists between UCC Article 9 and the Land Trust Act.
[28] *See* the newly created s. 689.071(13), F.S.

records"). The bill deletes s. 689.071(9)(a), F.S., because the "switchbox" provision in subsection 689.071(12), F.S., globally addresses the inapplicability of chapter 736, F.S., to land trusts.

The current text of s. 689.071(9), F.S., uses the expression "each successor trustee" to avoid the longer phrase "the successor trustee or trustees." Unfortunately, it is possible to misread the shorter phrase to mean "each and every successor trustee" in a series of successors.[29] The longer expression is clearer and replaces the shorter one.

Current s. 689.071(9)(f), F.S., provides that the beneficiaries may direct the land trustee to convey the trust property to another trustee. The bill changes this paragraph to provide that this direction to convey could also come from the person holding the power of direction.

9. Trustee as Creditor-- Revisions to s. 689.071(10), F.S.

The bill revises s. 689.071(10)(a), F.S., to include a conforming reference to a mortgage (as well as a security interest) against a beneficial interest in a land trust. Other non-substantive edits include consistent usage of defined terms and the deletion of "or entity" after "person."

10. Notices to Trustee Provisions-- Revisions to s. 689.071(11), F.S.

The bill adds a new subsection to assure that the right parties receive any third-party notices concerning property held in a land trust by requiring that notice to a land trustee include certain identifying information if it appears in the recorded instrument.

11. "Switchbox" Provision; Timeshare Trusts-- Revisions to s. 689.071(12), F.S.

The revised "land trust" definition discussed above contains a cross-reference to a transition rule that appears in s. 689.071(12), F.S., sometimes referred to below as the "switchbox" provision. This transition rule exempts existing land trusts from the new duties-based test in s. 689.071(2)(c), F.S; rather, an existing trust is a land trust (or not) based on the intentions expressed in (or discernible from) the existing trust agreement. As a practical matter, the overwhelming majority of existing land trusts sharply curtail the discretionary duties of the land trustee, such that those existing trusts would meet the new duties-based "land trust" definition even if it were applied to them retroactively. But because there are some land trust agreements that vest the land trustee with greater discretion, the switchbox provision does not apply the duties-based test to any existing land trust agreement that says the trust is a "land trust" or clearly was intended to be a land trust. In this way, existing obvious land trusts are "grandfathered" into the land trust statute.

There are two necessary exceptions to the switchbox provision: (1) if it is not obvious from reading the existing trust agreement that the parties intended to create a land trust, then the duties-based test applies; and (2) if an existing land trust agreement is amended to add or expand duties of the trustee, then the duties-based test is applied only to the added or expanded duties that were not found in the trust agreement before the effective date of the amended act. In either case, if the trustee has or adds too many duties beyond those in the land trust definition, the result is that the trustee becomes subject to the tougher trustee standards of ch. 736, F.S., but there is no effect on the title to the trust property.

As noted above in the discussion of timeshare interests, current statutes[30] authorize the use of trusts for the creation and marketing of timeshare estates; and specify similar requirements for using trusts for multi-site vacation clubs.[31] These statutes specify that certain provisions of the Florida Trust Code

[29] E.g., existing paragraph s. 689.071(9)(c), F.S., requires that "each successor trustee shall file a declaration of appointment."
[30] Chapter 721, F.S.
[31] Section 721.53(1)(e), F.S.

govern the liability of the trustees of such qualifying trusts,[32]and these provisions are usually recited in the ch. 721, F.S., trust agreements. If such an existing timeshare trust were created as a land trust, however, then the trust agreement would contain provisions stating that the trust is a land trust (making it a land trust[33] but would also refer to governance by these specific provisions of ch. 736, F.S.

Accordingly, the "switchbox" provision[34] expressly ignores these references to ch.736, F.S., in the trust agreement of a trust qualifying as a timeshare estate trust[35]or a vacation club trust.[36]

Similar considerations under ch. 721, F.S., led to the inclusion in the revised s. 689.071(2)(c), F.S., a list of limited duties for land trustees. Most of the recited ch. 736, F.S., provisions that apply to timeshare trusts[37]pertain to limitations on the liability of the trustee, but one of them[38] also imposes duties on a trustee. In addition, ch. 721, F.S., also directly imposes certain duties on the trustee of a timeshare estate trust or a vacation club trust, although arguably those duties fall into the ministerial and administrative category. Further, it is conceivable that ch. 721, F.S., might be amended in the future to impose other duties on timeshare trustees. To preserve the utility of land trusts as a structure for organizing timeshare estate trusts and vacation club trusts qualifying under ch. 721, F.S., revised s. 689.071(2)(c), F.S., simply includes in the list of limited land trustee duties any duties that are imposed on the trustee under ch. 721, F.S.

12. Florida Trust Code - Scope Provision-- Revisions to s. 736.0102, F.S.

The bill includes a conforming amendment to s. 736.0102, F.S., of the Florida Trust Code. The bill divides this section into two logical subsections, and a third subsection is added to address the exclusion of land trusts from the Florida Trust Code. New s. 736.0102(3), F.S., provides that the Trust Code does not apply to land trusts under s. 689.071, F.S., except to the extent provided in subsection 689.071(7), F.S., of the Land Trust Act and in the two provisions of ch. 721, F.S., that apply parts of ch. 736, F.S., to timeshare trusts.

The bill adds s. 736.0102(3), F.S., to provide that a Trust Code trust remains a Trust Code trust (and does not become a land trust) regardless of any amendment or change in asset composition or utilization of a sub trust.

B. SECTION DIRECTORY:

Section 1 creates s. 689.073, F.S., from portions of s. 689.071, F.S., regarding powers conferred on the trustee of a land trust.

Section 2 amends s. 689.071, F.S., regarding land trusts, definitions and law.

Section 3 amends s. 736.0102, F.S., a portion of the trust code, to exclude land trusts.

Section 4 is a direction regarding the effective date.

Section 5 provides that this bill is effective upon becoming law.

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[32] *See* specifically, ss. 736.08125, 736.08163, 736.1013 and 736.1015, F.S.
[33] *See* s. 689.071(14)(b)1, F.S.
[34] *See* s. 689.071(12)(b), F.S.
[35] *See* s. 721.08(2)(c)4, F.S.
[36] *See* s. 721.53(1)(e), F.S.
[37] *See* ch. 721, F.S.
[38] See s. 736.08163, F.S., concerning environmental matters.

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 bill does not appear to have any impact on state expenditures.

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:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made grammatical and stylistic changes without changing the meaning of the bill. The amendment also amended effective dates for any needed transition from recorded instruments that identify a security interest in a land trust as a personal interest under the Uniform Commercial Code to a mortgage. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to financial guaranty insurance corporations; amending ss. 627.971 and 627.972, F.S.; providing that such corporations include licensed mutual insurers as well as licensed stock insurers; providing an effective date.

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

Section 1. Subsection (6) of section 627.971, Florida Statutes, is amended to read:

627.971 Definitions.—As used in this part:

(6) "Financial guaranty insurance corporation" means a stock or mutual insurer licensed to transact financial guaranty insurance business in this state.

Section 2. Subsection (1) of section 627.972, Florida Statutes, is amended to read:

627.972 Organization; financial requirements.—

(1) A financial guaranty insurance corporation must be organized and licensed in the manner prescribed in this code for stock or mutual property and casualty insurers except that:

(a) A corporation organized to transact financial guaranty insurance may, subject to ~~the provisions of~~ this code, be licensed to transact:

1. Residual value insurance, as defined by s. 624.6081;

2. Surety insurance, as defined by s. 624.606;

3. Credit insurance, as defined by s. 624.605(1)(i); and

4. Mortgage guaranty insurance as defined in s. 635.011

if~~, provided that~~ the provisions of chapter 635 are met.

(b)1. Prior to the issuance of a license, a corporation must submit to the office for approval~~,~~ a plan of operation detailing:

a. The types and projected diversification of guaranties to be issued;

b. The underwriting procedures to be followed;

c. The managerial oversight methods;

d. The investment policies; and

e. Any other matters prescribed by the office.~~;~~

2. An insurer that ~~which~~ is writing only the types of insurance allowed under this part on July 1, 1988, and otherwise meets the requirements of this part, is exempt from ~~the requirements of~~ this paragraph.

(c) An insurer transacting financial guaranty insurance is subject to all provisions of this code which ~~that~~ are applicable to property and casualty insurers to the extent that those provisions are not inconsistent with this part.

(d) The investments of an insurer transacting financial guaranty insurance in any entity insured by the corporation may not exceed 2 percent of its admitted assets as of the end of the prior calendar year.

(e) An insurer transacting financial guaranty insurance may only assume those lines of insurance for which it is licensed to write direct business.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 509 Financial Guaranty Insurance Corporations
SPONSOR(S): Van Zant
TIED BILLS: **IDEN./SIM. BILLS:** SB 356; HB 635

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Bauer	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Financial guaranty insurance is regulated by the Office of Insurance Regulation and involves surety bonds, insurance policies, indemnity contracts, or any similar guaranty, under which loss is payable upon proof of occurrence of financial loss to an insured claimant, obligee, or indemnitee as a result of:

1. The failure of an obligor on a debt instrument or other monetary obligation, including common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract, to make principal, interest, premium, dividend, or purchase price payments when due, if the failure is the result of a financial default or insolvency, whether such obligation is incurred directly or as guarantor by or on behalf of another obligor who also defaulted;
2. Changes in the levels of interest rates or the differential in interest rates between various markets or products;
3. Changes in the rate of exchange of currency;
4. Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or
5. Other events which the office determines are substantially similar to any of the foregoing.

In order to qualify for a certificate of authority to transact financial guaranty insurance in Florida, the insurer must meet capital, surplus, and contingency reserve requirements, in addition to other provisions in the Insurance Code relating to property and casualty insurance. Currently, only stock property and casualty insurers are permitted to become financial guaranty insurance corporations, but not mutual insurers. Stock insurers divide their capital into shares and pay dividends to investors, and mutual insurers are cooperatives without permanent capital and pay dividends to policyholders (members).

HB 509 amends provisions of Part XX, Chapter 627, Florida Statutes, to permit mutual property and casualty insurers to become licensed financial guaranty insurance corporations

The bill does not have a fiscal impact on state and local governments, and may have a positive private sector by bringing more insurers into the state.

The bill provides that the act shall become effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation: Background

In order to transact insurance in this state, the Florida Insurance Code ("Code") states that a certificate of authority is required.[1] To qualify for and hold authority to transact insurance in this state, an insurer must be in compliance with the Code and its charter powers, and must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer.[2] In addition to applying for a certificate of authority to transact a particular kind of insurance, domestic insurers must apply to the Office of Insurance Regulation ("OIR") for a permit to form as either a stock or mutual insurer, and have its articles of incorporation approved by the Department of State.[3]

The distinction between stock and mutual insurers is governed by Part I, Chapter 628, F.S.:

- *Stock insurers* are defined as "incorporated insurers with its capital divided into shares and owned by its stockholders," and pay dividends to their stockholders.[4]
- *Mutual insurers*, on the other hand, are "incorporated insurers without permanent capital stock, the governing body of which is elected in accordance with this part," and pay dividends to their policyholders, who are members of the insurer.[5]

In other words, stock insurers are investor-owned, while mutual insurers are owned by their policyholders.

Mutual insurers may apply to demutualize to become a stock insurer (and vice versa), subject to the OIR's approval.[6] In order to obtain regulatory approval of a mutual insurer's plan to demutualize, the plan must be equitable to the members and be approved by at least three-fourths of the insurer's members. In addition, the members must be given the opportunity to receive stock or cash for their ownership rights in the mutual organization.[7] According to the National Association of Mutual Insurance Companies, demutualization is a complex, expensive, and lengthy process. While demutualization can provide additional capital, cash distributions to policyholders can deplete surplus.[8]

Financial Guaranty Insurance

Part XX of Chapter 627, Florida Statutes, was enacted in 1988[9] to set forth requirements for transacting financial guaranty insurance. *Financial guaranty insurance* means a surety bond, insurance policy, an indemnity contract issued by an insurer, or any similar guaranty, under which loss is payable upon proof of occurrence of financial loss to an insured claimant, obligee, or indemnitee as a result of:

1. The failure of an obligor on a debt instrument or other monetary obligation, including common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract, to make principal, interest, premium, dividend, or purchase price payments when due, if the failure is the result of a financial default or insolvency, whether such obligation is incurred directly or as guarantor by or on behalf of another obligor who also defaulted;

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[1] Section 624.401, F.S. The Florida Insurance Code consists of chs. 624, 632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[2] Section 624.404, F.S.
[3] Section 628.051, F.S. Domestic insurers are formed under Florida law. Insurers formed under other states' laws (foreign insurers) are entitled to become domestic insurers by complying with the same legal requirements for licensing and organization and by designating a principal place of business inside Florida upon the OIR's approval. See ss. 624.06 and 628.520, F.S.
[4] Sections 628.021and 628.371, F.S.
[5] Sections 628.031, 628.381 and 628.301, F.S.
[6] Sections 628.431 and 628.441, F.S.
[7] Section 628.441(2), F.S.
[8] NAMIC, Focus on the Future Options for the Mutual Insurance Company: https://www.namic.org/policy/futureMutualAlts.asp (last accessed February 25, 2013).
[9] Chapter 88-87, Laws of Florida.

2. Changes in the levels of interest rates or the differential in interest rates between various markets or products;
3. Changes in the rate of exchange of currency;
4. Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or
5. Other events which the office determines are substantially similar to any of the foregoing.[10]

Part XX of Chapter 627, F.S. requires an insurer to obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact financial guaranty insurance in Florida. The insurer must meet an initial $50 million surplus requirement at the date of initial licensing, and must maintain minimum capital, surplus, contingency reserve requirements and be within loss exposure limitations. Financial guaranty insurance corporations are subject to all provisions of the Florida Insurance Code applicable to property and casualty insurance, to the extent they are not inconsistent with Part XX, Ch. 627, F.S.[11] According to OIR's company search website, there are currently 50 insurers with financial guaranty insurance as an authorized line of business.[12]

By definition and by express requirement under current law, only stock property and casualty insurers are eligible to become financial guaranty insurance corporations, but not mutual insurers.[13]

The Financial Guaranty Insurance Guidelines, adopted by the National Association of Insurance Commissioners in 2008, does not make a distinction between stock and mutual insurers for purposes of transacting financial guaranty insurance.[14]

Effect of House Bill 509

The bill amends ss. 627.971 and 627.972, F.S. to allow mutual property and casualty insurers to become financial guaranty insurance corporations, subject to meeting the requirements of the Code. The bill does not change any existing requirements to become a stock or mutual insurer.

The bill also makes technical changes for purposes of clarity, and provides that the act shall take effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.971, F.S. relating to definitions, to include mutual insurers in the definition of financial guaranty insurance corporation.

Section 2. Amends s. 627.972, F.S., providing that financial guaranty insurance corporations include mutual property and casualty insurers as well as stock property and casualty insurers.

Section 3. Provides that the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[10] Section 627.971(1)(a), F.S. See subsection (1)(b) for exclusions from the definition of "financial guaranty insurance."
[11] Section 627.972(1)(c), F.S.
[12] OIR Company Directory, http://www.floir.com/CompanySearch, last accessed February 20, 2013.
[13] Sections 627.971(6) and 627.972(1), F.S.
[14] GDL-1626, at NAIC Model Laws, Regulations, and Guidelines: http://www.naic.org/store_model_laws.htm (last accessed February 20, 2013).

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 allow mutual insurers to become licensed as financial guaranty insurance corporations.

D. FISCAL COMMENTS:

The OIR has indicated that the bill will not have a fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The OIR has indicated its support for the bill in the interest of bringing new insuring entities into Florida.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to insurance; amending s. 215.555, F.S.; deleting the future repeal of an exemption of medical malpractice insurance premiums from emergency assessments imposed to fund certain obligations, costs, and expenses of the Florida Hurricane Catastrophe Fund and the Florida Hurricane Catastrophe Fund Finance Corporation; amending s. 316.646, F.S.; authorizing a uniform motor vehicle proof-of-insurance card to be in an electronic format; authorizing the Department of Highway Safety and Motor Vehicles to adopt rules; amending s. 320.02, F.S.; authorizing insurers to furnish uniform proof-of-purchase cards in an electronic format for use by insureds to prove the purchase of required insurance coverage when registering a motor vehicle; amending s. 624.413, F.S.; revising a specified time period applicable to a certified examination that must be filed by a foreign or alien insurer applying for a certificate of authority; amending s. 626.321, F.S.; providing that a limited license to offer motor vehicle rental insurance issued to a business that rents or leases motor vehicles encompasses the employees of such business; amending s. 626.601, F.S.; revising terminology relating to investigations conducted by the Department of Financial Services and the Office of Insurance Regulation with respect to individuals and entities involved in the insurance industry; amending

s. 626.9914, F.S.; conforming a provision to changes made by the act; amending s. 626.99175, F.S.; deleting provisions requiring registration of life expectancy providers; deleting procedures, qualifying criteria, and violations with respect thereto; amending ss. 626.9919, 626.992, 626.9925, and 626.99278, F.S.; conforming provisions to changes made by the act; amending s. 627.062, F.S.; requiring the Office of Insurance Regulation to use certain models or averages of certain models to estimate hurricane losses when determining whether the rates in a rate filing are excessive, inadequate, or unfairly discriminatory; amending s. 627.0628, F.S.; increasing the length of time during which an insurer must adhere to certain findings made by the Commission on Hurricane Loss Projection Methodology with respect to certain methods, principles, standards, models, or output ranges used in a rate finding; providing that the requirement to adhere to such findings does not limit an insurer from averaging together the results of certain models or output ranges under specified circumstances; amending s. 627.072, F.S.; authorizing retrospective rating plans relating to workers' compensation and employer's liability insurance to allow negotiations between certain employers and insurers with respect to rating factors used to calculate premiums; amending s. 627.281, F.S.; conforming a cross-reference; repealing s. 627.3519,

F.S., relating to an annual report from the Financial Services Commission to the Legislature of aggregate net probable maximum losses, financing options, and potential assessments of the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation; amending s. 627.4133, F.S.; deleting provisions that require extended periods of prior notice with respect to the nonrenewal, cancellation, or termination of certain insurance policies; prohibiting the cancellation of certain policies that have been in effect for a specified amount of time except under certain circumstances; amending s. 627.4137, F.S.; adding licensed company adjusters to the list of persons who may respond to a claimant's written request for information relating to liability insurance coverage; amending s. 627.421, F.S.; authorizing the electronic delivery of certain insurance documents; amending s. 627.43141, F.S.; authorizing a notice of change in policy terms to be sent in a separate mailing to an insured under certain circumstances; requiring an insurer to provide such notice to insured's insurance agent; amending s. 627.7015, F.S.; revising the rulemaking authority of the department with respect to qualifications and specified types of penalties covered under the property insurance mediation program; creating s. 627.70151, F.S.; providing criteria for an insurer or policyholder to challenge the impartiality of a loss

appraisal umpire for purposes of disqualifying such umpire; amending s. 627.706, F.S.; authorizing the inclusion of deductibles applicable to sinkhole losses in property insurance policies covering nonresidential buildings; revising the definition of the term "neutral evaluator"; amending s. 627.7074, F.S.; requiring the department to adopt rules relating to certification of neutral evaluators; amending s. 627.736, F.S.; revising the time period for applicability of certain Medicare fee schedules or payment limitations; amending s. 627.745, F.S.; revising qualifications for approval as a mediator by the department; providing grounds for the department to deny an application or revoke approval of a mediator or neutral evaluator; authorizing the department to adopt rules; amending s. 627.952, F.S.; deleting a fidelity bond requirement applicable to certain nonresident general lines agents who are licensed as surplus lines agents in another state; amending ss. 627.971 and 627.972, F.S.; including licensed mutual insurers in financial guaranty insurance corporations; amending s. 628.901, F.S.; revising the definition of the term "qualifying reinsurer parent company" to delete obsolete language; amending s. 628.909, F.S.; providing for applicability of certain provisions of the Insurance Code to specified captive insurers; amending s. 634.406, F.S.; revising criteria authorizing premiums of certain

service warranty associations to exceed their specified net assets limitations; revising requirements relating to contractual liability policies that insure warranty associations; providing an effective date.

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

Section 1. Paragraph (b) of subsection (6) of section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(6) REVENUE BONDS.—

(b) Emergency assessments—

1. If the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct premiums for all property and casualty lines of business in this state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums. As used in this subsection, the term "property and casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers by s. 624.424

and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program. The assessment shall be specified as a percentage of direct written premium and is subject to annual adjustments by the board in order to meet debt obligations. The same percentage shall apply to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

2. A premium is not subject to an annual assessment under this paragraph in excess of 6 percent of premium with respect to obligations arising out of losses attributable to any one contract year, and a premium is not subject to an aggregate annual assessment under this paragraph in excess of 10 percent of premium. An annual assessment under this paragraph shall continue as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

3. Emergency assessments shall be collected from policyholders. Emergency assessments shall be remitted by insurers as a percentage of direct written premium for the preceding calendar quarter as specified in the order from the Office of Insurance Regulation. The office shall verify the accurate and timely collection and remittance of emergency assessments and shall report the information to the board in a

form and at a time specified by the board. Each insurer collecting assessments shall provide the information with respect to premiums and collections as may be required by the office to enable the office to monitor and verify compliance with this paragraph.

4. With respect to assessments of surplus lines premiums, each surplus lines agent shall collect the assessment at the same time as the agent collects the surplus lines tax required by s. 626.932, and the surplus lines agent shall remit the assessment to the Florida Surplus Lines Service Office created by s. 626.921 at the same time as the agent remits the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessment on each insured procuring coverage and filing under s. 626.938 shall be remitted by the insured to the Florida Surplus Lines Service Office at the time the insured pays the surplus lines tax to the Florida Surplus Lines Service Office. The Florida Surplus Lines Service Office shall remit the collected assessments to the fund or corporation as provided in the order levied by the Office of Insurance Regulation. The Florida Surplus Lines Service Office shall verify the proper application of such emergency assessments and shall assist the board in ensuring the accurate and timely collection and remittance of assessments as required by the board. The Florida Surplus Lines Service Office shall annually calculate the aggregate written premium on property and casualty business, other than workers' compensation and medical malpractice, procured through surplus lines agents and insureds procuring coverage and filing under s. 626.938 and shall report the

information to the board in a form and at a time specified by the board.

5. Any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not exceeding the amount of unused assessment authority from a previous contract year or years, plus an additional 4 percent provided that the assessments in the aggregate do not exceed the limits specified in subparagraph 2.

6. The assessments otherwise payable to the corporation under this paragraph shall be paid to the fund unless and until the Office of Insurance Regulation and the Florida Surplus Lines Service Office have received from the corporation and the fund a notice, which shall be conclusive and upon which they may rely without further inquiry, that the corporation has issued bonds and the fund has no agreements in effect with local governments under paragraph (c). On or after the date of the notice and until the date the corporation has no bonds outstanding, the fund shall have no right, title, or interest in or to the assessments, except as provided in the fund's agreement with the corporation.

7. Emergency assessments are not premium and are not

subject to the premium tax, to the surplus lines tax, to any fees, or to any commissions. An insurer is liable for all assessments that it collects and must treat the failure of an insured to pay an assessment as a failure to pay the premium. An insurer is not liable for uncollectible assessments.

8. When an insurer is required to return an unearned premium, it shall also return any collected assessment attributable to the unearned premium. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances that are payable to the fund or corporation, but the insurer is not entitled to a refund.

9. When a surplus lines insured or an insured who has procured coverage and filed under s. 626.938 is entitled to the return of an unearned premium, the Florida Surplus Lines Service Office shall provide a credit or refund to the agent or such insured for the collected assessment attributable to the unearned premium before ~~prior to~~ remitting the emergency assessment collected to the fund or corporation.

~~10. The exemption of medical malpractice insurance premiums from emergency assessments under this paragraph is repealed May 31, 2013, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2013.~~

Section 2. Subsection (1) of section 316.646, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

316.646 Security required; proof of security and display

thereof; dismissal of cases.—

(1) Any person required by s. 324.022 to maintain property damage liability security, required by s. 324.023 to maintain liability security for bodily injury or death, or required by s. 627.733 to maintain personal injury protection security on a motor vehicle shall have in his or her immediate possession at all times while operating such motor vehicle proper proof of maintenance of the required security. Such proof shall be a uniform proof-of-insurance card, in paper or electronic format, in a form prescribed by the department, a valid insurance policy, an insurance policy binder, a certificate of insurance, or such other proof as may be prescribed by the department.

(5) The department may adopt rules to implement this section.

Section 3. Paragraph (a) of subsection (5) of section 320.02, Florida Statutes, is amended to read:

320.02 Registration required; application for registration; forms.—

(5)(a) Proof that personal injury protection benefits have been purchased when required under s. 627.733, that property damage liability coverage has been purchased as required under s. 324.022, that bodily injury or death coverage has been purchased if required under s. 324.023, and that combined bodily liability insurance and property damage liability insurance have been purchased when required under s. 627.7415 shall be provided in the manner prescribed by law by the applicant at the time of application for registration of any motor vehicle that is subject to such requirements. The issuing agent shall refuse to

issue registration if such proof of purchase is not provided. Insurers shall furnish uniform proof-of-purchase cards, in paper or electronic format, in a form prescribed by the department and shall include the name of the insured's insurance company, the coverage identification number, and the make, year, and vehicle identification number of the vehicle insured. The card shall contain a statement notifying the applicant of the penalty specified in s. 316.646(4). The card or insurance policy, insurance policy binder, or certificate of insurance or a photocopy of any of these; an affidavit containing the name of the insured's insurance company, the insured's policy number, and the make and year of the vehicle insured; or such other proof as may be prescribed by the department shall constitute sufficient proof of purchase. If an affidavit is provided as proof, it shall be in substantially the following form:

Under penalty of perjury, I ...(Name of insured)... do hereby certify that I have ...(Personal Injury Protection, Property Damage Liability, and, when required, Bodily Injury Liability)... Insurance currently in effect with ...(Name of insurance company)... under ...(policy number)... covering ...(make, year, and vehicle identification number of vehicle).... ...(Signature of Insured)...

Such affidavit shall include the following warning:

WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS SUBJECT TO PROSECUTION.

When an application is made through a licensed motor vehicle

dealer as required in s. 319.23, the original or a photostatic copy of such card, insurance policy, insurance policy binder, or certificate of insurance or the original affidavit from the insured shall be forwarded by the dealer to the tax collector of the county or the Department of Highway Safety and Motor Vehicles for processing. By executing the aforesaid affidavit, no licensed motor vehicle dealer will be liable in damages for any inadequacy, insufficiency, or falsification of any statement contained therein. A card shall also indicate the existence of any bodily injury liability insurance voluntarily purchased.

Section 4. Paragraph (f) of subsection (1) of section 624.413, Florida Statutes, is amended to read:

624.413 Application for certificate of authority.—

(1) To apply for a certificate of authority, an insurer shall file its application therefor with the office, upon a form adopted by the commission and furnished by the office, showing its name; location of its home office and, if an alien insurer, its principal office in the United States; kinds of insurance to be transacted; state or country of domicile; and such additional information as the commission reasonably requires, together with the following documents:

(f) If a foreign or alien insurer, a copy of the report of the most recent examination of the insurer certified by the public official having supervision of insurance in its state of domicile or of entry into the United States. The end of the most recent year covered by the examination must be within the 5-year ~~3-year~~ period preceding the date of application. In lieu of the certified examination report, the office may accept an audited

certified public accountant's report prepared on a basis consistent with the insurance laws of the insurer's state of domicile, certified by the public official having supervision of insurance in its state of domicile or of entry into the United States.

Section 5. Paragraph (d) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(d) Motor vehicle rental insurance.—

1. License covering only insurance of the risks set forth in this paragraph when offered, sold, or solicited with and incidental to the rental or lease of a motor vehicle and which applies only to the motor vehicle that is the subject of the lease or rental agreement and the occupants of the motor vehicle:

a. Excess motor vehicle liability insurance providing coverage in excess of the standard liability limits provided by the lessor in the lessor's lease to a person renting or leasing a motor vehicle from the licensee's employer for liability arising in connection with the negligent operation of the leased or rented motor vehicle.

b. Insurance covering the liability of the lessee to the lessor for damage to the leased or rented motor vehicle.

c. Insurance covering the loss of or damage to baggage,

personal effects, or travel documents of a person renting or leasing a motor vehicle.

d. Insurance covering accidental personal injury or death of the lessee and any passenger who is riding or driving with the covered lessee in the leased or rented motor vehicle.

2. Insurance under a motor vehicle rental insurance license may be issued only if the lease or rental agreement is for no more than 60 days, the lessee is not provided coverage for more than 60 consecutive days per lease period, and the lessee is given written notice that his or her personal insurance policy providing coverage on an owned motor vehicle may provide coverage of such risks and that the purchase of the insurance is not required in connection with the lease or rental of a motor vehicle. If the lease is extended beyond 60 days, the coverage may be extended one time only for a period not to exceed an additional 60 days. Insurance may be provided to the lessee as an additional insured on a policy issued to the licensee's employer.

3. The license may be issued only to the full-time salaried employee of a licensed general lines agent or to a business entity that offers motor vehicles for rent or lease if insurance sales activities authorized by the license are in connection with and incidental to the rental or lease of a motor vehicle.

a. A license issued to a business entity that offers motor vehicles for rent or lease encompasses each office, branch office, <u>employee,</u> or place of business making use of the entity's business name in order to offer, solicit, and sell

insurance pursuant to this paragraph.

b. The application for licensure must list the name, address, and phone number for each office, branch office, or place of business that is to be covered by the license. The licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee must notify the department within 30 days after closing or terminating an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.

c. A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees.

Section 6. Section 626.601, Florida Statutes, is amended to read:

626.601 Improper conduct; inquiry; fingerprinting.—

(1) The department or office may, upon its own motion or upon a written complaint signed by any interested person and filed with the department or office, inquire into any alleged improper conduct of any licensed, approved, or certified insurance agency, agent, adjuster, service representative, managing general agent, customer representative, title insurance agent, title insurance agency, mediator, neutral evaluator, continuing education course provider, instructor, school official, or monitor group under this code. The department or office may thereafter initiate an investigation of any such

individual or entity ~~licensee~~ if it has reasonable cause to believe that the individual or entity ~~licensee~~ has violated any provision of the insurance code. During the course of its investigation, the department or office shall contact the individual or entity ~~licensee~~ being investigated unless it determines that contacting such individual or entity ~~person~~ could jeopardize the successful completion of the investigation or cause injury to the public.

(2) In the investigation by the department or office of the alleged misconduct, the individual or entity ~~licensee~~ shall, whenever so required by the department or office, cause the individual's or entity's ~~his or her~~ books and records to be open for inspection for the purpose of such inquiries.

(3) The complaints against any individual or entity ~~licensee~~ may be informally alleged and need not be in any such language as is necessary to charge a crime on an indictment or information.

(4) The expense for any hearings or investigations under this law, as well as the fees and mileage of witnesses, may be paid out of the appropriate fund.

(5) If the department or office, after investigation, has reason to believe that an individual or entity ~~a licensee~~ may have been found guilty of or pleaded guilty or nolo contendere to a felony or a crime related to the business of insurance in this or any other state or jurisdiction, the department or office may require the individual ~~licensee~~ to file with the department or office a complete set of his or her fingerprints, which shall be accompanied by the fingerprint processing fee set

forth in s. 624.501. The fingerprints shall be taken by an authorized law enforcement agency or other department-approved entity.

(6) The complaint and any information obtained pursuant to the investigation by the department or office are confidential and are exempt from ~~the provisions of~~ s. 119.07, unless the department or office files a formal administrative complaint, emergency order, or consent order against the individual or entity ~~licensee~~. ~~Nothing in~~ This subsection does not ~~shall be construed to~~ prevent the department or office from disclosing the complaint or such information as it deems necessary to conduct the investigation, to update the complainant as to the status and outcome of the complaint, or to share such information with any law enforcement agency.

Section 7. Paragraphs (i), (j), and (k) of subsection (1) of section 626.9914, Florida Statutes, are amended to read:

626.9914 Suspension, revocation, denial, or nonrenewal of viatical settlement provider license; grounds; administrative fine.—

(1) The office shall suspend, revoke, deny, or refuse to renew the license of any viatical settlement provider if the office finds that the licensee:

(i) Employs any person who materially influences the licensee's conduct and who fails to meet the requirements of this act; or

(j) No longer meets the requirements for initial licensure~~; or~~

~~(k) Obtains or utilizes life expectancies from life~~

~~expectancy providers who are not registered with the office pursuant to this act~~.

Section 8. Section 626.99175, Florida Statutes, is amended to read:

626.99175 Life expectancy providers~~; registration required; denial, suspension, revocation~~.—

~~(1) After July 1, 2006, a person may not perform the functions of a life expectancy provider without first having registered as a life expectancy provider, except as provided in subsection (6).~~

~~(2) Application for registration as a life expectancy provider must be made to the office by the applicant on a form prescribed by the office, under oath and signed by the applicant. The application must be accompanied by a fee of $500.~~

~~(3) A completed application shall be evidenced on a form and in a manner prescribed by the office and shall require the registered life expectancy provider to update such information and renew such registration as required by the office.~~

~~(4) In the application, the applicant must provide all of the following:~~

~~(a) The full name, age, residence address, and business address, and all occupations engaged in by the applicant during the 5 years preceding the date of the application.~~

~~(b) A copy of the applicant's basic organizational documents, if any, including the articles of incorporation, articles of association, partnership agreement, trust agreement, or other similar documents, together with all amendments to such documents.~~

~~(c) Copies of all bylaws, rules, regulations, or similar documents regulating the conduct of the applicant's internal affairs.~~

~~(d) A list showing the name, business and residence addresses, and official position of each individual who is responsible for conduct of the applicant's affairs, including, but not limited to, any member of the board of directors, board of trustees, executive committee, or other governing board or committee and any other person or entity owning or having the right to acquire 10 percent or more of the voting securities of the applicant, and any person performing life expectancies by the applicant.~~

~~(e) A sworn biographical statement on forms supplied by the office with respect to each individual identified under paragraph (d), including whether such individual has been associated with any other life expectancy provider or has performed any services for a person in the business of viatical settlements.~~

~~(f) A sworn statement of any criminal and civil actions pending or final against the registrant or any individual identified under paragraph (d).~~

~~(g) A general description of the following policies and procedures covering all life expectancy determination criteria and protocols:~~

~~1. The plan or plans of policies and procedures used to determine life expectancies.~~

~~2. A description of the training, including continuing training, of the individuals who determine life expectancies.~~

~~3. A description of how the life expectancy provider updates its manuals, underwriting guides, mortality tables, and other reference works and ensures that the provider bases its determination of life expectancies on current data.~~

~~(h) A plan for assuring confidentiality of personal, medical, and financial information in accordance with federal and state laws.~~

~~(i) An anti-fraud plan as required pursuant to s. 626.99278.~~

~~(j) A list of any agreements, contracts, or any other arrangement to provide life expectancies to a viatical settlement provider, viatical settlement broker, or any other person in the business of viatical settlements in connection with any viatical settlement contract or viatical settlement investment.~~

~~(5) As part of the application, and on or before March 1 of every 3 years thereafter, a registered life expectancy provider shall file with the office an audit of all life expectancies by the life expectancy provider for the 5 calendar years immediately preceding such audit, which audit shall be conducted and certified by a nationally recognized actuarial firm and shall include only the following:~~

~~(a) A mortality table.~~

~~(b) The number, percentage, and an actual-to-expected ratio of life expectancies in the following categories: life expectancies of less than 24 months, life expectancies of 25 months to 48 months, life expectancies of 49 months to 72 months, life expectancies of 73 months to 108 months, life~~

~~expectancies of 109 months to 144 months, life expectancies of 145 months to 180 months, and life expectancies of more than 180 months.~~

~~(6)~~ A ~~No~~ viatical settlement broker, viatical settlement provider, or insurance agent in the business of viatical settlements in this state may not ~~shall~~ directly or indirectly own or be an officer, director, or employee of a life expectancy provider.

~~(7) Each registered life expectancy provider shall provide the office, as applicable, at least 30 days' advance notice of any change in the registrant's name, residence address, principal business address, or mailing address.~~

~~(8) A person required to be registered by this section shall for 5 years retain copies of all life expectancies and supporting documents and medical records unless those personal medical records are subject to different retention or destruction requirements of a federal or state personal health information law.~~

~~(9) An application for life expectancy provider registration shall be approved or denied by the commissioner within 60 calendar days following receipt of a completed application by the commissioner. The office shall notify the applicant that the application is complete. A completed application that is not approved or denied in 60 calendar days following its receipt shall be deemed approved.~~

~~(10) The office may, in its discretion, deny the application for a life expectancy provider registration or suspend, revoke, or refuse to renew or continue the registration~~

~~of a life expectancy provider if the office finds:~~

~~(a) Any cause for which registration could have been refused had it then existed and been known to the office;~~

~~(b) A violation of any provision of this code or of any other law applicable to the applicant or registrant;~~

~~(c) A violation of any lawful order or rule of the department, commission, or office; or~~

~~(d) That the applicant or registrant:~~

~~1. Has been found guilty of or pled guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country;~~

~~2. Has knowingly and willfully aided, assisted, procured, advised, or abetted any person in the violation of a provision of the insurance code or any order or rule of the department, commission, or office;~~

~~3. Has knowingly and with intent to defraud, provided a life expectancy that does not conform to an applicant's or registrant's general practice;~~

~~4. Does not have a good business reputation or does not have experience, training, or education that qualifies the applicant or registrant to conduct the business of a life expectancy provider; or~~

~~5. Has demonstrated a lack of fitness or trustworthiness to engage in the business of issuing life expectancies.~~

~~(11) The office may, in lieu of or in addition to any suspension or revocation, assess an administrative fine not to exceed $2,500 for each nonwillful violation or $10,000 for each~~

~~willful violation by a registered life expectancy provider. The office may also place a registered life expectancy provider on probation for a period not to exceed 2 years.~~

~~(12) It is a violation of this section for a person to represent, orally or in writing, that a life expectancy provider's registration pursuant to this act is in any way a recommendation or approval of the entity or means that the qualifications or abilities have in any way been approved of.~~

~~(13) The Financial Services Commission may, by rule, require that all or part of the statements or filings required under this section be submitted by electronic means and in a computer-readable format specified by the commission.~~

Section 9. Section 626.9919, Florida Statutes, is amended to read:

626.9919 Notice of change of licensee ~~or registrant's~~ address or name.—Each viatical settlement provider licensee ~~and registered life expectancy provider~~ must provide the office at least 30 days' advance notice of any change in the licensee's ~~or registrant's~~ name, residence address, principal business address, or mailing address.

Section 10. Section 626.992, Florida Statutes, is amended to read:

626.992 Use of licensed viatical settlement providers and~~,~~ viatical settlement brokers~~, and registered life expectancy providers required~~.—

(1) A licensed viatical settlement provider may not use any person to perform the functions of a viatical settlement broker as defined in this act unless such person holds a

current, valid life agent license and has appointed himself or herself in conformance with this chapter.

(2) A viatical settlement broker may not use any person to perform the functions of a viatical settlement provider as defined in this act unless such person holds a current, valid license as a viatical settlement provider.

~~(3) After July 1, 2006, a person may not operate as a life expectancy provider unless such person is registered as a life expectancy provider pursuant to this act.~~

~~(4) After July 1, 2006, a viatical settlement provider, viatical settlement broker, or any other person in the business of viatical settlements may not obtain life expectancies from a person who is not registered as a life expectancy provider pursuant to this act.~~

Section 11. Section 626.9925, Florida Statutes, is amended to read:

626.9925 Rules.—The commission may adopt rules to administer this act, including rules establishing standards for evaluating advertising by licensees; rules providing for the collection of data, for disclosures to viators, and for the reporting of life expectancies~~, and for the registration of life expectancy providers~~; and rules defining terms used in this act and prescribing recordkeeping requirements relating to executed viatical settlement contracts.

Section 12. Section 626.99278, Florida Statutes, is amended to read:

626.99278 Viatical provider anti-fraud plan.—Every licensed viatical settlement provider ~~and registered life~~

~~expectancy provider~~ must adopt an anti-fraud plan and file it with the Division of Insurance Fraud of the department. Each anti-fraud plan shall include:

(1) A description of the procedures for detecting and investigating possible fraudulent acts and procedures for resolving material inconsistencies between medical records and insurance applications.

(2) A description of the procedures for the mandatory reporting of possible fraudulent insurance acts and prohibited practices set forth in s. 626.99275 to the Division of Insurance Fraud of the department.

(3) A description of the plan for anti-fraud education and training of its underwriters or other personnel.

(4) A written description or chart outlining the organizational arrangement of the anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts and for the investigation of unresolved material inconsistencies between medical records and insurance applications.

(5) For viatical settlement providers, a description of the procedures used to perform initial and continuing review of the accuracy of life expectancies used in connection with a viatical settlement contract or viatical settlement investment.

Section 13. Paragraph (b) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(b) Upon receiving a rate filing, the office shall review

the filing to determine if a rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the following factors:

1. Past and prospective loss experience within and without this state.

2. Past and prospective expenses.

3. The degree of competition among insurers for the risk insured.

4. Investment income reasonably expected by the insurer, consistent with the insurer's investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the amount expected on unearned premium reserves and loss reserves. The commission may adopt rules using reasonable techniques of actuarial science and economics to specify the manner in which insurers calculate investment income attributable to classes of insurance written in this state and the manner in which investment income is used to calculate insurance rates. Such manner must contemplate allowances for an underwriting profit factor and full consideration of investment income which produce a reasonable rate of return; however, investment income from invested surplus may not be considered.

5. The reasonableness of the judgment reflected in the filing.

6. Dividends, savings, or unabsorbed premium deposits allowed or returned to Florida policyholders, members, or subscribers.

7. The adequacy of loss reserves.

8. The cost of reinsurance. The office may not disapprove a rate as excessive solely due to the insurer having obtained catastrophic reinsurance to cover the insurer's estimated 250-year probable maximum loss or any lower level of loss.

9. Trend factors, including trends in actual losses per insured unit for the insurer making the filing.

10. Conflagration and catastrophe hazards, if applicable.

11. Projected hurricane losses, if applicable, which must be estimated using a model or method, or models or an average or weighted average of models, independently found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in s. 627.0628.

12. A reasonable margin for underwriting profit and contingencies.

13. The cost of medical services, if applicable.

14. Other relevant factors that affect the frequency or severity of claims or expenses.

Section 14. Paragraph (d) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

(d) With respect to a rate filing under s. 627.062, an insurer shall employ and may not modify or adjust actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable in determining

hurricane loss factors for use in a rate filing under s. 627.062. An insurer shall employ and may not modify or adjust models found by the commission to be accurate or reliable in determining probable maximum loss levels pursuant to paragraph (b) with respect to a rate filing under s. 627.062 made more than 120 ~~60~~ days after the commission has made such findings. This paragraph does not prohibit an insurer from averaging together the model results or output ranges or using weighted averages for the purposes of a rate filing under s. 627.062.

Section 15. Subsections (2), (3), and (4) of section 627.072, Florida Statutes, are renumbered as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to that section to read:

627.072 Making and use of rates.—

(2) A retrospective rating plan may contain a provision that allows negotiation between the employer and the insurer to determine the retrospective rating factors used to calculate the premium for employers having exposure in more than one state and an estimated annual countrywide standard premium of $1 million or more for workers' compensation.

Section 16. Subsection (2) of section 627.281, Florida Statutes, is amended to read:

627.281 Appeal from rating organization; workers' compensation and employer's liability insurance filings.—

(2) If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in s.

627.072(3) ~~627.072(2)~~, from the system of expense provisions included in a filing made by the rating organization, the office shall, if it grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the office shall apply the applicable standards set forth in ss. 627.062 and 627.072.

Section 17. Section 627.3519, Florida Statutes, is repealed.

Section 18. Paragraph (b) of subsection (2) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, apartment building, or other policy covering a residential structure or its contents:

(b) The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 100 days before the effective date of the nonrenewal, cancellation, or termination. ~~However, the insurer shall give at least 100 days' written notice, or written notice by June 1, whichever is earlier, for any nonrenewal, cancellation, or termination that would be effective between June 1 and November 30.~~ The notice must include the reason or reasons for the nonrenewal, cancellation, or termination, except that:

~~1. The insurer shall give the first-named insured written~~

~~notice of nonrenewal, cancellation, or termination at least 120 days prior to the effective date of the nonrenewal, cancellation, or termination for a first-named insured whose residential structure has been insured by that insurer or an affiliated insurer for at least a 5-year period immediately prior to the date of the written notice.~~

1.~~2.~~ If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due her or his obligations for ~~in connection with~~ the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail.~~, and~~ If the contract is void, any premium received by the insurer from a third party must be refunded to that party in full.

2.~~3.~~ If ~~such~~ cancellation or termination occurs during the first 90 days the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must be given unless there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

3. After the policy has been in effect for 90 days, the policy may not be canceled by the insurer unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy or if the cancellation is for all insureds under such policies for a given class of insureds. This subparagraph does not apply to individually rated risks having a policy term of less than 90 days.

~~4. The requirement for providing written notice by June 1 of any nonrenewal that would be effective between June 1 and November 30 does not apply to the following situations, but the insurer remains subject to the requirement to provide such notice at least 100 days before the effective date of nonrenewal:~~

~~a. A policy that is nonrenewed due to a revision in the coverage for sinkhole losses and catastrophic ground cover collapse pursuant to s. 627.706.~~

4.~~b.~~ A policy that is nonrenewed by Citizens Property

Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement coverage to the policyholder is exempt from the notice requirements of paragraph (a) and this paragraph. In such cases, the corporation must give the named insured written notice of nonrenewal at least 45 days before the effective date of the nonrenewal.

~~After the policy has been in effect for 90 days, the policy may not be canceled by the insurer unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy or if the cancellation is for all insureds under such policies for a given class of insureds. This paragraph does not apply to individually rated risks having a policy term of less than 90 days.~~

5. Notwithstanding any other provision of law, an insurer may cancel or nonrenew a property insurance policy after at least 45 days' notice if the office finds that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal of some or all of its policies. The office may base such finding upon the financial condition of the insurer, lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The office may condition its finding on the consent of the insurer to be placed under

administrative supervision pursuant to s. 624.81 or to the appointment of a receiver under chapter 631.

6. A policy covering both a home and motor vehicle may be nonrenewed for any reason applicable to ~~either~~ the property or motor vehicle insurance after providing 90 days' notice.

Section 19. Subsection (1) of section 627.4137, Florida Statutes, is amended to read:

627.4137 Disclosure of certain information required.—

(1) Each insurer that provides ~~which does~~ or may provide liability insurance coverage to pay all or a portion of any claim that ~~which~~ might be made shall provide, within 30 days after ~~of~~ the written request of the claimant, a statement, under oath, of a corporate officer or the insurer's claims manager, ~~or~~ superintendent, or licensed company adjuster setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

(a) The name of the insurer.

(b) The name of each insured.

(c) The limits of the liability coverage.

(d) A statement of any policy or coverage defense that the ~~which such~~ insurer reasonably believes is available to the ~~such~~ insurer at the time of filing such statement.

(e) A copy of the policy.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as

required by this subsection to all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days after ~~of~~ receipt of such request.

Section 20. Subsection (1) of section 627.421, Florida Statutes, is amended to read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed or delivered to the insured or to the person entitled thereto not later than 60 days after the effectuation of coverage. Notwithstanding any other provision of law, an insurer may allow a policyholder to elect delivery of the policy documents, including, but not limited to, policies, endorsements, notices, or documents, by electronic means in lieu of delivery by mail.

Section 21. Subsection (2) of section 627.43141, Florida Statutes, is amended to read:

627.43141 Notice of change in policy terms.—

(2) A renewal policy may contain a change in policy terms. If a renewal policy contains ~~does contain~~ such change, the insurer must give the named insured written notice of the change, which may either ~~must~~ be enclosed along with the written notice of renewal premium required by ss. 627.4133 and 627.728 or sent in a separate notice that complies with the nonrenewal mailing time requirement for that particular line of business. The insurer must also provide or make available electronically to the insured's insurance agent such notice before or at the same time notice is given to the insured. Such notice shall be

entitled "Notice of Change in Policy Terms."

Section 22. Paragraph (b) of subsection (4) of section 627.7015, Florida Statutes, is amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(4) The department shall adopt by rule a property insurance mediation program to be administered by the department or its designee. The department may also adopt special rules which are applicable in cases of an emergency within the state. The rules shall be modeled after practices and procedures set forth in mediation rules of procedure adopted by the Supreme Court. The rules shall provide for:

(b) Qualifications, denial of application, suspension, revocation, and other penalties for ~~of~~ mediators as provided in s. 627.745 ~~and in the Florida Rules of Certified and Court Appointed Mediators, and for such other individuals as are qualified by education, training, or experience as the department determines to be appropriate~~.

Section 23. Section 627.70151, Florida Statutes, is created to read:

627.70151 Appraisal; conflicts of interest.—An insurer that offers residential coverage, as defined in s. 627.4025, or a policyholder that uses an appraisal clause in the property insurance contract to establish a process of estimating or evaluating the amount of the loss through the use of an impartial umpire may challenge the umpire's impartiality and disqualify the proposed umpire only if:

(1) A familial relationship within the third degree exists

between the umpire and any party or a representative of any party;

(2) The umpire has previously represented any party or a representative of any party in a professional capacity in the same or a substantially related matter;

(3) The umpire has represented another person in a professional capacity on the same or a substantially related matter, including the claim, on the same property, or on an adjacent property and that other person's interests are materially adverse to the interests of any party; or

(4) The umpire has worked as an employer or employee of any party within the preceding 5 years.

Section 24. Subsection (1) and paragraph (c) of subsection (2) of section 627.706, Florida Statutes, are amended to read:

627.706 Sinkhole insurance; catastrophic ground cover collapse; definitions.—

(1)(a) Every insurer authorized to transact property insurance in this state must provide coverage for a catastrophic ground cover collapse.

(b) The insurer shall make available, for an appropriate additional premium, coverage for sinkhole losses on any structure, including the contents of personal property contained therein, to the extent provided in the form to which the coverage attaches. The insurer may require an inspection of the property before issuance of sinkhole loss coverage. A policy for ~~residential~~ property insurance may include a deductible amount applicable to sinkhole losses equal to 1 percent, 2 percent, 5 percent, or 10 percent of the policy's covered building ~~policy~~

~~dwelling~~ limits, with appropriate premium discounts offered with each deductible amount.

(c) The insurer may restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building, as defined in the applicable policy.

(2) As used in ss. 627.706-627.7074, and as used in connection with any policy providing coverage for a catastrophic ground cover collapse or for sinkhole losses, the term:

(c) "Neutral evaluator" means a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution designed or approved by the department for use in the neutral evaluation process, ~~and~~ who is determined by the department to be fair and impartial, and who is not otherwise ineligible for certification as provided in s. 627.7074.

Section 25. Subsection (1) of section 627.7074, Florida Statutes, is amended to read:

627.7074 Alternative procedure for resolution of disputed sinkhole insurance claims.—

(1) The department shall:

(a) Certify and maintain a list of persons who are neutral evaluators.

(b) Adopt rules for certifying, denying certification, suspending certification, and revoking certification as a neutral evaluator, in keeping with qualifications specified in this section and ss. 627.706 and 627.745(4).

(c) ~~(b)~~ Prepare a consumer information pamphlet for distribution by insurers to policyholders which clearly

describes the neutral evaluation process and includes information necessary for the policyholder to request a neutral evaluation.

Section 26. 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 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 <u>until March 1 of the following</u> ~~throughout the remainder of that~~ 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.

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 27. Subsection (3) of section 627.745, Florida Statutes, is amended, present subsections (4) and (5) of that section are renumbered as subsections (5) and (6), respectively, and a new subsection (4) is added to that section, to read:

627.745 Mediation of claims.—

(3)(a) The department shall approve mediators to conduct mediations pursuant to this section. All mediators must file an application under oath for approval as a mediator.

(b) To qualify for approval as a mediator, an individual ~~a person~~ must meet one of the following qualifications:

1. Possess an active certification as a Florida Circuit Court Mediator. A Florida Circuit Court Mediator in a lapsed, suspended, or decertified status is not eligible to participate in the mediation program ~~a masters or doctorate degree in psychology, counseling, business, accounting, or economics, be a member of The Florida Bar, be licensed as a certified public accountant, or demonstrate that the applicant for approval has been actively engaged as a qualified mediator for at least 4 years prior to July 1, 1990~~.

2. Be an approved department mediator as of July 1, 2013, and have conducted at least one mediation on behalf of the department within 4 years immediately preceding that ~~the~~ date ~~the application for approval is filed with the department, have completed a minimum of a 40-hour training program approved by the department and successfully passed a final examination~~

~~included in the training program and approved by the department. The training program shall include and address all of the following:~~

~~a. Mediation theory.~~

~~b. Mediation process and techniques.~~

~~c. Standards of conduct for mediators.~~

~~d. Conflict management and intervention skills.~~

~~e. Insurance nomenclature~~.

(4) The department shall deny an application, or revoke its approval of a mediator or neutral evaluator to serve in such capacity, if the department finds that any of the following grounds exist:

(a) Lack of one or more of the qualifications specified in this section for approval or certification.

(b) Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain the approval or certification.

(c) Demonstrated lack of fitness or trustworthiness to act as a mediator or neutral evaluator.

(d) Fraudulent or dishonest practices in the conduct of mediation or neutral evaluation or in the conduct of business in the financial services industry.

(e) Violation of any provision of this code or of a lawful order or rule of the department or aiding, instructing, or encouraging another party in committing such a violation.

The department may adopt rules to administer this subsection.

Section 28. Paragraph (b) of subsection (1) of section 627.952, Florida Statutes, is amended to read:

627.952 Risk retention and purchasing group agents.—

(1) Any person offering, soliciting, selling, purchasing, administering, or otherwise servicing insurance contracts, certificates, or agreements for any purchasing group or risk retention group to any resident of this state, either directly or indirectly, by the use of mail, advertising, or other means of communication, shall obtain a license and appointment to act as a resident general lines agent, if a resident of this state, or a nonresident general lines agent if not a resident. Any such person shall be subject to all requirements of the Florida Insurance Code.

(b) Any person required to be licensed and appointed under this subsection, in order to place business through Florida eligible surplus lines carriers, must, if a resident of this state, be licensed and appointed as a surplus lines agent. If not a resident of this state, such person must be licensed and appointed as a surplus lines agent in her or his state of residence ~~and file and maintain a fidelity bond in favor of the people of the State of Florida executed by a surety company admitted in this state and payable to the State of Florida; however, such nonresident is limited to the provision of insurance for purchasing groups. The bond must be continuous in form and in the amount of not less than $50,000, aggregate liability. The bond must remain in force and effect until the surety is released from liability by the department or until the bond is canceled by the surety. The surety may cancel the bond and be released from further liability upon 30 days' prior written notice to the department. The cancellation does not~~

~~affect any liability incurred or accrued before the termination of the 30-day period. Upon receipt of a notice of cancellation, the department shall immediately notify the agent~~.

Section 29. Subsection (6) of section 627.971, Florida Statutes, is amended to read:

627.971 Definitions.—As used in this part:

(6) "Financial guaranty insurance corporation" means a stock or mutual insurer licensed to transact financial guaranty insurance business in this state.

Section 30. Subsection (1) of section 627.972, Florida Statutes, is amended to read:

627.972 Organization; financial requirements.—

(1) A financial guaranty insurance corporation must be organized and licensed in the manner prescribed in this code for stock or mutual property and casualty insurers except that:

(a) A corporation organized to transact financial guaranty insurance may, subject to the provisions of this code, be licensed to transact:

1. Residual value insurance, as defined by s. 624.6081;

2. Surety insurance, as defined by s. 624.606;

3. Credit insurance, as defined by s. 624.605(1)(i); and

4. Mortgage guaranty insurance as defined in s. 635.011, provided that the provisions of chapter 635 are met.

(b)1. Before ~~Prior to~~ the issuance of a license, a corporation must submit to the office for approval~~,~~ a plan of operation detailing:

a. The types and projected diversification of guaranties to be issued;

b. The underwriting procedures to be followed;

c. The managerial oversight methods;

d. The investment policies; and

e. Any other matters prescribed by the office;

2. An insurer which is writing only the types of insurance allowed under this part on July 1, 1988, and otherwise meets the requirements of this part, is exempt from the requirements of this paragraph.

(c) An insurer transacting financial guaranty insurance is subject to all provisions of this code that are applicable to property and casualty insurers to the extent that those provisions are not inconsistent with this part.

(d) The investments of an insurer transacting financial guaranty insurance in any entity insured by the corporation may not exceed 2 percent of its admitted assets as of the end of the prior calendar year.

(e) An insurer transacting financial guaranty insurance may only assume those lines of insurance for which it is licensed to write direct business.

Section 31. Subsection (13) of section 628.901, Florida Statutes, is amended to read:

628.901 Definitions.—As used in this part, the term:

(13) "Qualifying reinsurer parent company" means a reinsurer <u>that</u> ~~which~~ currently holds a certificate of authority <u>or a</u>~~,~~ letter of eligibility or is an accredited ~~or a satisfactory non-approved~~ reinsurer in this state possessing a consolidated GAAP net worth of at least $500 million and a consolidated debt to total capital ratio of not greater than

0.50.

Section 32. Paragraph (a) of subsection (2) and paragraph (a) of subsection (3) of section 628.909, Florida Statutes, are amended to read:

628.909 Applicability of other laws.—

(2) The following provisions of the Florida Insurance Code apply to captive insurers who are not industrial insured captive insurers to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, and 624.426.

(3) The following provisions of the Florida Insurance Code apply to industrial insured captive insurers to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, 624.426, and 624.609(1).

Section 33. Subsection (8) of section 634.406, Florida Statutes, is renumbered as subsection (7), and present subsections (6) and (7) of that section are amended to read:

634.406 Financial requirements.—

(6) An association which holds a license under this part and which does not hold any other license under this chapter may allow its premiums to exceed the ratio to net assets limitations of this section if the association meets all of the following:

(a) Maintains net assets of at least $750,000.

(b) Utilizes a contractual liability insurance policy approved by the office which:

1. Reimburses the service warranty association for 100 percent of its claims liability and is issued by an insurer that maintains a policyholder surplus of at least $100 million; or

2. Complies with the requirements of subparagraph (c)3. and is issued by an insurer that maintains a policyholder surplus of at least $200 million.

(c) The insurer issuing the contractual liability insurance policy:

~~1. Maintains a policyholder surplus of at least $100 million.~~

1.~~2.~~ Is rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the office.

2.~~3.~~ Is in no way affiliated with the warranty association.

3.~~4.~~ In conjunction with the warranty association's filing of the quarterly and annual reports, provides, on a form prescribed by the commission, a statement certifying the gross written premiums in force reported by the warranty association and a statement that all of the warranty association's gross written premium in force is covered under the contractual liability policy, whether or not it has been reported.

~~(7) A contractual liability policy must insure 100 percent of an association's claims exposure under all of the association's service warranty contracts, wherever written, unless all of the following are satisfied:~~

~~(a) The contractual liability policy contains a clause that specifically names the service warranty contract holders as~~

~~sole beneficiaries of the contractual liability policy and claims are paid directly to the person making a claim under the contract;~~

~~(b) The contractual liability policy meets all other requirements of this part, including subsection (3) of this section, which are not inconsistent with this subsection;~~

~~(c) The association has been in existence for at least 5 years or the association is a wholly owned subsidiary of a corporation that has been in existence and has been licensed as a service warranty association in the state for at least 5 years, and:~~

~~1. Is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is required to file either of Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and publicly traded or is the wholly owned subsidiary of a corporation that is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is required to file Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and is publicly traded;~~

~~2. Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating~~

~~service;~~

~~3. Has and maintains at all times a minimum net worth of not less than $10 million as evidenced by audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles and submitted to the office annually; and~~

~~4. Is authorized to do business in this state; and~~

~~(d) The insurer issuing the contractual liability policy:~~

~~1. Maintains and has maintained for the preceding 5 years, policyholder surplus of at least $100 million and is rated "A" or higher by A.M. Best Company or has an equivalent rating by another rating company acceptable to the office;~~

~~2. Holds a certificate of authority to do business in this state and is approved to write this type of coverage; and~~

~~3. Acknowledges to the office quarterly that it insures all of the association's claims exposure under contracts delivered in this state.~~

~~If all the preceding conditions are satisfied, then the scope of coverage under a contractual liability policy shall not be required to exceed an association's claims exposure under service warranty contracts delivered in this state.~~

Section 34. This act shall take effect upon becoming a law.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 635 Insurance
SPONSOR(S): Edwards
TIED BILLS: **IDEN./SIM. BILLS:** SB 1046

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Callaway	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

This bill contains changes for various types of insurance. Specific issues include:

- Permanently exempting medical malpractice insurance policyholders from assessments levied by the Florida Hurricane Catastrophe Fund (FHCF);
- Allowing electronic proof of automobile insurance cards;
- Extending the examination period for licensing of foreign or alien insurers;
- Exempting employees of rental car businesses from insurance agent licensing;
- Repealing registration of life expectancy providers used in viatical settlements;
- Allowing a weighted average of hurricane loss models to be used in property insurance rate filings;
- Extending the time period insurers have to use a hurricane model in property insurance rate filings;
- Allowing parties to negotiate rate factors in retrospective rating in workers' compensation;
- Repealing specified reports done by the Financial Services Commission relating to Citizens Property Insurance Corporation and the FCHF;
- Reducing the notification period for property insurance nonrenewals, cancellations, or terminations given to policyholders;
- Allowing electronic delivery of insurance policies to policyholders with their consent;
- Expanding the insurer personnel authorized to sign insurance coverage statements;
- Allowing insurers a new method to notify policyholders of a change in the terms of their insurance policy and requiring notification to the insurance agent;
- Providing additional authority to the Department of Financial Services (DFS) relating to the alternative dispute programs for property, sinkhole, and automobile insurance claims run by the DFS;
- Providing a clarifying change for personal injury protection insurance relating to the Medicare fee schedule used;
- Repealing a fidelity bond required for nonresident surplus lines insurance agents selling insurance to risk retention and purchasing groups;
- Allowing mutual insurance companies to form a financial guaranty insurance company;
- Amending a definition relating to captive insurance; and
- Providing exceptions to certain financial requirements for service warranty associations.

The bill has no fiscal impact on local government and an insignificant fiscal impact on state government. Provisions having a fiscal impact on the private sector are: permanently exempting medical malpractice insurance from the FHCF assessments, allowing negotiation of rate factors in retrospective rating in workers' compensation, repealing required registration of life expectancy providers, allowing a new method of notification for insurance policy changes, and expanding the types of insurers authorized to be a financial guaranty insurer.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill contains changes for various types of insurance. Issues addressed include:

- the Florida Hurricane Catastrophe Fund;
- electronic proof of automobile insurance cards;
- insurance licensing for foreign or alien insurers;
- insurance agent licensing of employees of rental car businesses;
- life expectancy providers used in viatical settlements;
- use of hurricane loss models in property insurance rate filings;
- rate setting in workers' compensation;
- repeal of reports relating to Citizens Property Insurance Corporation and the Florida Hurricane Catastrophe Fund;
- the notification period for property insurance nonrenewals, cancellations, or terminations;
- insurance coverage statements;
- electronic delivery of insurance policies to policyholders;
- notification to policyholders of a change in the terms of their insurance policy;
- the alternative dispute programs administered by the Department of Financial Services for property, sinkhole, and automobile insurance claims; personal injury protection insurance;
- disqualification of an appraisal umpire in residential property insurance;
- sinkhole deductibles;
- the fee schedule used in personal injury protection insurance;
- a bond required for insurance agents selling insurance to risk retention and purchasing groups;
- formation of financial guaranty insurance companies;
- a definition used in captive insurance; and
- financial requirements for service warranty associations.

Florida Hurricane Catastrophe Fund

The Florida Hurricane Catastrophe Fund (FHCF or Fund) is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers.[1] The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must participate in the FHCF (s. 215.555(4)(a), F.S. and s. 215.555(2)(c), F.S.). The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage (45, 75, or 90%) of hurricane losses to residential property above the insurer's retention (deductible).[2]

The FHCF must offer two options for reinsurance coverage for all residential property insurers. One of the two options is mandatory and thus must be purchased by all insurers on their residential property exposure. The voluntary coverage option, Temporary Increase In Coverage Limit Options (TICL), offers reinsurance to insurers above the mandatory coverage.

For the mandatory coverage, the FHCF charges insurers the "actuarially indicated" premium for the coverage provided by the FHCF, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. The premium for mandatory coverage also includes a cash build-up factor which is charged on top of the actuarially indicated premium. For

[1] s. 215.555, F.S. The FHCF was created after Hurricane Andrew in 1992.

[2] Retention is defined to mean the amount of losses below which an insurer is not entitled to reimbursement from the Fund. A retention is calculated for each insurer based on its proportionate share of Fund premiums.

the 2012-2013 contract year, the cash build-up factor is 20%, meaning an insurer's premium is 20% greater than the actuarially indicated premium. The cash build-up factor increases by 5% each year until it is 25% (2013-2014 contract year).

Florida law sets the maximum amount the FHCF reimburses insurers each year for the mandatory coverage.[3] This is the FHCF's capacity. Under current law, the FHCF's capacity is $17 billion for each contract year. The capacity does not increase until the FHCF's cash and bonding ability exceeds $34 billion. Because this condition for an increase in capacity is not yet met, for the current contract year, the insurance industry as a whole is covered for losses up to $17 billion by the mandatory coverage.

Before FHCF monies are available to pay claims each insurer must meet a retention/deductible. The retention amount for each insurer is different because the amount is based on the amount of premium the insurer pays to the FHCF. For the 2012-2013 contract year, the insurance industry as a whole has an aggregate retention of $7.389 billion for mandatory coverage, meaning the total of all individual insurer retentions/deductibles will total $7.389 billion per hurricane event if all participating insurers reached their retention. Although the insurance industry's aggregate deductible/retention totals $7.389 billion, insurers can obtain reimbursement from the FHCF before the insurance industry losses total $7.389 billion because loss recovery from the FHCF is based on an individual insurer meeting its own retention for mandatory coverage prior to losses being reimbursed.

Revenue bonds are issued by the FHCF to pay claims when the FHCF's funds are inadequate. These bonds are funded by emergency assessments levied by the FHCF against property and casualty insurance premiums paid by policyholders (other than workers' compensation, accident and health, federal flood and, until May 31, 2013, medical malpractice), including surplus lines policyholders.[4] The FHCF assessment base is over $34.6 billion.[5] Annual assessments are capped at 6% of premium with respect to losses from any one year and a maximum of 10% of premium to fund hurricane losses from multiple years.[6]

The bill allows medical malpractice insurance policyholders to be exempt from FHCF assessments permanently. Although these policyholders are currently exempt from the assessment base, they will be added to the base starting June 1, 2013 because their exemption expires on May 31, 2013.

Proof of Insurance Cards

Florida motorists are required to present proof of insurance when registering a motor vehicle and to have this proof in their immediate possession while operating the vehicle. Historically, automobile insurance identification cards, which provide such proof, have been issued in paper format. However, eight states[7] have enacted laws/ adopted regulations that allow electronic proof or evidence of insurance, e.g., an electronic image that shows proof of coverage on an insured's cellular phone. It has estimated that another 21 states are likely to consider such legislation this year.[8]

The bill amends Florida law to permit proof-of-insurance cards to be issued in paper or electronic format, and grants rulemaking authority to the Department of Highway Safety and Motor Vehicles.

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[3] s. 215.555(4)(c)1., F.S.

[4] s. 215.555(6)(b)1., F.S.; s. 215.555(6)(b)(10), F.S.

[5] Assessment base total is as of the end of 2011. See Report Prepared for the Florida Hurricane Catastrophe Fund on Claims-Paying Capacity Estimates by Raymond James Public Finance Department, dated October 9, 2012, available at http://www.sbafla.com/fhcf/AdvisoryCouncil/2012MeetingMaterials/tabid/1311/Default.aspx (last viewed February 27, 2013).

[6] s. 215.555(6)(b)2., F.S.

[7] The eight states are Alabama, Arizona, California, Colorado, Idaho, Louisiana, Minnesota, and Virginia. In California, the person who presents the "mobile electronic device" assumes all liability for any subsequent damage to the device. Arizona, California, and Louisiana expressly preclude law enforcement officers from accessing any other information on the device. Correspondence from Property Casualty Insurers Association of America, received March 1, 2013, on file with staff of the Insurance & Banking Subcommittee.

[8] *Id.*

Certificate of Authority for Foreign or Alien Insurers

Section 624.401, F.S., prohibits insurance transactions in Florida unless the insurer holds a certificate of authority from the state. The Office of Insurance Regulation (OIR) regulates insurers and grants certificates of authority for insurance transactions in Florida. Section 624.413, F.S., specifies information an insurer must give to the OIR in an application for a certificate of authority.

A foreign insurer is one formed under the laws of another state, district, territory, or commonwealth of the United States.[9] An alien insurer is an insurer that is not a foreign insurer or a domestic insurer, with domestic insurers being an insurer formed under Florida law.[10]

When a foreign or alien insurer files an application for a certificate of authority with the OIR, current law requires the insurer provide the OIR a copy of the most recent examination report done by the public official over insurance where the insurer is domiciled. The examination provided must be within the three years preceding the insurer's application for a Florida certificate of authority. According to the OIR, some states examine insurers every five years, instead of three years. Thus, insurers licensed in those states that want to also be licensed in Florida cannot provide an examination within the preceding three years with their Florida license application. Thus, these insurers must wait to come into Florida until the requisite examination can be provided, which can be as long as two years. The bill changes the examination period from three years to five years to avoid the waiting time incurred by these insurers wanting to be a Florida licensed insurer. The change also provides consistency with examination requirements in current law for domestic insurers, which is five years.[11]

Licensing of Insurance Agents Selling Motor Vehicle Rental Insurance

In general, insurance agents transact insurance on behalf of an insurer or insurers. Agents must be licensed by the Department of Financial Services (DFS or department) to act as an agent for an insurer, and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers.[12]

Limited lines insurance agents are individuals, or in some cases entities, licensed as insurance agents but limited to selling one or more of the following forms of insurance (each requiring a separate license):

- Motor vehicle physical damage and mechanical breakdown insurance;
- Industrial fire or burglary;
- Travel insurance;
- Motor vehicle rental insurance;
- Credit insurance;
- Crop hail and multiple-peril crop insurance;
- In-transit and storage personal property insurance; and
- Portable electronics insurance.[13]

A limited lines insurance agent license generally has fewer requirements for licensing than other insurance agents. These licensees must, however, file an application with DFS and be appointed by an insurance company.

The bill makes one change to the limited license statute for motor vehicle rental insurance. Under current law, a limited license to sell motor vehicle rental insurance can be issued to a business that offers motor vehicles for rent or lease. A license issued to a rental business covers each office, branch office, or place of business associated with the rental business. The bill expands this coverage to include each employee working at the rental business. Thus, all employees would be covered by the

[9] s. 624.06(2), F.S.
[10] s. 624.06, F.S.
[11] s. 624.316(2), F.S.
[12] s. 626.112, F.S.
[13] s. 626.321, F.S.

rental business' license to sell rental insurance. According to DFS, the agency interprets the current law relating to rental insurance licensing to mean the license for the rental company business covers each branch office and each employee working at the rental business. Thus, the change made by the bill is clarifying and is consistent with the application of the current law by the DFS.

Life Expectancy Providers

Life expectancy providers are used in viatical settlements. A viatical settlement agreement typically includes an agreement on the part of the owner of a life insurance policy to sell the policy to another person or entity for less than the expected death benefit payable under the policy. The discounted amount paid to a policyholder is generally based upon the life expectancy of the insured, his or her general health, and other similar considerations. A life expectancy provider is used in a viatical settlement to determine life expectancy or mortality ratings used to determine a life expectancy.

Under current law, life expectancy providers must register with the OIR. Section 626.99175, F.S., sets out the registration requirements. Every three years, registered life expectancy providers must file an audit of all life expectancies by the provider for the five years preceding the audit. The audit compares actual to projected mortality data. According to the OIR, the OIR reviews the audit to verify it was done, is complete, and in the proper format, but does not verify the accuracy of the audit because the OIR has no authority to regulate the life expectancy provider.

The bill repeals current law requiring life expectancy providers to register with the OIR and makes conforming changes to the viatical settlement law necessary due to this repeal. Current law prohibiting a viatical settlement broker, viatical settlement provider, or insurance agent from directly or indirectly owning a life expectancy provider is maintained.

Hurricane Loss Models

In 1995 the Legislature established the Florida Commission on Hurricane Loss Projection Methodology (Commission) to serve as an independent body within the State Board of Administration.[14] The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. Members of the Commission include experts in insurance finance, statistics, computer system design, and meteorology who are full-time faculty members in the State University System and appointed by the state Chief Financial Officer (CFO); an actuary member from the FHCF Advisory Council; an actuary employed with a property and casualty insurer appointed by the CFO; an actuary employed by the OIR; the Executive Director of Citizens Property Insurance Corporation; the senior employee responsible for FHCF operations; the Insurance Consumer Advocate; and the Director of Emergency Management. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards.

Only hurricane loss models or methods the Commission deems accurate or reliable can be used by insurers in rate filings to estimate hurricane losses used to set property insurance rates. Additionally, insurers have 60 days after the Commission finds a model accurate and reliable to use the model to predict the insurer's probable maximum loss levels[15] in a rate filing.

The bill allows insurers to use loss estimates from multiple models or a weighted average of multiple models in their rate filing for property insurance rates. Current law allows only one model to be used to project loss estimates. The bill also lengthens the time insurers have to use a model or models in their rate filing from 60 to 120 days after the Commission finds the model reliable and accurate.

Retrospective Rating Plan in Workers' Compensation

[14] s. 627.0628, F.S.

[15] Probable maximum loss is an estimate of maximum dollar value that can be lost under realistic situations.

Retrospective rating plans[16] may be used by workers' compensation insurers to compete on price. Under such a plan, the final premium paid by the employer is based on the actual loss experience of the employer during the policy, plus insurer expenses and an insurance charge. If the employer controls the amount of claims, it pays lower premiums. Before there were large deductible programs, retrospective rating plans were the dominant rating plan for large employers.

The bill allows retrospective rating plans to provide for negotiation between the employer and insurer to determine the retrospective rating factors to be used to calculate the premium when the employer has exposure in more than one state and an estimated annual countrywide standard premium of $1 million or more for workers' compensation.

Repeal of Report to the Legislature Relating to the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation

Section 627.3519, F.S., requires the Financial Services Commission (FSC)[17] to provide the Legislature, by February 1st each year, a report on the aggregate net probable maximum losses[18], financing options, and potential assessments of the FHCF and Citizens Property Insurance Corporation (Citizens). This statute was enacted in 2006.[19] The FSC has provided the required report on to the Legislature each February since 2008.

The report includes the amount and term of debt needed to be issued by the FHCF and Citizens to support the probable maximum losses required to be reported. The assessment percentage that would be needed to support the debt is also required to be reported.

The OIR prepares the report on behalf of the FSC. The OIR does not compute or generate the information required to be reported. Much of the information needed in the report is already computed by the FHCF and by Citizens and provided to various stakeholders, such as potential bond investors, rating agencies, public policymakers, and the advisory and governing boards of the FHCF and Citizens. Thus, the OIR gathers the information already computed from FHCF and Citizens and presents the information in a report format. The bill repeals the report.

Nonrenewal Notice For Property Insurance

Under current law,[20] personal lines or commercial lines residential property insurers must give policyholders a notice of cancellation, nonrenewal, or termination at least 100 days prior to the effective date of the cancellation, nonrenewal, or termination.[21] Further, for any cancellation, nonrenewal, or termination that takes effect between June 1st and November 30th, an insurer must provide at least 100 days written notice, or notice by June 1st, whichever is earlier. The June 1st notice deadline ensures policyholders whose property insurance policies will be cancelled, nonrenewed, or terminated during hurricane season (June 1st – November 30th) will receive notice of the cancellation, nonrenewal, or termination by the start of hurricane season.

The bill repeals the required notice by June 1st for policies being cancelled, nonrenewed, or terminated between June 1st and November 30th. Policyholders with a policy renewal date from June 1st to November 30th will receive 100 days' notice before the policy's cancellation, nonrenewal, or termination date. This change means some property insurance policyholders will receive notice of cancellation, nonrenewal, or termination during hurricane season (June 1st – November 30th). Under the bill, policies renewing September 8th – November 30th that are being nonrenewed, cancelled or terminated by the insurer will receive notice of nonrenewal, cancellation or termination during hurricane season.

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[16] See "2012 Workers' Compensation Annual Report" (December 2012) by the Florida Office of Insurance Regulation. Available at http://www.floir.com (last viewed February 27, 2013).

[17] The Financial Services Commission is comprised of the Governor and Cabinet (s. 20.121(3), F.S.).

[18] Probable maximum loss is an estimate of maximum dollar value that can be lost under realistic situations.

[19] Section 20, Ch. 2006-12.

[20] s. 627.4133(2), F.S.

[21] A 45-day notice of cancellation or nonrenewal, rather than the 100-day or 120-day notice is allowed if the OIR determines early cancellation of some or all of an insurer's property insurance policies is necessary to protect the best interest of the public or the policyholders. (s. 627.4133(2)(b)5., F.S.)

Policyholders with property insured by the same insurer for five years or more receive 120 days' notice of cancellation, nonrenewal, or termination, instead of 100 days' notice. The bill reduces the 120-day notice to 100 days. This change makes the notice of cancellation, nonrenewal or termination uniform for all personal lines or commercial lines property insurance.

Coverage Statement

Under current law, only an officer of an insurer or the insurer's claims manager or superintendent can sign statements given to persons making a claim under a liability insurance policy. The statement sets out the name of the insurer, the name of each insured, the limits of liability coverage, and coverage defenses. A copy of the insurance policy is also included in the statement. The bill expands the insurer personnel authorized to sign coverage statements to include licensed company adjusters.

Delivery of Insurance Policies Electronically

Section 627.421, F.S., requires every insurance policy[22] to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed.

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.[23] Insurance is specifically included in E-SIGN.[24] 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 insurers to deliver insurance policies by electronic means in lieu of delivery by mail if the policyholder elects electronic delivery. The bill does not likely implicate E-SIGN or UETA because it requires consent of the policyholder before an insurance policy is delivered electronically to the policyholder.

Change of Policy Terms In Insurance Policies

Under current law, to make a change in the terms of a property and casualty insurance contract, the insurer must give the policyholder written Notice of Change in Policy Terms with the policy renewal notice and the policy renewal notice must be provided to the policyholder in accordance with current law, which requires insurers to give notice of renewal 45 days prior to the renewal date.[25] A policyholder is deemed to accept the policy term change if the renewal premium is paid. If the insurer does not provide the Notice of Change in Policy Terms to the policyholder, the terms of the insurance policy are not changed.

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[22] s. 627.402, F.S., defines policy to include endorsements, riders, and clauses. Reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered. (see s. 627.401, F.S.)

[23] 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.

[24] *Id.*

[25] s. 627.43141, F.S.

The bill allows an insurer to send a Notice of Change of Policy Terms separate from the renewal notice as long as the notice is sent within the policy nonrenewal time limits in current law. The nonrenewal time limits are notice at least 100 days prior to the effective date of the nonrenewal.[26] And, for any nonrenewal that takes effect between June 1st and November 30th, at least 100 days written notice, or notice by June 1st, whichever is earlier, is required. Furthermore, policyholders with property insured by the same insurer for five years or more receive 120 days' notice of nonrenewal instead of 100 days' notice. Thus, the bill requires a Notice of Change of Policy Terms to be given sooner when it is not included with the renewal notice.

The bill also requires the insurer to provide the policyholder's insurance agent with the Notice of Change of Policy Terms before or at the same time as the Notice is provided to the policyholder.

Insurance Mediation Programs

Current law provides for alternative dispute programs, administered by the DFS for various types of insurance. DFS runs mediation programs for property insurance and automobile insurance claims and a neutral evaluation program, similar to mediation, for sinkhole insurance claims.[27] The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.

To qualify as a mediator for the property or automobile mediation programs, a person must meet specific education or experience requirements set out in statute.[28] The person must possess certain masters or doctorate degrees, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for four years.

Also, to qualify as a DFS mediator, a person must successfully complete a training program approved by the DFS. According to DFS, the required mediation training program is no longer available from outside vendors due to the low volume of DFS mediators.[29] However, in order to ensure there was a training program available for those who wanted to be DFS mediators, for the past seven or eight years DFS approved the mediator training program offered by the courts.

The bill replaces the DFS mediator education, experience, and training program requirements set out above with new ones. Under the bill, a person with an active certification as a Florida Circuit Court Mediator is qualified to be a mediator for the DFS. Also, a person not certified as a Florida Circuit Court Mediator can be a DFS mediator if the person is an approved DFS mediator on July 1, 2013 and has conducted at least one DFS mediation from July 1, 2009 – July 1, 2013. This provision essentially grandfathers in current and active DFS mediators so they can continue to be DFS mediators, even if they are not certified as a Florida Circuit Court Mediator.

According to the DFS, 200 of the 300 current DFS mediators are certified as Florida Circuit Court Mediators,[30] so these mediators would still qualify to be a DFS mediator under the new qualifications provided in the bill. The remaining 100 mediators are grandfathered in by the bill and would still qualify to be DFS mediators even though they are not certified as a Florida Circuit Court Mediator. The DFS estimates changing the DFS mediator qualifications to allow Florida Circuit Court Mediators will expand the pool of mediators qualified to mediate for DFS to over 3,000 mediators.

The bill also requires DFS to deny an application to be a mediator or neutral evaluator or revoke or suspend a mediator or neutral evaluator in specified circumstances. These circumstances primarily

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[26] A 45-day notice of cancellation or nonrenewal, rather than the 100-day or 120-day notice is allowed if the OIR determines early cancellation of some or all of an insurer's property insurance policies is necessary to protect the best interest of the public or the policyholders. (s. 627.4133(2)(b)5., F.S.)

[27] s. 627.7015, F.S., for property insurance claim mediation program; s. 627.7074, F.S., for sinkhole claim mediation program; and s. 627.745, F.S., for automobile insurance claim mediation program,

[28] s. 627.745, F.S.

[29] DFS does not provide the training program in house.

[30] Information obtained from the DFS dated February 5, 2013, on file with the Insurance & Banking Subcommittee.

involve the mediator or neutral evaluator committing fraud, violating laws or DFS orders, or not being qualified. Additionally, DFS is authorized to inquire and investigate into improper conduct of mediators or neutral evaluators. DFS does not have this authority in current law, but does have authority to inquire into and investigate improper conduct of other persons licensed by DFS, such as insurance agents and insurance adjusters.

Disqualification of Appraisal Umpire In Residential Property Claims

An appraisal clause is found in all insurance policies. The purpose of the appraisal clause is to establish a procedure to allow disputed amounts to be resolved by disinterested parties. The appraisal clause is used only to determining disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers cannot agree on the amount of damages, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both parties.
- If the two parties agree to the amount of the loss, that amount becomes the claim amount. However, if one of the parties does not agree, then the case can still be litigated in court.

Because current law does not address disqualification of an umpire due to impartiality, a party wanting to disqualify an umpire must go to Circuit Court and have a judge rule on the umpire's impartiality. In making the ruling, the judge uses his or her judgment about the umpire's impartiality. There are no parameters in current law for a judge's ruling on an umpire's impartiality. The bill provides parameters for the judge's impartiality ruling by adding grounds to current law which the insurer or policyholder in a residential property dispute can use to challenge the impartiality of the umpire in order to disqualify the umpire. The disqualification grounds provided in the bill are the substantially the same as those used to disqualify a neutral evaluator in sinkhole claims under s. 627.7074(7)(a), F.S.

Deductible In Sinkhole Claims

Section 627.706, F.S., allows residential property insurance policies to include various deductibles applicable only to sinkhole losses. A property insurer is authorized to offer sinkhole deductibles of 1 percent, 2 percent, 5 percent, or 10 percent of the policy's dwelling limits. Premium discounts must be offered to homeowners who choose higher deductibles. Sinkhole deductibles are in addition to hurricane and non-hurricane (i.e., other peril) deductibles which also apply in property insurance. Current law is silent on allowable sinkhole deductible offers for commercial nonresidential property. The bill removes the application of sinkhole deductible offers in current law from applying only to residential property and applies it to all property. Thus, the allowable sinkhole deductible offers would apply also to commercial nonresidential property.

Personal Injury Protection Insurance

House Bill 119, the personal injury protection insurance (PIP) reform bill enacted in 2012,[31] 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*

[31] Ch. 2012-151, L.O.F.

payment limitation applies throughout the remainder of that year [italics added for emphasis]...."

The above-emphasized language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied through the calendar year (through December 31st) or whether the March 1st fee schedule applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,[32] 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 clarify that the fee schedule in place on March 1st applies until March 1st of the following year.

Surety Bond Required of Surplus Lines Agents For Risk Retention Groups

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurance is sold by surplus lines insurance agents.

Risk retention and purchasing groups are governed by Part XIX of chapter 627. These groups are corporations, limited liability associations, or other groups who assume and spread the liability exposure of the members of the group to all the group members. Group members typically have a common business, product, or service. Risk retention groups can be certified in Florida by the OIR. If the group is not certified in Florida, but is licensed or certified in another state, it must comply with certain Florida insurance laws set out in s. 627.944, F.S.

Purchasing groups buy insurance for the risks of group members. Purchasing groups can only purchase insurance for a risk located in Florida from an authorized insurer, a risk retention group, or a surplus lines insurer.

Section 627.952, F.S., governs the conduct of persons selling to or buying insurance for purchasing groups or risk retention groups. Persons selling or buying insurance for these groups must be licensed as a Florida resident or nonresident general lines insurance agent. General lines agents wanting to place business with a surplus lines insurer must also be licensed as a surplus lines insurance agent in Florida or in their state of residence. Surplus lines agents licensed outside of Florida and selling insurance to purchasing groups must post a $50,000 fidelity bond payable to the State of Florida. The bill repeals the $50,000 bond requirement for nonresident surplus lines agents to conform to the repeal of the bond requirements enacted in 2012 for Florida licensed surplus lines agents.[33]

The bill also repeals the restriction in current law that nonresident surplus lines agents can only sell insurance to purchasing groups. Thus, these agents will now be able to sell insurance to risk retention groups and purchasing groups.

Financial Guaranty Insurers

In order to transact insurance in this state, the Florida Insurance Code (Code) states that a certificate of authority is required.[34] To qualify for and hold authority to transact insurance in this state, an insurer must be in compliance with the Code and its charter powers, and must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer.[35] In addition to applying for a certificate of authority to transact a particular kind of insurance, domestic insurers must apply to the OIR for a

[32] Available at http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx (last accessed: February 27, 2013).
[33] In 2012, CS/CS/CS/HB 725 was enacted (Ch. 2012-209, L.O.F.). This bill repealed the fidelity bond for surplus lines agents found in ss. 626.927(5) and 626.928, F.S.
[34] s. 624.401, F.S. The Florida Insurance Code consists of chs. 624, 632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[35] s. 624.404, F.S.

permit to form as either a stock or mutual insurer, and have its articles of incorporation approved by the Department of State.[36]

The distinction between stock and mutual insurers is governed by Part I, Chapter 628, F.S.:

- *Stock insurers* are defined as "incorporated insurers with its capital divided into shares and owned by its stockholders," and pay dividends to their stockholders.[37]
- *Mutual insurers*, on the other hand, are "incorporated insurers without permanent capital stock, the governing body of which is elected in accordance with this part," and pay dividends to their policyholders, who are members of the insurer.[38]

In other words, stock insurers are investor-owned, while mutual insurers are owned by their policyholders. Mutual insurers may apply to demutualize to become a stock insurer (and vice versa), both subject to the OIR's approval.[39] In order to obtain regulatory approval of a mutual insurer's plan to demutualize, the plan must be equitable to the members and be approved by at least three-fourths of the insurer's members. In addition, the members must be given the opportunity to receive stock or cash for their ownership rights in the mutual organization.[40] According to the National Association of Mutual Insurance Companies, demutualization is a complex, expensive, and lengthy process. While demutualization can provide additional capital, cash distributions to policyholders can also deplete surplus.[41]

Part XX of Chapter 627, Florida Statutes, was enacted in 1988[42] to set forth requirements for transacting financial guaranty insurance. *Financial guaranty insurance* means a surety bond, insurance policy, an indemnity contract issued by an insurer, or any similar guaranty, under which loss is payable upon proof of occurrence of financial loss to an insured claimant, obligee, or indemnitee as a result of:

1. The failure of an obligor on a debt instrument or other monetary obligation, including common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract, to make principal, interest, premium, dividend, or purchase price payments when due, if the failure is the result of a financial default or insolvency, whether such obligation is incurred directly or as guarantor by or on behalf of another obligor who also defaulted;
2. Changes in the levels of interest rates or the differential in interest rates between various markets or products;
3. Changes in the rate of exchange of currency;
4. Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or
5. Other events which the OIR determines are substantially similar to any of the foregoing.[43]

Part XX of Chapter 627, F.S. requires an insurer to obtain a certificate of authority from the OIR to transact financial guaranty insurance in Florida. The insurer must meet an initial $50 million surplus requirement at the date of initial licensing, and must maintain minimum capital, surplus, contingency reserve requirements and be within loss exposure limitations. Financial guaranty insurance corporations are subject to all provisions of the Florida Insurance Code applicable to property and casualty insurance, to the extent they are not inconsistent with Part XX, Ch. 627, F.S.[44] According to

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[36] s. 628.051, F.S. Domestic insurers are formed under Florida law. Insurers formed under other states' laws (foreign insurers) are entitled to become domestic insurers by complying with the same legal requirements for licensing and organization and by designating a principal place of business inside Florida upon the OIR's approval. See ss. 624.06 and 628.520, F.S.

[37] ss. 628.021and 628.371, F.S.

[38] ss. 628.031, 628.381 and 628.301, F.S.

[39] ss. 628.431 and 628.441, F.S.

[40] s. 628.441(2), F.S.

[41] NAMIC, Focus on the Future Options for the Mutual Insurance Company: https://www.namic.org/policy/futureMutualAlts.asp (last viewed February 25, 2013).

[42] Chapter 88-87, Laws of Florida.

[43] s. 627.971(1)(a), F.S. See subsection (1)(b) for exclusions from the definition of "financial guaranty insurance."

[44] s. 627.972(1)(c), F.S.

the OIR's company search website, there are currently 50 insurers with financial guaranty insurance as an authorized line of business.[45]

By definition and by express requirement under current law, only stock property and casualty insurers are eligible to become financial guaranty insurance corporations, but not mutual insurers.[46]

The Financial Guaranty Insurance Guidelines, adopted by the National Association of Insurance Commissioners in 2008, does not make a distinction between stock and mutual insurers for purposes of transacting financial guaranty insurance.[47]

The bill amends ss. 627.971 and 627.972, F.S. to allow mutual property and casualty insurers to become financial guaranty insurance corporations, subject to meeting the requirements of the Code. The bill does not change any existing requirements to become a stock or mutual insurer.

Captive Insurance

Captive insurance is a form of self-insurance where an insurer is created and wholly owned by one or more non-insurers to provide owners with coverage.[48] Unlike traditional self-insurance, the owner does not retain risk but transfers risk; the insured pay premiums to the captive insurer in exchange for the coverage of a specific risk.[49] Companies generally pursue this alternative risk transfer arrangement when commercial insurance becomes unavailable or reaches excessive costs.[50]

Captives may take many formations, often being divided into pure captives and group captives. Each formation may vary in allowable corporate structure, capital and surplus, underwritten risks, and number of owners. Most captive insurance companies are formed as pure captives,[51] meaning that the captive is a wholly-owned subsidiary that insures the risks of its parents and affiliates. Group captives typically include association captives, industrial captives, risk retention groups, and reciprocals; each is owned by and insures a group.[52]

Florida captive insurance legislation became effective in 1982. Florida captive insurance is regulated by the OIR under Part V of ch. 628, F.S. That Part defines a captive insurer to be "a domestic insurer established under Part I[53] to insure the risks of a specific corporation or group of corporations under common ownership owned by the corporation or corporations from which it accepts risk under a contract of insurance."[54]

The bill changes the definition of "qualifying reinsurer parent company" in the captive insurance law to remove authority for one entity to meet the definition. Satisfactory non-approved reinsurers will no longer qualify as a qualifying reinsurer parent company. According to the OIR, a satisfactory non-approved reinsurer does not exist anymore. Additionally, although defined in Florida law, it does not appear the term "qualifying reinsurer parent company" is used anywhere in statute.

Service Warranty Associations

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics

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[45] OIR Company Directory, http://www.floir.com/CompanySearch, last viewed February 20, 2013.
[46] ss. 627.971(6) and 627.972(1), F.S.
[47] GDL-1626, at NAIC Model Laws, Regulations, and Guidelines: http://www.naic.org/store_model_laws.htm (last viewed February 20, 2013).
[48] http://www2.iii.org/glossary/c/ (last viewed February 28, 2013).
[49] http://www.iii.org/issue_updates/captives-and-other-risk-financing-options.html (last viewed February 28, 2013).
[50] *Id.*
[51] Theriault, Patrick. *Captive Insurance Companies* (2008). Page 9. www.captive.com (last viewed February 27, 2013).
[52] http://www.captive.utah.gov/rrg.html (last viewed February 27, 2013). See also: Theriault, Patrick. *Captive Insurance Companies* (2008). Page 9.
[53] Part I of ch. 628, F.S., is entitled "STOCK AND MUTUAL INSURERS: ORGANIZATION AND CORPORATE PROCEDURES."
[54] s. 628.901, F.S.

and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the OIR. The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve rates for warranties.

The bill changes one of the financial requirements service warranty associations must have in order to keep its license. Current Florida law allows a service warranty association to demonstrate financial responsibility by securing contractual liability insurance from an authorized insurer which covers the service warranty association's obligations under service warranties sold in Florida. There are two kinds of insurance policies that are permitted: (1) an insolvency style policy that pays when the service warranty association becomes insolvent or is otherwise unable to perform; and (2) a policy that pays claims under the association's service warranties from the first dollar. In addition, Florida law requires service warranty associations to maintain a writing ratio of gross written premiums to net assets of seven-to-one, meaning for every one dollar of net assets held by the association, the association can write seven dollars of premium. Under current Florida law a service warranty association can avoid this minimum writing ratio by securing an insurance policy providing first dollar coverage from an insurer that maintains a minimum capital surplus of $100 million and maintains an "A" or higher rating.[55]

The bill expands the exception to the minimum writing ratio for service warranty association. Under the bill, associations utilizing an insolvency style policy can avoid the writing ratio as long as the insurer issuing the insolvency style policy to the association maintains a minimum capital surplus of $200 million and an "A" or higher rating. This $100 million and $200 million surplus requirement for insurers issuing these policies helps ensure there is more than adequate capital in the insurance companies to honor all obligations of the insured association under service warranties sold in Florida.

B. SECTION DIRECTORY:

Section 1: Amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund.

Section 2: Amends s. 316.646, F.S., relating to security required; proof of security and display thereof; dismissal of cases.

Section 3: Amends s. 320.02, F.S., relating to registration required; application for registration forms.

Section 4: Amends s. 624.413, F.S., relating to application for certificate of authority.

Section 5: Amends s. 626.321, F.S., relating to limited licenses.

Section 6: Amends s. 626.601, F.S., relating to improper conduct; inquiry; fingerprinting.

Section 7: Amends s. 626.9914, F.S., relating to suspension, revocation, denial, or nonrenewal of viatical settlement provider license; ground administrative fine.

Section 8: Amends s. 626.99175, F.S., relating to life expectancy providers; registration required; denial, suspension, revocation.

Section 9: Amends s. 626.9919, F.S., relating to notice of change of licensee or registrant's address or name.

[55] The rating is from A.M. Best Company. However, an equivalent rating by another national rating service acceptable to the OIR is also allowed by statute.

Section 10: Amends s. 626.992, F.S., relating to use of licensed viatical settlement providers, viatical settlement brokers, and registered life expectancy providers required.

Section 11: Amends s. 626.9925, F.S., relating to rules.

Section 12: Amends s. 626.99278, F.S., relating to viatical provider anti-fraud plan.

Section 13: Amends s. 627.062, F.S., relating to rate standards.

Section 14: Amends s. 627.0628, F.S., relating to Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.

Section 15: Amends s. 627.072, relating to making and use of rates.

Section 16: Amends s. 627.281, F.S., relating to appeal from rating organization; workers' compensation and employer's liability insurance filings.

Section 17: Repeals s. 627.3519, F.S., relating to annual report of aggregate net probable maximum losses, financing options, and potential assessments.

Section 18: Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

Section 19: Amends s. 627.4137, F.S., relating to disclosure of certain information required.

Section 20: Amends s. 627.421, F.S., relating to delivery of policy.

Section 21: Amends s. 627.43141, F.S., relating to notice of change in policy terms.

Section 22: Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

Section 23: Creates s. 627.70151, F.S., relating to appraisal; conflicts of interest.

Section 24: Amends s. 627.706, F.S., relating to sinkhole insurance; catastrophic ground cover collapse; definitions.

Section 25: Amends s. 627.7074, F.S., relating to alternative procedure for resolution of disputed sinkhole insurance claims.

Section 26: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 27: Amends s. 627.745, F.S., relating to mediation of claims.

Section 28: Amends s. 627.952, F.S., relating to risk retention and purchasing group agents.

Section 29: Amends s. 627.971, F.S., relating to definitions.

Section 30: Amends s. 627.972, F.S., relating to organization, financial requirements.

Section 31: Amends s. 628.901, F.S., relating to definitions.

Section 32: Amends s. 628.909, F.S., relating to applicability of other laws.

Section 33: Amends s. 634.406, F.S., relating to financial requirements.

Section 34: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill has the following fiscal impact on state government, which is insignificant:

   Because the bill repeals the registration of life expectancy providers with the OIR, the OIR will no longer collect a $500 registration fee for life expectancy providers. In fiscal year 2011-2012, the OIR collected $500 in registration fees for life expectancy providers.[56] Since 2006, 11 life expectancy providers have registered with the OIR and six are currently registered.[57] There are no other fees associated with life expectancy providers.[58]

2. Expenditures:

   With the repeal of the report on the FHCF and Citizens prepared by the OIR for the FSC, the OIR will no longer expend staff time compiling the data and writing the report.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Removing medical malpractice insurance from the FHCF assessment base permanently will cause policyholders of the other types of property and casualty insurance included in the assessment base to pay higher assessments. Although medical malpractice is not currently in the FHCF assessment base, it was to be added as of June 1, 2013. Adding additional types of insurance to the assessment base grows the base and lowers the assessment for all types of insurance in the base. As of December 31, 2011, medical malpractice premiums totaled almost $555 million.[59] Thus, the bill precludes the FHCF assessment base of $34.6 billion[60] to increase by $555 million.

If the FHCF has to issue revenue bonds to pay claims, it is likely to obtain more favorable bonding terms with a larger the assessment base. Thus, preventing medical malpractice from being added to the assessment base may result in the FHCF receiving less favorable bonding terms than it would receive had medical malpractice been added to the base on June 1, 2013.

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[56] Information received from the OIR dated February 28, 2013, on file with the Insurance & Banking Subcommittee. Although the provider submitted a registration in 2012 and paid the registration fee, the registration was never completed as the registration submitted was incomplete and the provider did not reapply.

[57] Information received from the OIR dated February 28, 2013, on file with the Insurance & Banking Subcommittee.

[58] Information received from the OIR dated February 28, 2013, on file with the Insurance & Banking Subcommittee.

[59] This total includes premiums from surplus lines insurance and risk retention groups. Information obtained from the OIR on February 27, 2013, on file with the Insurance & Banking Subcommittee.

[60] Assessment base total is as of the end of 2011. See Report Prepared for the Florida Hurricane Catastrophe Fund on Claims-Paying Capacity Estimates by Raymond James Public Finance Department, dated October 9, 2012, available at http://www.sbafla.com/fhcf/AdvisoryCouncil/2012MeetingMaterials/tabid/1311/Default.aspx (last viewed February 27, 2013).

Policyholders of medical malpractice insurance will never have to pay FHCF assessments on their medical malpractice insurance under the bill. Under current law, these policyholders would have had to start paying FHCF assessments levied due to hurricanes occurring on or after June 1, 2013.

The changes made by the bill to the use of retrospective rating in workers' compensation may reduce workers' compensation premiums for some employers.

Life expectancy providers will no longer incur a $500 registration fee. In fiscal year 2011-2012, one life expectancy provider registered with the OIR.

Insurers emailing policies will save costs associated with printing and mailing insurance policies to policyholders. The exact amount of savings cannot be calculated as it is unknown how many insurers will opt to deliver their policies by email and how many policyholders will choose to obtain their policies by email rather than by mail. However, any savings realized by insurers should be passed through to policyholders.

Property and casualty insurers who choose to provide a Notice of Change of Policy Terms separate from the renewal notice will incur additional costs associated with printing and mailing this Notice. Additionally, the insurers will incur costs associated with providing a copy of the Notice to the policyholder's insurance agent.

The bill permits more types of insurers to become financial guaranty insurers by allowing mutual insurers to become licensed as financial guaranty insurance corporations.

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:

The bill provides rulemaking authority to DFS for rules relating to certification of neutral evaluators for sinkhole insurance claims, relating to DFS' authority to deny an application for approval as a property insurance claim mediator, and relating to DFS' authority to revoke approval of a property insurance mediator or certification of a sinkhole claim neutral evaluator. The bill changes rulemaking authority under current law given to DFS for approving mediators for property insurance claims.

The Department of Highway Safety and Motor Vehicles is authorized to adopt rules relating to electronic proof-of-insurance cards.

The bill repeals rulemaking authority for the Financial Services Commission to make rules relating to the registration life expectancy providers as the registration for such providers is repealed by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In its bill analysis, the OIR notes the provisions in the bill allowing property insurers to average the results of hurricane loss models for use in rate filings would allow an insurer to obtain the results of two or more models and combine them to produce almost any projected hurricane loss amounts the insurer desired. The OIR further notes this would allow an insurer to manipulate the rate indications and consequently property insurance rates and rating factors. An amendment is anticipated to allow property insurers to use a straight average of hurricane models, instead of a weighted average. This should alleviate the concerns raised by the OIR.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to licensure by the Office of Financial Regulation; amending s. 494.00321, F.S.; authorizing, rather than requiring, the office to deny a mortgage broker license application if the applicant had a mortgage broker license revoked previously; amending s. 494.00611, F.S.; authorizing, rather than requiring, the office to deny a mortgage lender license application if the applicant had a mortgage lender license revoked previously; amending s. 517.12, F.S.; revising the procedures and requirements for submitting fingerprints as part of an application to sell, or offer to sell, securities; removing conflicting language; amending s. 560.141, F.S.; revising the procedures and requirements for submitting fingerprints to apply for a license as a money services business; requiring the Office of Financial Regulation to pay an annual fee to the Department of Law Enforcement; removing conflicting language; repealing s. 560.143(1)(f), F.S., relating to fingerprint fees when applying for a license as a money services business; providing effective dates.

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

Section 1. Effective upon this act becoming a law, subsection (5) of section 494.00321, Florida Statutes, is amended to read:

494.00321 Mortgage broker license.—

(5) The office may ~~shall~~ deny a license if the applicant has had a mortgage broker license, or its equivalent, revoked in any jurisdiction, and shall deny a license ~~or~~ if any of the applicant's control persons has had a loan originator license, or its equivalent, revoked in any jurisdiction.

Section 2. Effective upon this act becoming a law, subsection (5) of section 494.00611, Florida Statutes, is amended to read:

494.00611 Mortgage lender license.—

(5) The office may deny ~~not issue~~ a license if the applicant has had a mortgage lender license or its equivalent revoked in any jurisdiction, and shall deny a license if ~~or~~ any of the applicant's control persons has ~~ever~~ had a loan originator license or its equivalent revoked in any jurisdiction.

Section 3. Subsection (7) of section 517.12, Florida Statutes, is amended to read:

517.12 Registration of dealers, associated persons, investment advisers, and branch offices.—

(7) The application must ~~shall~~ also contain such information as the commission or office may require about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; any person directly or indirectly controlling the applicant; or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant and any direct owners, principals, or indirect owners that are

required to be reported on Form BD or Form ADV pursuant to subsection (15) shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements ~~file a complete set of fingerprints. A fingerprint card submitted to the office must be taken by an authorized law enforcement agency or in a manner approved by the commission by rule. The office shall submit the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for federal processing. The cost of the fingerprint processing may be borne by the office, the employer, or the person subject to the background check. The Department of Law Enforcement shall submit an invoice to the office for the fingerprints received each month. The office shall screen the background results to determine if the applicant meets licensure requirements~~. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners that are required to be reported on Form BD or

Form ADV pursuant to subsection (15), submit ~~file a set of~~ fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission or office may require information about any such applicant or person concerning such matters as:

(a) His or her full name, and any other names by which he or she may have been known, and his or her age, social security number, photograph, qualifications, and educational and business history.

(b) Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) His or her conviction of, or plea of nolo contendere to, a criminal offense or his or her commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office may inquire as to his or her character, reputation, and financial responsibility.

Section 4. Subsection (1) of section 560.141, Florida Statutes, is amended to read:

560.141 License application.—

(1) To apply for a license as a money services business under this chapter, the applicant must submit:

(a) ~~Submit~~ An application to the office on forms prescribed by rule which includes the following information:

1. The legal name and address of the applicant, including any fictitious or trade names used by the applicant in the conduct of its business.

2. The date of the applicant's formation and the state in which the applicant was formed, if applicable.

3. The name, social security number, alien identification or taxpayer identification number, business and residence addresses, and employment history for the past 5 years for each officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business as provided in s. 560.127.

4. A description of the organizational structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded.

5. The applicant's history of operations in other states if applicable and a description of the money services business or deferred presentment provider activities proposed to be conducted by the applicant in this state.

6. If the applicant or its parent is a publicly traded company, copies of all filings made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States,

within the preceding year.

7. The location at which the applicant proposes to establish its principal place of business and any other location, including branch offices and authorized vendors operating in this state. For each branch office and each location of an authorized vendor, the applicant shall include the nonrefundable fee required by s. 560.143.

8. The name and address of the clearing financial institution or financial institutions through which the applicant's payment instruments are drawn or through which the payment instruments are payable.

9. The history of the applicant's material litigation, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld.

10. The history of material litigation, arrests, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld for each executive officer, director, controlling shareholder, and responsible person.

11. The name of the registered agent in this state for service of process unless the applicant is a sole proprietor.

12. Any other information specified in this chapter or by rule.

(b) ~~In addition to the application form, submit:~~

~~1.~~ A nonrefundable application fee as provided in s. 560.143.

(c)~~2.~~ Fingerprints for each person listed in subparagraph (a)3. for live-scan processing in accordance with rules adopted by the commission.

1. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting.

2. The Department of Law Enforcement must conduct the state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation.

3. All fingerprints submitted to the Department of Law Enforcement must be submitted electronically and entered into the statewide automated fingerprint identification system established in s. 943.05(2)(b) and available for use in accordance with s. 943.05(2)(g) and (h). The office shall pay an annual fee to the Department of Law Enforcement to participate in the system and shall inform the Department of Law Enforcement of any person whose fingerprints no longer must be retained.

4. The costs of fingerprint processing, including the cost of retaining the fingerprints, shall be borne by the person subject to the background check.

5. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.

6. For purposes of this paragraph, fingerprints are not required to be submitted if ~~A fingerprint card for each of the persons listed in subparagraph (a)3. unless~~ the applicant is a publicly traded corporation~~.~~ or is exempted from this chapter under s. 560.104(1). ~~The fingerprints must be taken by an authorized law enforcement agency. The office shall submit the fingerprints to the Department of Law Enforcement for state~~

~~processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for federal processing. The cost of the fingerprint processing may be borne by the office, the employer, or the person subject to the criminal records background check. The office shall screen the background results to determine if the applicant meets licensure requirements. As used in this section,~~ The term "publicly traded" means a stock is currently traded on a national securities exchange registered with the federal Securities and Exchange Commission or traded on an exchange in a country other than the United States regulated by a regulator equivalent to the Securities and Exchange Commission and the disclosure and reporting requirements of such regulator are substantially similar to those of the commission.

(d) ~~3.~~ A copy of the applicant's written anti-money laundering program required under 31 C.F.R. s. 103.125.

(e) ~~4.~~ Within the time allotted by rule, any information needed to resolve any deficiencies found in the application.

Section 5. Paragraph (f) of subsection (1) of section 560.143, Florida Statutes, is repealed.

Section 6. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 665 Licensure by Office of Financial Regulation
SPONSOR(S): La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** SB 644

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Bauer	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) administers Florida laws and rules governing the licensure and regulation of individuals and entities in the non-depository mortgage, securities, and money services business industries. This bill proposes the following changes to several statutes under the OFR's jurisdiction:

- Current law requires the OFR to deny an application for a mortgage broker or mortgage lender license when the applicant has had an equivalent license revoked in another state. This has resulted in the OFR having to deny some mortgage company licenses where the applicant's out-of-state revocation was due to purely administrative reasons, such as an expired license. The bill eliminates the mandatory language in current law, and gives the OFR discretion to review an applicant's out-of-state mortgage company revocations on a case-by-case basis. The bill provides that these provisions will be effective upon becoming a law.

- Current law requires applicants for securities and money services business licenses to submit fingerprint cards to the OFR for state and federal criminal background checks in order for the OFR to determine an applicant's fitness for licensure. However, the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation, who conduct these background checks, no longer accept physical fingerprint cards for processing and now process fingerprints electronically or through the live-scan system through contracted vendors throughout the state. This bill amends various provisions to require securities and money services business license applicants to submit electronic or live-scan fingerprints and pay the processing costs to the live-scan vendor. The bill also provides that the fingerprints of money services business applicants be entered into and retained in FDLE's database, the cost of which would be collected by OFR and submitted to FDLE.

The bill has a fiscal impact on state government, in that the OFR requires budgetary authority to collect an estimated $3,000 additional fingerprint *retention* fees from money services business applicants and to transfer those fees to FDLE. However, the OFR would no longer have to collect and transfer the fingerprint *processing* fees, as the applicants would pay for those fees at the live-scan vendors, who then transmit those fees to FDLE. The bill has a private sector impact, in that 1) electronic/live-scan fingerprint processing costs slightly more than physical fingerprinting and 2) easing the restriction on out-of-state mortgage broker or lender revocations may result in more mortgage company licenses issued in Florida.

The bill provides for an effective date of October 1, 2013, except as otherwise expressly provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background: The Office of Financial Regulation (OFR)

The OFR regulates and licenses a wide range of entities and individuals in the banking, securities, and consumer finance industries. For purposes of HB 665, some of the licensing and enforcement programs that OFR administers are:

- Non-depository mortgage loan originators, brokers, and lenders (Chapter 494, F.S.);
- Money services businesses (MSBs), which include check cashers, foreign currency exchangers, and deferred presentment providers (Chapter 560, F.S.);
- Securities dealers, issuer dealers, investment advisers, and branch offices (Chapter 517, F.S.).

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.

Current Situation: Licensure Revocation

The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008[1] sets forth minimum standards for state-licensed individual loan originators. One requirement is that an individual who is an applicant for a state loan originator license must have never had his or her loan originator license revoked in any other governmental jurisdiction.[2] In 2009, the Florida Legislature adopted the minimum requirements of the SAFE Act, including this requirement for loan originators in s. 494.00312(5), F.S.[3] In addition, Florida exceeded the federal requirements by adopting parallel requirements for mortgage company licenses (i.e., mortgage brokers and mortgage lenders), thereby mandating the OFR to deny licensure to any mortgage lender or mortgage broker applicant who has had an equivalent license revoked in another state, regardless of the underlying reason.[4]

Since the enactment of this requirement, the OFR has encountered situations where other states interpret the term "revoked" differently. For example, Florida uses an annual renewal and fee process. If a Florida mortgage licensee does not timely complete their annual renewal or pay the annual fee, the license "expires" on December 31 and the person must apply for a new license in order to continue conducting mortgage business lawfully. On the other hand, other states may use a permanent license with an annual assessment. If the licensee decides it wants to discontinue doing its licensed business in the other state and does not pay that state's annual assessment when due, the other state's regulatory process may be to administratively revoke the permanent license. Therefore, because the license status will be "revoked" in the other state, it would cause a Florida mortgage license application in Florida to be denied under current law, even though the underlying reason was technical or ministerial in nature.[5]

Effect of HB 665 on License Revocation

The bill amends ss. 494.00321 and 494.00611, F.S. to provide the OFR discretion in denying applicants a mortgage broker and mortgage lender license, respectively, if the applicant has had an equivalent license revoked in another jurisdiction. This allows the OFR to consider out-of-state company revocations on a case-by-case basis in determining applicants' fitness for mortgage broker or mortgage lender licensure. The bill provides that these changes are effective upon becoming a law.

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[1] 12 U.S.C. § 4501 et seq.
[2] 12 U.S.C. § 5104(b)(1).
[3] Chapter 2009-241, L.O.F.
[4] Sections 494.00321(5) and 494.00611(5), F.S.
[5] Bill analysis from the OFR (dated February 19, 2013), on file with the Insurance & Banking Subcommittee staff.

The bill does not affect the OFR's discretion and authority under current law impose disciplinary action on existing mortgage lender or mortgage broker licensees who have equivalent licenses revoked in other states.[6]

The bill provides that these provisions shall take effect upon becoming a law.

Current Situation: Fingerprinting for Securities and MSB Applicants

Under Chapter 517, F.S., no dealer, associated person, or issuer of securities is authorized to sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state without being registered with the OFR. The application for such registration requires dealers, investment advisers, and associated persons to submit fingerprint cards, which are then processed by the Florida Department of Law Enforcement (FDLE) for state criminal background checks and Federal Bureau of Investigation (FBI) for federal criminal background checks. These background checks enable the OFR to determine an applicant's fitness for registration in accordance with Chapter 517, F.S. Currently, the fingerprint processing fee for securities applicants is $40.50.[7] The cost of the processing may be borne by the OFR, the employer, or the person subject to the background check.[8]

Under Chapter 560, F.S., persons engaged in business as a money services business must be licensed with the OFR.[9] The application for such license requires each officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business to submit a fingerprint card, which is processed by the FDLE and FBI for state and federal criminal background checks.[10] Applicants that are publicly traded corporations are not required to submit individual fingerprints. These background checks enable the OFR to determine an applicant's fitness for licensure in accordance with Chapter 560, F.S. MSB applicants are required to pay non-refundable fingerprint fees to the OFR as prescribed by rule.[11] The fingerprint fee is currently $40.50 per person.[12] The cost of the processing may be borne by the Office, the employer, or the person subject to the background check.[13]

Currently, the OFR collects fingerprint cards and fingerprint processing fees from Securities and MSB applicants, and mails them to FDLE. Effective April 2012, the FDLE and FBI have discontinued accepting physical fingerprint cards and now process fingerprints electronically or via live-scan technology. Live-scan fingerprints are taken on glass plates and electronically scanned, enabling more legible prints and shorter processing times than traditional ink-and-paper fingerprinting yields.[14] Currently, there are 120 FDLE-approved live-scan service providers in the state which submit electronic prints to FDLE for processing.[15] The average cost to obtain live-scan fingerprints from an approved live-scan service provider is $57.75.[16]

Effect of HB 665 on Fingerprinting for Securities and MSB Applicants

The bill removes the requirement that securities and MSB applicants submit fingerprint "cards," and replaces it with the requirement that applicants submit their fingerprints for live-scan processing in accordance with the rules adopted by the Financial Services Commission. With live-scan fingerprints, the applicants would pay the processing fee directly to the vendor, who in turn pays FDLE for the background checks. The OFR would no longer have to collect fingerprint processing fees from applicants. The bill states that the cost of the

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[6] Section 494.00255(1)(n), F.S.
[7] Rule 69W-600.006, F.A.C.
[8] Section 517.12(7), F.S.
[9] Sections 560.204, 560.303, and 560.403, F.S.
[10] Section 560.141(1)(b)2., F.S.
[11] Section 560.143(1)(f), F.S.
[12] Form OFR-560-01, Application for Licensure as a Money Services Business, incorporated by reference in Rule 69V-560.102, F.A.C.
[13] Section 560.141(1)(b)2., F.S.
[14] Background information from OFR (dated February 25, 2013), on file with Insurance & Banking Subcommittee staff.
[15] FDLE Livescan Service Providers and Device Vendors, at http://www.fdle.state.fl.us/Content/getdoc/941d4e90-131a-45ef-8af3-3c9d4efefd8e/Livescan-Service-Providers-and-Device-Vendors.aspx (last accessed February 21, 2013).
[16] Information provided by OFR (February 21, 2013); on file with the Insurance & Banking Subcommittee staff.

processing shall be borne by the person subject to the background check, which can vary depending on the live-scan service provider's rates.

The bill repeals a requirement in current law[17] that MSB applicants submit non-refundable fingerprint fees, as prescribed by rule, with their initial applications for licensure to OFR. This provision is unnecessary since the bill would require applicants to pay fingerprint processing fees directly to the live-service provider.

For MSBs applicants only, all fingerprints electronically submitted to the FDLE will be entered into and retained in the statewide automated fingerprint identification system, which provides for immediate notification if an individual is arrested in Florida. The cost of retaining fingerprints, which is currently $6 per year per applicant,[18] shall be borne by the person subject to the background check.[19] The bill requires the OFR to pay an annual fee to FDLE to participate in this system and to inform FDLE of any person whose fingerprints are no longer required to be retained, such as a control person on an expired license.[20]

The bill provides that these changes are effective October 1, 2013.

B. SECTION DIRECTORY:

Section 1. Amends s. 494.00321, F.S., to authorize, rather than require, the OFR to deny a mortgage broker license application if the applicant had a mortgage broker license previously revoked in another jurisdiction.

Section 2. Amends s. 494.00611, F.S., to authorize, rather than require, the OFR to deny a mortgage lender license application if the applicant had a mortgage lender license previously revoked in another jurisdiction.

Section 3. Amends s. 517.12, F.S., to revise the procedures and requirements for submitting fingerprints as part of an application to sell or offer to sell securities; removes conflicting language.

Section 4. Amends s. 560.141, F.S. revise the procedures and requirements for submitting fingerprints for a money services business license; requires the OFR to pay an annual fee to the Department of Law Enforcement; removes conflicting language.

Section 5. Repeals s. 560.143(1)(f), F.S., relating to fingerprint fees when applying for a money services business license.

Section 6. Provides that the act shall take effect October 1, 2013, except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments below.

2. Expenditures:

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[17] Section 560.143(1)(f), F.S.

[18] FDLE Criminal History Record Checks/Background Checks Fact Sheet, dated October 7, 2011.

[19] MSBs licensees would pay $12 once every two years, since MSB licenses are issued and renewed on a two-year cycle. Sections 560.141(2) and 560.142, F.S.

[20] According to information provided by OFR, the bill does not include fingerprint retention for securities applicants, since the majority of securities registrants do not reside in Florida.

See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Securities and MSB applicants currently pay $40.50 to have a physical fingerprint card processed for state and federal criminal background checks. Live-scan fingerprint processing costs generally range from between $50 to $65, depending on the vendor, and average $57.75.

Easing the restriction on out-of-state mortgage lender and mortgage broker license revocations may result in more mortgage company licenses issued in Florida.

D. FISCAL COMMENTS:

Currently, the OFR collects a paper fingerprint card and the fingerprint fee from money services business and securities applicants. The fingerprint fee is collected as revenue and deposited into the Regulatory Trust Fund. The whole fee is then passed on to Florida Department of Law Enforcement (FDLE) as a journal transfer from non-operating expenses.

- In FY 2011-2012, the Division of Securities collected $114,171.00 in fingerprint fees that were transferred to FDLE. In FY 2012-2013 to date, $47,263.50 in fingerprint fees have been collected and paid to FDLE.
- In FY 2011-2012, the Division of Consumer Finance collected $25,405.50 in fingerprint fees that were transferred to FDLE. In FY 2012-2013 to date, $18,300 in fingerprint fees have been collected and paid to FDLE.

The bill would require applicants to obtain and submit their fingerprints electronically through a live-scan vendor. The applicants would pay the vendor, who would then pay FDLE for the background check. Thus, the OFR would no longer have to collect fingerprinting fees from applicants, nor would they have the expenses of doing so.

Fingerprint *retention* fees only apply to new money services businesses that apply for licensure after October 1, 2013, and have submitted electronic fingerprints. The OFR estimates that 500 new sets of fingerprints retained each year, based on historical fingerprint card submissions. The current annual retention cost charged by the FDLE is $6 per set of fingerprints. The OFR would collect fingerprint retention fees from licensees during the application and renewal process, and submit those fees to FDLE annually. The Office would require an estimated $3,000 additional annual budgetary authority to transfer to FDLE from non-operating expenses.

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:

If enacted, the administrative rules governing fingerprint fees for MSB and securities applicants (Chapters 69V-560 and 69W-600, F.A.C., respectively) will need to be updated to reflect the live-scan fingerprinting processes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Regarding fingerprint retention fees for MSB applicants, the bill states that the cost of fingerprint retention shall be borne by the person subject to the background check and that the OFR is required to submit an annual fee to FDLE to have MSB applicants' fingerprints retained. An amendment is anticipated to clarify that MSB applicants and licensees must submit fingerprint retention fees to OFR upon initial application as well as during renewal cycle.
- An amendment is anticipated to address MSBs who are licensed before the bill's effective date of October 1, 2013 and did not submit live-scan fingerprints for retention. The amendment will clarify that those licensees must submit live-scan fingerprints before the expiration of the next MSB license renewal cycle (between April 30, 2014 and December 31, 2015).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to health insurance marketing materials; amending ss. 627.6699 and 627.9407, F.S.; deleting requirements that a health insurer submit proposed marketing communications or advertising material to the Office of Insurance Regulation for review and approval; providing an effective date.

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

Section 1. Paragraph (d) of subsection (12) of section 627.6699, Florida Statutes, is amended to read:

627.6699 Employee Health Care Access Act.—

(12) STANDARD, BASIC, HIGH DEDUCTIBLE, AND LIMITED HEALTH BENEFIT PLANS.—

(d)1. Upon offering coverage under a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract for a ~~any~~ small employer group, the small employer carrier shall provide such employer group with a written statement that contains, at a minimum:

a. An explanation of those mandated benefits and providers that are not covered by the policy or contract;

b. An explanation of the managed care and cost control features of the policy or contract, along with all appropriate mailing addresses and telephone numbers to be used by insureds in seeking information or authorization; and

c. An explanation of the primary and preventive care features of the policy or contract.

Such disclosure statement must be presented in a clear and understandable form and format and must be separate from the policy or certificate or evidence of coverage provided to the employer group.

2. Before a small employer carrier issues a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract, the carrier ~~it~~ must obtain from the prospective policyholder a signed written statement in which the prospective policyholder:

a. Certifies as to eligibility for coverage under the standard health benefit plan, basic health benefit plan, or limited benefit policy or contract;

b. Acknowledges the limited nature of the coverage and an understanding of the managed care and cost control features of the policy or contract;

c. Acknowledges that if misrepresentations are made regarding eligibility for coverage under a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract, the person making such misrepresentations forfeits coverage provided by the policy or contract; and

d. If a limited plan is requested, acknowledges that the prospective policyholder had been offered, at the time of application for the insurance policy or contract, the opportunity to purchase any health benefit plan offered by the carrier and that the prospective policyholder ~~had~~ rejected that coverage.

A copy of such written statement must ~~shall~~ be provided to the prospective policyholder by ~~no later than at~~ the time of delivery of the policy or contract, and the original of such written statement must ~~shall~~ be retained in the files of the small employer carrier for the period of time that the policy or contract remains in effect or for 5 years, whichever ~~period~~ is longer.

3. Any material statement made by an applicant for coverage under a health benefit plan which falsely certifies ~~as to~~ the applicant's eligibility for coverage serves as the basis for terminating coverage under the policy or contract.

~~4. Each marketing communication that is intended to be used in the marketing of a health benefit plan in this state must be submitted for review by the office prior to use and must contain the disclosures stated in this subsection.~~

Section 2. Subsection (2) of section 627.9407, Florida Statutes, is amended to read:

627.9407 Disclosure, advertising, and performance standards for long-term care insurance.—

(2) ADVERTISING.—The commission shall adopt rules establishing ~~setting forth~~ standards for the advertising, marketing, and sale of long-term care insurance policies in order to protect applicants from unfair or deceptive sales or enrollment practices. An insurer shall file with the office any long-term care insurance advertising material intended for use in this state and may immediately begin using such material upon filing ~~at least 30 days before the date of use of the advertisement in this state~~. ~~Within 30 days after the date of~~

~~receipt of the advertising material, the office shall review the material and shall disapprove any advertisement if, in the opinion of the office, such advertisement violates any of the provisions of this part or of part IX of chapter 626 or any rule of the commission.~~ The office may disapprove an advertisement at any time and enter an immediate order requiring that the use of the advertisement be discontinued if it determines that the advertisement violates ~~any of the provisions of~~ this part, ~~or of~~ part IX of chapter 626, or any rule of the commission.

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 675 Health Insurance Marketing Materials
SPONSOR(S): Ingram and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Cooper	Cooper
2) Health Innovation Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Employee Health Care Access Act is intended to promote the availability of health insurance coverage to small employers, and establishes certain requirements to accomplish that purpose. The Act defines small employer as any person, sole proprietor, self-employed person, independent contractor, firm, association, or other business entity that is based in Florida, actively engaged in business, with at least one, and no more than 50 employees.

Among its many features, the Act requires carriers to offer any small employer, upon request, a standard health benefit plan, a basic health benefit plan, and a high deductible plan that meets the requirements of health savings account plans. As a part of their offer, insurers must disclose certain information relating to health benefit mandates, managed care arrangements, and the plans' primary and preventive care features.

Current law also requires that each marketing communication that is to be used in the marketing of a health benefit plan be submitted for review by the Office of Insurance Regulation (OIR) prior to use. The law also requires such marketing communication to contain the disclosures referenced above.

The bill repeals an insurer's obligation to submit the marketing materials to OIR prior to use as well as the requirement that the marketing communication contain the specified disclosures. The bill does not repeal the mandate that the insurer present the disclosure statement to the small employer. Nor does the bill eliminate the ability of OIR to review the marketing communications and disclosure statements as part of complaint investigations or market conduct reviews. The bill also does not modify the current statutory authority of the Financial Services Commission to establish regulations setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers.

The bill also addresses the regulation of advertising materials utilized by long-term care insurers. Long-term care insurance is insurance which covers the cost of certain health and personal services needed over a long period of time. Most of these benefits are not covered by traditional health insurance or Medicare. These include services in one's home such as assistance with Activities of Daily Living or Instrumental Activities of Daily Living as well as care in a variety of facility and community settings.

The bill deletes the current statutory requirement that insurers have to submit their advertising materials to OIR prior to their use. However, the bill still requires insurers to file the materials with OIR. The effect of this change is that insurers can immediately use their advertisements upon filing and the opportunity for OIR to disapprove before their use is removed. The bill retains the office's authority to disapprove an advertisement at any time and to enter an immediate order for the insurer to stop its use.

The bill should have a minimal positive fiscal impact on OIR. The bill may have a small positive fiscal impact for insurers.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Employee Health Care Access Act

In 1992, the Florida Legislature created the Employee Health Care Access Act to promote the availability of health insurance coverage to small employers and to establish certain requirements to accomplish that purpose.[1] Small employer is defined as any person, sole proprietor, self-employed person, independent contractor, firm, association, or other business entity that is based in Florida, actively engaged in business, with at least one, and no more than 50 employees.[2]

Among its many features, the Act requires carriers to offer any small employer, upon request, a standard health benefit plan, a basic health benefit plan, and a high deductible plan that meets the requirements of health savings account plans.[3] The offer of coverage must include a statement disclosing the following:

a) An explanation of those mandated benefits and providers that are not covered by the policy or contract;
b) An explanation of the managed care and cost control features of the policy or contract, along with all appropriate mailing addresses and telephone numbers to be used by insureds in seeking information or authorization; and
c) An explanation of the primary and preventive care features of the policy or contract.[4]

Current law also requires that each marketing communication that is to be used in the marketing of a health benefit plan be submitted for review by the Office of Insurance Regulation (OIR) prior to use. The law also requires such marketing communication to contain the aforementioned disclosures.[5]

The bill repeals an insurer's obligation to submit the marketing materials to OIR prior to use as well the requirement that the marketing communication contain the specified disclosures. The bill does not repeal the mandate that the insurer present the disclosure statement to the small employer. Nor does the bill extinguish the ability of OIR to review the marketing communications and disclosure statements as part of complaint investigations or market conduct reviews. The bill also does not modify the current statutory authority of the Financial Services Commission (FSC) to establish regulations setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers.

Long-Term Care Insurance

Long-term care insurance is insurance which covers the cost of certain health and personal services, most of which are not covered by traditional health insurance or Medicare, These include services in one's home such as assistance with Activities of Daily Living (ADL) as well as care in a variety of facility and community settings. Examples of ADLs include bathing, dressing, caring for incontinence, and eating. Other common long-term care services and supports are assistance to complete Instrumental Activities of Daily Living, which may include such activities as housework, taking medication, shopping for groceries or clothes, and the caring of pets.[6] Benefits may also be provided when the insured is experiencing cognitive impairment.

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[1] Section 627.6699(2), F.S.
[2] Section 627.6699(3)(v), F.S.
[3] Section 627.6699(12)(b)1., F.S
[4] Section 627.6699(12)(d)1., F.S.
[5] Section 627.6699(12)(d)4., F.S.
[6] http://www.longtermcare.gov/LTC/Main_Site/Understanding/Definition/Index.aspx (last accessed: March 4, 2013).

The regulatory framework in statute for long-term care insurance policies is ss. 627.9401-627.9408, F.S. In part, the law requires the FSC to adopt rules setting forth standards for the advertising, marketing, and sale of long-term care policies in order "to protect applicants from unfair or deceptive sales or enrollment practices." The law also states that an insurer shall file with OIR any long-term care insurance advertising material at least 30 days before the date of use of the advertisement in Florida. Within 30 days after receiving the material OIR is required to review and disapprove any advertisement it finds violates the law. The statute further authorizes OIR to disapprove an advertisement at any time and to order its use be discontinued if the office determines the advertisement violates the law.[7]

The bill deletes the requirement that insurers have to submit their advertising materials to OIR prior to their use. However, the bill still requires insurers to file the materials with OIR. The effect of this change is that insurers can immediately use their advertisements upon filing and the opportunity for OIR to disapprove before their use is removed. The bill retains the office's authority to disapprove an advertisement at any time and to enter an immediate order for the insurer to stop its use.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.6699, F.S., relating to standard, basic, high deductible, and limited health benefit plans for the Employee Health Care Access Act.

Section 2. Amends s. 627.9407, F.S., relating to disclosure, advertising, and performance standards for long-term care insurance.

Section 3. Provides an effective date of July 1, 2013.

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:

By potentially streamlining the process for distributing marketing materials, the bill may a small positive impact on insurers.

[7] Section 627.9407, F.S.

D. FISCAL COMMENTS:

According to OIR, "[t]here will be some reduction in staff time devoted to review of marketing material for health insurance, but the reduction would have no significant impact on resources otherwise allocated to health and life insurance form reviews."[8]

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

[8] Bill Analysis for HB 675, Florida Office of Insurance Regulation, February 21, 2013. On file with the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to manufactured and mobile homes; amending s. 723.06115, F.S.; specifying the procedure for requesting and obtaining funds from the Florida Mobile Home Relocation Trust Fund to pay for the operational costs of the Florida Mobile Home Relocation Corporation and the relocation costs of mobile home owners; providing an effective date.

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

Section 1. Section 723.06115, Florida Statutes, is amended to read:

723.06115 Florida Mobile Home Relocation Trust Fund.—

(1) The Florida Mobile Home Relocation Trust Fund ~~There~~ is established within the Department of Business and Professional Regulation. The ~~Florida Mobile Home Relocation~~ trust fund is~~,~~ to be used to fund ~~by the department for the purpose of funding~~ the administration and operations of the Florida Mobile Home Relocation Corporation. All interest earned from the investment or deposit of moneys in the trust fund shall be deposited in the trust fund. The trust fund shall be funded from ~~the~~ moneys collected by the corporation ~~department under s. 723.06116~~ from mobile home park owners under s. 723.06116, ~~who change the use of their mobile home parks;~~ the surcharge collected by the department under s. 723.007(2)~~,~~ the surcharge collected by the Department of Highway Safety and Motor Vehicles~~,~~ and from ~~by~~ other appropriated funds.

(2) Moneys in the Florida Mobile Home Relocation Trust Fund may be expended only:

(a) To pay the administration costs of the Florida Mobile Home Relocation Corporation; and

(b) To carry out the purposes and objectives of the ~~Florida Mobile Home Relocation~~ corporation by making payments to mobile home owners under the relocation program.

(3) The department shall distribute moneys in the Florida Mobile Home Relocation Trust Fund to the Florida Mobile Home Relocation Corporation in accordance with the following:

(a) At the beginning of each fiscal year, the corporation shall determine its operational costs for the fiscal year and set forth that amount to the department in writing. The department shall distribute that amount to the corporation within 2 business days after receipt of the written statement. Throughout the fiscal year, the corporation may seek additional funds in writing for administration and operational costs based on need as determined by the corporation and the department shall distribute these funds within 2 business days after receipt of the written statement. The corporation may place these funds in a noninterest bearing checking account; and

(b) As it deems necessary, the corporation shall set forth to the department in writing the amount needed to make payments to mobile home owners under the relocation program. The department shall distribute that amount to the corporation within 2 business days after receipt of the written statement. The corporation may place these funds in a non-interest-bearing checking account.

(4) Other than the requirements specified by this section, neither the corporation nor the department are required to take any other action as a prerequisite to the distribution of trust funds to the corporation.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 573 Manufactured and Mobile Homes
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Collins	Cooper

SUMMARY ANALYSIS

Section 723.061(1)(d), F.S., provides that a mobile home owner and/or tenant can be evicted from his or her mobile home due to a change in the use of the land comprising the mobile home park. The Florida Mobile Home Relocation Corporation was created to provide payments to mobile home owners who are required to move due to a change in the use of the land comprising their mobile home park.

All funds for relocation payments are deposited into the Florida Mobile Home Relocation Trust Fund. Currently, Chapter 723, F.S., is silent as to the manner in which funds are to be disbursed by the Department of Business and Professional Regulation to the Florida Mobile Home Relocation Corporation. Instead, the funds are disbursed pursuant to a Memorandum of Understanding.

The bill amends s. 723.06115, F.S., to specify the manner in which funds are to be disbursed to the Florida Mobile Home Relocation Corporation. Specifically:

- At the beginning of each fiscal year, the Florida Mobile Home Relocation Corporation shall determine its operational costs and provide that amount to the Department of Business and Professional Regulation, in writing.
- Throughout the year, additional requests for necessary operational funding may be submitted to the Department of Business and Professional Regulation, in writing.
- As it deems necessary, the Florida Mobile Home Relocation Corporation shall advise the Department of Business and Professional Regulation, in writing, of the amount needed to make payments to mobile home owners under the relocation program.

The Department of Business and Professional Regulation must transfer the requested funds to the Florida Mobile Home Corporation within two business days of the written request. The funds may be placed in a non-interest bearing checking account.

The requirements set forth in the section effectively nullify any additional disbursement provisions, as listed in the Memorandum of Understanding or elsewhere.

The bill has no fiscal impact on state and local funds.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 723.061(1)(d), F.S., provides that a mobile home owner and/or tenant can be evicted from his or her mobile home due to a change in the use of the land comprising the mobile home park. The park owner must give the affected mobile home owners and tenants at least six months' notice of the eviction due to the projected change in use, and of their need to secure other accommodations.[1]

In 2001, the Florida Mobile Home Relocation Corporation (Corporation) was created to provide payments to mobile home owners who are required to move due to a change in the use of the land comprising their mobile home park, pursuant to s. 723.061(1)(d), F.S.[2] The Corporation is administered by a volunteer-based, six-member board.[3] The board also employs or retains attorneys, accountants, and administrative personnel to perform its duties.[4]

The corporation receives funding from three sources:

- An annual one dollar surcharge on mobile home lots located in a mobile home park, collected by the Department of Business and Professional Regulation (Department) pursuant to s. 723.007(2), F.S.;
- An annual one dollar surcharge on registration payments by mobile home owners collected by the Department of Highway Safety and Motor Vehicles; and
- Funds collected from mobile home park owners when the mobile home owner applies for payment of moving expenses or mobile home abandonment allowance.[5]

All funds are deposited into the Florida Mobile Home Relocation Trust Fund (Trust Fund), established by s. 723.06115, F.S. Chapter 723, F.S., does not specify how the funds are to be disbursed to the Corporation. Instead, the transfer of funds is conducted pursuant to a Memorandum of Understanding, entered into by the Department and the Corporation.

Currently, funds are disbursed to the Corporation on a monthly basis, less any amounts withheld for the required eight percent contribution to the general revenue fund.[6] According to the Department, during fiscal year 2011-2012, $759,376.86 was deposited into the Trust Fund while $698,945.71 of that amount was transferred to the Corporation.[7]

Effect of Proposed Changes

The bill amends s. 723.06115, F.S., to specify the manner in which funds from the Trust Fund are to be disbursed to the Corporation.

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[1] Section 723.061(1)(d)2., Florida Statutes.
[2] See generally: ss. 723.0611, 723.0612, and 723.06116, Florida Statutes.
[3] Department of Business and Professional Regulation Internal Audit Report A-1112-BPR-032, page 2, dated October 4, 2012, on file with the Business and Professional Regulation Subcommittee.
[4] Id.
[5] Department of Business and Professional Regulation Internal Audit Report A-1112-BPR-032, page 1, dated October 4, 2012, on file with the Business and Professional Regulation Subcommittee.
[6] Memorandum of Understanding, page 2, dated February 9, 2011, on file with the Business and Professional Regulation Subcommittee.
[7] Department of Business and Professional Regulation 2013 Legislative Analysis of SB 378 (similar), page 4, dated January 31, 2013, on file with the Business and Professional Regulation Subcommittee.

Specifically, the bill provides that the Department shall disburse funds from the Trust Fund to the Corporation using the following procedures:

- At the beginning of each fiscal year, the Corporation shall determine its operational costs and provide that amount to the Department, in writing. The Department must transfer that amount within two business days of the Corporation's written request.
- Throughout the year, additional requests for necessary operational funding may be submitted to the Department, in writing. The Department again must transfer the requested funds to the Corporation within two business days.
- As it deems necessary, the Corporation shall advise the Department, in writing, of the amount needed to make payments to mobile home owners under the relocation program. The Department must distribute the amount within two business days of the Corporation's written request.

The bill allows the Corporation to place funds received from the Trust Fund into a non-interest bearing checking account.

Finally, the bill specifies that other than the requirements set forth in the section, neither the Corporation nor the Department is required to take any other action in order for the Corporation to receive distributions from the Trust Fund. This effectively nullifies any additional disbursement "prerequisites," listed in the Memorandum of Understanding or elsewhere.

B. SECTION DIRECTORY:

Section 1: amends s. 723.06115, F.S., to specify the manner in which funds from the Florida Mobile Home Relocation Trust Fund are to be disbursed to the Florida Mobile Home Relocation Corporation.

Section 2: provides that the bill is effective upon becoming law.

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:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Inspector General Audit Findings

On October 4, 2012, the Department's Office of Inspector General issued its audit findings regarding the business practices of the Florida Mobile Home Relocation Program.[8] The audit did not find any evidence of wrongdoing; however, it expressed concerns regarding inadequate segregation of duties, large cash balances that have amassed, and other internal control issues.

Additionally, the audit report made several recommendations to the Department. Such recommendations include:

- Amend the current Memorandum of Understanding to address the transfer of funds, submission of additional financial reporting, and periodic review of the Memorandum;
- Review and analyze the Corporation's financial information in order to enhance detective controls and to minimize the risks associated with inadequate segregation of duties; and
- Consider policy and operational changes so as to better align the Corporation's operations with current needs.[9]

Taking these audit findings into account, this bill likely does not improve the level of the Corporation's financial oversight. Specifically:

- On line 600, the bill provides that the Corporation, as it deems necessary, shall request the amount needed to make payments to mobile home owners under the relocation program. This effectively allows the Corporation to request program disbursements without providing documentation supporting the disbursement.
- The bill does not provide that the Corporation's distribution requests be approved by anyone within the Corporation.
- The bill does not otherwise provide any oversight by the Department of the Corporation's accounting practices, as it relates to calculating its operational costs and program disbursements. For example, no supporting documentation is required to be submitted with the operational budget request and/or claims disbursement request.

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[8] See, generally: Department of Business and Professional Regulation Internal Audit Report A-1112-BPR-032, dated October 4, 2012, on file with the Business and Professional Regulation Subcommittee.

[9] Department of Business and Professional Regulation Internal Audit Report A-1112-BPR-032, page 5, dated October 4, 2012, on file with the Business and Professional Regulation Subcommittee.

- The bill effectively nullifies the disbursement provisions of the Memorandum of Understanding. It may be helpful to also codify the remaining provisions of the Memorandum of Understanding, specifically the provisions relating to department monitoring/access to records, record retention, and report submission. Codifying some or all of these remaining provisions would work to decrease confusion, and increase clarity and oversight of the Corporation.

Insufficient Funding and Timing of Funding

It is possible that the Trust Fund may not contain sufficient funding to meet the requests of the Corporation, making it impossible for the Department to comply with the procedure set forth in s. 723.06115(3), F.S. To remedy this potential issue, additional language could specify that distributions to the Corporation are subject to funds being available in the Trust Fund.

Moreover, the bill requires that the Corporation be paid its operational costs, in full, at the beginning of each fiscal year. It is unlikely that the Corporation will need its entire yearly operating budget to be disbursed at one time. As such, it would be prudent for the Department to disburse the Corporation's yearly operational costs in quarterly installments. This would leave the balance invested with the state Treasury until needed, providing increased oversight over the funds.

Two-Day Disbursement Requirement

The bill requires funds to be transferred to the Corporation within two business days of the Department's receipt of the written statement requesting payment. The disbursement of funds is ultimately handled by the Bureau of Finance and Accounting (Bureau) within the Department.

Specifically, the Department processes fund disbursements as follows:

1. Receipt of transfer request;
2. Review of transfer request;
3. Approval of transfer request;
4. Payment request transmitted to the Bureau; and
5. Disbursement to the Corporation.[10]

The Department has indicated that the disbursement process may take longer than two business days.[11] To remedy this potential time lag, it may be necessary to increase the two-day disbursement requirement.

FDIC Protection

The bill provides that funds transferred to the Corporation may be placed in a non-interest bearing checking account. The Federal Deposit Insurance Corporation (FDIC) provides coverage to protect depositors in FDIC-insured institutions. Specifically, the FDIC will guarantee up to $250,000 per ownership category, per institution.[12]

Thus, if the Corporation places disbursed funds in excess of $250,000 in one non-interest bearing checking account pursuant to the provisions created in the bill, only $250,000 of those funds would be federally guaranteed. Furthermore, the Department's recent internal audit report, as discussed above,

[10] Department of Business and Professional Regulation 2013 Legislative Analysis of SB 378 (similar), page 6, dated January 31, 2013, on file with the Business and Professional Regulation Subcommittee.
[11] Id.
[12] http://fdic.gov/deposit/deposits/dis/index.html, last visited on February 22, 2013.

indicated that the Corporation currently maintains several commercial bank accounts, the balance of which regularly exceeds the $250,000 FDIC insurance limit.[13]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[13] Department of Business and Professional Regulation Internal Audit Report A-1112-BPR-032, page 5, dated October 4, 2012, on file with the Business and Professional Regulation Subcommittee.

PCS for HB 835

A bill to be entitled

An act relating to Citizens Property Insurance Corporation; amending s. 20.055, F.S.; revising the definition of the term "agency head" to include the Financial Services Commission for the purpose of Citizens Property Insurance Corporation; revising the definition of the term "state agency" to include the Citizens Property Insurance Corporation; amending s. 627.351, F.S.; providing that certain residential structures are not eligible for coverage by Citizens after a certain date; prohibiting Citizens from covering property with new construction commencing on or after July 1, 2014, that is seaward of the coastal construction control line; restricting the eligibility of a risk for a renewal policy issued by the corporation under certain circumstances; allowing insurers removing policies from the corporation to use the corporation's policy forms for a specified time without approval by the Office of Insurance Regulation; allowing the corporation to adopt policy forms to replace or repair covered damage; providing an effective date.

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

Section 1. Subsection (1) of section 20.055, Florida Statutes, is amended to read:

20.055 Agency inspectors general.—

(1) For the purposes of this section:

(a) ~~(b)~~ "Agency head" means the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), or an executive director as defined in s. 20.03(6). It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, the Financial Services Commission for the purposes of Citizens Property Insurance Corporation, and the Chief Justice of the State Supreme Court.

(b) ~~(d)~~ "Entities contracting with the state" means for-profit and not-for-profit organizations or businesses having a legal existence, such as corporations or partnerships, as opposed to natural persons, which have entered into a relationship with a state agency as defined in paragraph (a) to provide for consideration certain goods or services to the state agency or on behalf of the state agency. The relationship may be evidenced by payment by warrant or purchasing card, contract, purchase order, provider agreement, or other such mutually agreed upon relationship. This definition does not apply to entities which are the subject of audits or investigations conducted pursuant to ss. 112.3187-112.31895 or s. 409.913 or which are otherwise confidential and exempt under s. 119.07.

(c) "Individuals substantially affected" means natural persons who have established a real and sufficiently immediate injury in fact due to the findings, conclusions, or

recommendations of a final report of a state agency inspector general, who are the subject of the audit or investigation, and who do not have or are not currently afforded an existing right to an independent review process. Employees of the state, including career service, probationary, other personal service, Selected Exempt Service, and Senior Management Service employees, are not covered by this definition. This definition also does not cover former employees of the state if the final report of the state agency inspector general relates to matters arising during a former employee's term of state employment. This definition does not apply to persons who are the subject of audits or investigations conducted pursuant to ss. 112.3187-112.31895 or s. 409.913 or which are otherwise confidential and exempt under s. 119.07.

(d) ~~(a)~~ "State agency" means each department created pursuant to this chapter, and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Citizens Property Insurance Corporation, and the state courts system.

Section 2. Paragraphs (a), (c), and (q) of subsection (6) of section 627.351, Florida Statutes, are amended, and a new paragraph (gg) is added to said section, 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's, mobile home owner's, dwelling, tenant's, condominium unit owner's, 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 ~~January 1, 2009~~, a ~~personal lines residential~~ structure that has a dwelling replacement cost of $1 ~~2~~ million or more, or a single condominium unit that has a combined dwelling and contents ~~content~~ replacement cost of $1 ~~2~~ million or more is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013 ~~December 31, 2008~~, may continue to be covered by the corporation until the end of the policy term. ~~However, such dwellings that are insured by the corporation and become ineligible for coverage due to the provisions of this subparagraph may reapply and obtain coverage if the property owner provides the corporation with a sworn affidavit from one or more insurance agents, on a form provided by the corporation, stating that the agents have made their best efforts to obtain coverage and that the property has been rejected for coverage by at least one authorized insurer and at least three surplus lines insurers. If such conditions are met, the dwelling may be insured by the corporation for up to 3 years, after which time the dwelling is ineligible for coverage.~~ 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 prior to 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.

e. Effective January 1, 2018, a structure that has a dwelling replacement cost of $600,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $600,000 or more, is not eligible for

coverage by the corporation. Such dwellings insured by the corporation on December 31, 2017, may continue to be covered by the corporation until the end of the policy term.

f. Effective January 1, 2019, a structure that has a dwelling replacement cost of $500,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $500,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2018, may continue to be covered by the corporation until the end of the policy term.

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 shall be deemed to comply with this 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 property for which new construction begins on or after July 1, 2014, and which is located seaward of the coastal construction control line created pursuant to s. 161.053, is ineligible for coverage through the corporation.

6. For any claim filed under any policy of the corporation, a public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of value greater than 10 percent of the additional amount actually paid over the amount that was originally offered by the corporation for any one claim.

(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.a. 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.

b. To ensure that the corporation is operating in an efficient and economic manner while providing quality service to policyholders, applicants, and agents, the board shall

commission an independent third-party consultant having expertise in insurance company management or insurance company management consulting to prepare a report and make recommendations on the relative costs and benefits of outsourcing various policy issuance and service functions to private servicing carriers or entities performing similar functions in the private market for a fee, rather than performing such functions in-house. In making such recommendations, the consultant shall consider how other residual markets, both in this state and around the country, outsource appropriate functions or use servicing carriers to better match expenses with revenues that fluctuate based on a widely varying policy count. The report must be completed by July 1, 2012. Upon receiving the report, the board shall develop a plan to implement the report and submit the plan for review, modification, and approval to the Financial Services Commission. Upon the commission's approval of the plan, the board shall begin implementing the plan by January 1, 2013.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of eight individuals who are residents of this state, from different geographical areas of this state.

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 is 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. For renewal policies, the risk is not eligible for any policy issued by the corporation unless the premium for the coverage from the authorized insurer is more than five percent greater than the premium for comparable coverage from 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 of the corporation or a policyholder removed from the corporation through an assumption agreement until the end of the assumption period remains eligible for coverage from the corporation regardless of any offer of coverage from an authorized insurer or surplus lines insurer. 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. For renewal policies, the risk is not eligible for any policy issued by the corporation unless the premium for the coverage from the authorized insurer is more than five percent greater than the premium for comparable coverage from 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 of the corporation or a policyholder removed from the corporation through an assumption agreement until the end of the assumption period remains eligible for coverage from the corporation regardless of an offer of coverage from an authorized insurer or surplus lines insurer.

(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. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

18. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

19. 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.

20. 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 ALSO 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.

3. 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.

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessments due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable

insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation

and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.d., and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraph (b)3.a. However, any "take-out bonus" or payment to an insurer must be conditioned on the

property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When 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 such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the

insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.d.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

5. Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

6. Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed

from any other entity.

7. For a policy taken out, assumed, or removed from the corporation, the insurer may, for a period of no more than three years, continue to use any of the corporation's policy forms or endorsements that apply to the policy taken out, removed, or assumed without obtaining approval from the office for use of such policy form or endorsement.

(gg) The corporation may adopt policy forms which allow the corporation the option, at its discretion, to repair or replace covered damage with like kind and quality property rather than paying the value of the loss to the policyholder.

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 835 Citizens Property Insurance Corporation
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Callaway	Cooper

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.

As of January 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies extending approximately $418 billion of property coverage to Floridians. Citizens insures over 444,000 residential and commercial policies in Florida's coastal areas and over 835,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas.

The PCS contains numerous changes to Citizens. Changes include:

- creating an Inspector General for Citizens who reports to the Financial Services Commission,
- precluding Citizens' policyholders from renewing insurance with Citizens if an insurer in the private market will insure the property for a premium up to five percent more than the Citizens' renewal premium,
- precluding Citizens from insuring property with a dwelling replacement cost or a condominium unit that has a dwelling and contents replacement cost of $500,000 or more, implemented over a six year period,
- precluding Citizens from insuring newly constructed property seaward from the coastal construction control line starting July 1, 2014,
- authorizing Citizens to require repair of damaged property, instead of paying to replace it, and
- authorizing insurers taking policies out of Citizens to use Citizens' policy forms for three years which will allow these insurers to insure the property with reduced coverage and to require repair of the property instead of paying to replace it.

The PCS has no impact on state or local government. The PCS should reduce the number of policies in Citizens. This also reduces the amount of potential losses for Citizens which, in turn, decreases the likelihood and amount of a deficit in Citizens causing assessments on Citizens' and non-Citizens' policyholders. Some current Citizens' policyholders will no longer be able to obtain insurance in Citizens and will have to purchase insurance in the private market which may be more expensive than Citizens' insurance. Citizens and insurers taking policies out of Citizens will be able to ensure damaged property is repaired. Insurers taking policies out of Citizens will be able to reduce their exposure on the policies by insuring them for the reduced coverage offered by Citizens for three years. However, policyholders previously insured by Citizens who are taken out will not get the more comprehensive coverage offered by the insurer to its' other policyholders.

The PCS is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The PCS contains numerous changes to Citizens Property Insurance Corporation (Citizens or corporation). Changes include:

- creating an Inspector General for Citizens,
- restricting the eligibility for insurance in Citizens based on renewal premium amount, insured value, and location of the property,
- authorizing Citizens to pay to repair or replace damaged property, and
- authorizing insurers taking policies out of Citizens to use Citizens' policy forms for three years.

Background of 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 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies extending approximately $418 billion of property coverage to Floridians.[1] Citizens insures over 444,000 residential and commercial policies in Florida's coastal areas and over 835,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas. As of June 30, 2012, Citizens represented approximately 23 percent of the residential property admitted market based on number of policies.[2]

Citizens was created by the Legislature in 2002 by the merger of two existing property insurance associations: 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 various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts within the corporation:

1. Personal Lines Account (PLA) – Multiperil Policies[3]
   Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2. Commercial Lines Account (CLA) – Multiperil Policies
   Consists of condominium association, apartment building, homeowner's association policies, and commercial non-residential multiperil policies on property located outside the Coastal Account area; and

[1] https://www.citizensfla.com/ (last viewed February 22, 2013).

[2] "Florida Property Insurance Market Analysis and Recommendations," presentation to the Senate Committee on Banking and Insurance by Locke Burt, Chairman and President, Security First Insurance Company, dated February 6, 2013. Data based on the OIR QUASR Report. Citizens represents over 21% of the market based on total insured value and 20% of the homeowner's residential market based on 2011 written premium. (See "Principle-Based Reforms for Florida's Property Insurance Market," presentation to the Senate Committee on Banking and Insurance by Kevin M. McCarty, Insurance Commissioner, Florida Office of Insurance Regulation, dated January 16, 2013.).

[3] A multi-peril 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. (http://www2.iii.org/glossary/) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

3. Coastal Account – Wind-only[4] and Multiperil Policies
   Consists of wind-only and multiperil policies for personal residential, commercial residential, and commercial non-residential issued in limited eligible coastal areas.

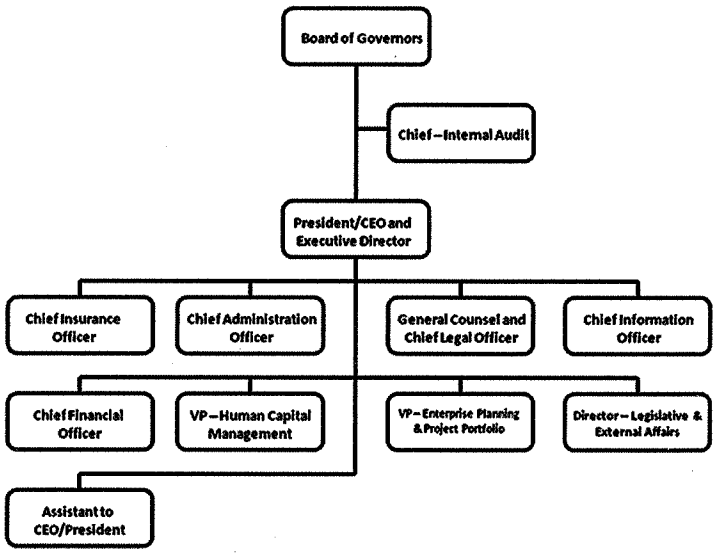
Citizens' Inspector General

Citizens operates under the direction of an eight member Board of Governors (Board). 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.[5] At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. The board members are not Citizens' employees and are not paid.

Only the Citizens' President/CEO/Executive Director and the Chief of Internal Audit report directly to the Citizens' Board. The following senior managers report directly to the President/CEO/Executive Director:

- Chief Insurance Officer,
- Chief Administration Officer,
- General Counsel and Chief Legal Officer,
- Chief Information Officer,
- Chief Financial Officer,
- Vice President of Human Capital Management,
- Vice President of Enterprise Planning and Project Portfolio, and
- Director of Legislative and External Affairs.

An organizational chart of the senior managers at Citizens is as follows:



Citizens does not currently have an inspector general and is not required by law to have one. However, the Chief of Internal Audit has job duties and responsibilities similar to an inspector general. The Chief of Internal Audit position was created in Citizens in 2006.[6] Citizens' first Chief of Internal Audit started in January, 2007. The position has been filled almost continuously since that time, with Citizens employing four Chiefs of Internal Audit since 2007.[7]

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[4] 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.

[5] s. 627.351(6)(c)4., F.S.

[6] See Section 15, Ch. 2006-12, L.O.F.

[7] The Chief of Internal Audit position was not filled between 6/9/2007 and 11/4/2007 due to a lapse between the resignation of one Chief and the hiring of a replacement.

Generally, the duties of the Chief of Internal Audit include: fostering and promoting accountability and integrity in Citizens; holding the Citizen's leadership, management and staff accountable for efficient, cost-effective operation; and preventing, identifying, and eliminating fraud, waste, corruption, illegal acts, and abuse. Specific duties and responsibilities for the position are contained in s. 627.351(6)(i), F.S. The Chief of Internal Audit carries out his duties primarily through audits, management reviews and investigations.

From December 2010 until October 2012, Citizens also had an Office of Corporate Integrity (Office).[8] The Office handled employee complaints, particularly those that could indicate ethics violations and internal fraud. From December 2010 until July 2012, the employees in this office reported to Citizens' General Counsel and Chief Legal Officer. Thereafter, they reported to the Citizens' Chief of Internal Audit. The Office was disbanded by Citizens' Board in October 2012, but its functions were absorbed by other Citizens' staff, including the Office of Internal Audit, the Ethics Officer, and the Employee Relations Office.[9]

Governor's Inspector General Report

In September 2012, Governor Rick Scott asked his Office of the Chief Inspector General (Inspector General) to review travel expenses incurred by Citizens' Board members, Senior Managers, and employees to determine whether the expenses were incurred in accordance with Citizens' travel policies.[10] The Governor requested the review after newspapers published articles relating to Citizens' employees' travel expenses.[11] The Inspector General issued a report on February 14, 2013.[12] The report found travel expenses incurred by Citizens' Board and staff were generally compliant with the Citizens' travel policies in effect when the travel was incurred. But, the Inspector General also found Citizens' travel policies were ambiguous and lacked specific requirements to ensure travel was necessary and conducted in the most economical manner. Additionally, the report noted the policies allowed for travel expenses in excess of the State of Florida travel guidelines. The Inspector General recommended Citizens be required to follow state travel laws and that Citizens' travel policies be updated to reflect that state travel laws apply to Board Members, Senior Managers, and all employees. The Inspector General also recommended Citizens enhance their internal controls to address the findings in the report.

Governor's Response to the Inspector General Report

In response to the Inspector General Report on Citizens' travel expenses, Governor Scott proposed four reforms.[13] First, the Governor recommended Citizens immediately change their travel guidelines to comply with official state travel restrictions. Second, he recommended Citizens' Board members to change their travel policy to prohibit any international travel. Third, he suggested Citizens' travel policy be further tightened to allow only essential employees to attend board meetings. Lastly, the Governor recommended Citizens have its own independent statutory Inspector General to enforce existing rules and any additional reforms needed. On January 18, 2013, Citizens' President/CEO/Executive Director

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[8] The Office of Corporate Integrity began as the Office of Corporate Compliance within the Administration/Human Resources Department in Citizens. The Office of Corporate Compliance was established in June 2008.

[9] Press Release from Citizens dated October 18, 2012, available at https://www.citizensfla.com/about/pressreleases.cfm?show=text&link=/shared/press/articles/new/10_18_2012.cfm&showyear=2012 (last viewed January 22, 2013). The Office was disbanded by the Citizens' Board upon a recommendation of the Audit Committee of the Board.

[10] The Inspector General reviewed approximately 350 expense reports of travel and travel related expenses for Citizens' eight Board members, 13 Senior Managers and 18 other employees.

[11] "Expense reports for Citizens Property Insurance's top executives how lavish spending," August 26, 2012, available at http://www.tampabay.com/news/business/banking/expense-reports-for-citizens-property-insurances-top-executives-show/1247636 (last viewed January 22, 2013); "Citizens Property Insurance interim president chalks up almost $10,000 in travel expenses in two months," June 20, 2012, available at http://www.tampabay.com/news/business/banking/citizens-property-insurance-interim-president-chalks-up-almost-10000-in/1236203 (last viewed January 22, 2013).

[12] Executive Office of the Governor Office of the Chief Inspector General, Report No. 2013-10, Citizens Property Insurance Corporation Travel Review, dated February 14, 2013, on file with the Insurance & Banking Subcommittee.

[13] http://www.flgov.com/2013/01/17/statement-from-governor-rick-scott-regarding-inspector-general-report-on-citizens-corporate-travel/ (last viewed January 22, 2013). The statement was issued in response to the Inspector General's preliminary report issued January 15, 2013.

publically provided support for an Inspector General at Citizens.[14] In a February 13, 2013 written response to the Inspector General's report, Citizens' President/CEO/Executive Director stated Citizens would implement changes to the corporation's travel and expense procedures to more closely mirror the travel guidelines applicable to state agencies.[15]

Effect of Proposed Changes Relating to Citizens' Inspector General

Section 20.055, F.S., establishes the Office of Inspector General in each state agency and specifies the duties and responsibilities of that office. This law also outlines who appoints each state agency's inspector general and the chain of command, job qualifications, auditing requirements and reporting requirements for an agency's inspector general.

The definition of "state agency" in the inspector general statute does not include Citizens and the PCS changes that definition to include Citizens as a state agency. Thus, current law establishing the Office of Inspector General in each state agency would apply to Citizens and require Citizens to have an inspector general. In addition, all the duties, responsibilities, qualifications, and auditing and reporting requirements required of state agency inspector generals would also apply to the Citizens' Inspector General. The Citizens' Inspector General will have more extensive duties and responsibilities than the Citizens' Chief of Internal Audit, although some statutory duties and responsibilities of these two positions overlap.

Under the PCS, the agency head for the purposes of Citizens' Inspector General is the Financial Services Commission, comprised of the Governor and Cabinet.[16] Thus, the Financial Services Commission will hire, fire, and supervise the Citizens' Inspector General.

Citizens' Financial Resources to Pay Claims[17]

Citizens' financial resources include both resources typically available to private insurance companies and resources uniquely available to Citizens as a governmental entity with the statutory authority to levy assessments in the event of a deficit in Citizens' financial resources. Like typical private insurance companies, Citizens' financial resources include:

- insurance premiums;
- investment income;
- accumulated surplus;
- reimbursements from the Florida Hurricane Catastrophe Fund due to Citizens' purchase of reinsurance from the Florida Hurricane Catastrophe Fund; and
- reimbursements from private reinsurance companies if Citizens purchases private reinsurance.

Financial resources unique to Citizens include: Citizens Policyholder Surcharges, regular assessments, and emergency assessments.

Citizens projects the corporation will have $6.2 billion in surplus to pay claims during the 2012 hurricane season. In addition, Citizens could be reimbursed $6.9 billion for claims it pays by the Florida Hurricane Catastrophe Fund and $1.5 billion from private reinsurers claims paid in the Coastal Account.

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[14] https://www.citizensfla.com/about/pressreleases.cfm?show=text&link=/shared/press/articles/new/01_18_2013.cfm (last viewed January 22, 2013).

[15] Executive Office of the Governor Office of the Chief Inspector General, Report No. 2013-10, Citizens Property Insurance Corporation Travel Review, dated February 14, 2013, on file with the Insurance & Banking Subcommittee.

[16] s. 20.121(3), F.S.

[17] All Citizens' projections about claims paying capacity for the 2012 hurricane season are found in meeting materials from Citizens presented at the Insurance & Banking Subcommittee meeting held on January 15, 2013. Citizens has not finalized its plan of finance for risk transfer and liquidity for 2013, although it has approval from their governing board to seek risk transfer of $1.75 billion for 2013 for the Coastal Account with the risk transfer methods of continuation of 2012 capital market transactions and private reinsurance, replacement of 2012 traditional reinsurance, and new capital market transactions. The board also approved a $600 million pre-event liquidity financing program for the Coastal Account. No risk transfer methods were requested or approved for the PLA and CLA due to the significant amount of surplus in these accounts. (See meeting materials from the Citizens' Board of Governors meeting on February 14, 2013, available at https://www.citizensfla.com/about/mDetails_boardmtgs.cfm?event=504&when=Past (last viewed February 22, 2013)).

Thus, the maximum amount Citizens has to pay claims without levying assessments for the 2012 hurricane season is approximately $14.6 billion.[18]

As of January 31, 2013, Citizens' total exposure is over $418 billion. Citizens estimates the 1-in-100 year hurricane would cost almost $24 billion.[19] The $9.4 billion difference between Citizens' resources to pay claims ($14.6 billion) and its 1-in-100 year exposure ($24 billion) would be covered by assessments levied by Citizens on its own policyholders and on policyholders of most property and casualty insurance.

Assessments Levied by Citizens

In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute.[20] The three Citizens' accounts calculate deficits and resulting assessment needs independently. The three types of assessments Citizens can levy are:

1. Citizens Policyholder Assessments,
2. Regular Assessments, and
3. Emergency Assessments.

Citizens Policyholder Assessments

If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15 percent of premium per account in deficit, for a maximum total of 45 percent.

Regular Assessments

If the Coastal Account incurs a deficit that the levy of a Citizens Policyholder Assessment does not cure, then Citizens may levy another assessment, a regular assessment, of up to 2 percent of premium or 2 percent of the remaining deficit in the Coastal Account.[21] The regular assessment is levied on virtually all property and casualty policies in the state, but not on Citizens' policies. The assessment is also not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

Regular assessments cannot be levied for deficits in the PLA or CLA. Only Citizens Policyholder Assessments and emergency assessments can be levied to cure deficits in these accounts.

Emergency Assessments

If the PLA or CLA incurs a deficit that a Citizens Policyholder Assessment levy does not cure, then Citizens may levy another assessment, an emergency assessment, to cure the deficit. An emergency assessment may also be levied for deficits in the Coastal Account that a Citizens Policyholder Assessment and regular assessment do not cure. Emergency assessments are limited to 10 percent of premium or 10 percent of the deficit per account, for a maximum total of 30 percent.[22] This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies. However, this assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

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[18] Citizens has also issued $5.1 billion in pre-event bonds to create additional liquidity to pay claims during the 2012 hurricane season. If these funds are used to pay claims during the 2012 hurricane season, then monies drawn must be repaid and assessments will likely be levied by Citizens to provide funds for repayment. Thus, pre-event bonding is not included in this calculation of the amount of funds Citizens has to pay claims because this calculation is the amount available to pay claims without assessing policyholders.

[19] A 1-in-100 year hurricane has a 1 percent probability of occurring. Information on probable maximum loss is contained in the meeting packet from the Insurance & Banking Subcommittee meeting on January 15, 2013.

[20] s. 627.351(6)(b)3.a.,d., and i., F.S.

[21] s. 627.351(6)(b)3.a., F.S.

[22] s. 627.352(6)(b)3.d., F.S.

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amount and value of the property insured. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules, which are approved by the Office of Insurance Regulation (OIR), give flexibility for Citizens to denote some risks as uninsurable based on factors not enumerated in statute, such as age of home, condition and age of roof, vacant property, certain seasonal occupancy, and type of electrical wiring. The PCS provides some new statutory eligibility requirements for Citizens and does not address the ones set by underwriting rule.

Eligibility Based on Premium Amount

A major eligibility requirement for insurance in Citizens provided in current law is a 15 percent premium restriction. This restriction prevents a homeowner from buying insurance in Citizens if an insurer in the private market offers the homeowner insurance for a premium 15 percent or less than the Citizens' premium.[23] In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage. Thus, a homeowner can buy insurance from Citizens only if the private insurer's premium is more than 15 percent than the Citizens' premium.

For policies being renewed by Citizens, the PCS adds a new eligibility requirement based on premium amount. The 15 percent premium restriction, described above, imposes an eligibility requirement based on premium amount only for new policies. Thus, under current law, policies can be renewed in Citizens if a private market insurer is willing to insure the property regardless of the premium associated with the private insurer's offer. The PCS makes policies being renewed by Citizens ineligible for insurance in Citizens at renewal if an insurer in the private market offers to insure the property at a premium five percent or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the five percent premium eligibility requirement to apply.

Eligibility Based on Value of Property Insured

Citizens currently has eligibility restrictions for homes and condominium units based on the value of the property insured. These restrictions are in addition to the 15 percent premium eligibility restriction. Citizens currently does not insure a home or condominium unit if the insured value of the dwelling is $1 million or more.[24]

The PCS adds additional eligibility restrictions for only personal residential property based on insured value and phases in the new restrictions over six years. Personal lines residential property is primarily homeowner's, mobile homeowner's, tenant's, dwelling, condominium unit owner's, cooperative unit owner's, and similar policies.

Under the PCS, structures with a dwelling replacement cost or a condominium unit that has a dwelling and contents replacement cost of:

- $1 million or more cannot obtain insurance in Citizens starting January 1, 2014, but property insured by Citizens for $1 million or more on December 31, 2013 can remain insured in Citizens until the policy expires in 2014, but cannot be renewed.
- $900,000 or more cannot obtain insurance in Citizens starting January 1, 2015, but property insured for $900,000 or more on December 1, 2014 can remain insured in Citizens until the policy expires in 2015, but cannot be renewed.
- $800,000 or more cannot obtain insurance in Citizens starting January 1, 2016, but property insured for $800,000 or more on December 1, 2015 can remain insured in Citizens until the policy expires in 2016, but cannot be renewed.

[23] s. 627.351(6)(c)5.a., F.S. Commercial non-residential property is not subject to this eligibility restriction.

[24] This restriction is pursuant to an underwriting rule.

- $700,000 or more cannot obtain insurance in Citizens starting January 1, 2017, but property insured for $700,000 or more on December 1, 2016 can remain insured in Citizens until the policy expires in 2017, but cannot be renewed.
- $600,000 or more cannot obtain insurance in Citizens starting January 1, 2018, but property insured for $600,000 or more on December 1, 2017 can remain insured in Citizens until the policy expires in 2018, but cannot be renewed.
- $500,000 or more cannot obtain insurance in Citizens starting January 1, 2019, but property insured for $500,000 or more on December 1, 2018 can remain insured in Citizens until the policy expires in 2019, but cannot be renewed.

Citizens does not have any eligibility restrictions based on the value of the property insured for condominium association, homeowner association, or apartment building policies and the bill does not add any such restrictions for these properties.

Citizens has multiple eligibility and coverage restrictions for commercial businesses, depending on where the business is located and the type of policy the business purchases from Citizens. The restrictions are contained in the underwriting rules of Citizens, not in the statute. The bill does not add any eligibility restrictions based on the value of the property insurance for commercial businesses.

Eligibility Based on Location of Property

The only eligibility for insurance in Citizens in current law based on the location of the property to be insured is the designation of wind-only zones where Citizens can provide coverage for only property damage caused by wind events. And even this eligibility does not preclude Citizens from insuring property located in a wind-only zone, but allows Citizens to restrict its coverage to damage from wind events only.

Citizens' Wind-Only Policies

Citizens provides coverage in the Coastal Account for specially designated areas, called wind-only zones,[25] which have been determined to be particularly vulnerable to severe hurricane damage. In these areas, a property owner can obtain a property insurance policy from Citizens covering property damage from only wind events and can obtain a property insurance policy from a private market insurance company covering property damage and liability from non-wind events (other peril/non-wind coverage).

The wind-only zones that currently exist have evolved over three decades, but originated with the creation of the FWUA in 1970. The FWUA was created to cover residential and commercial policyholders unable to secure windstorm coverage in the voluntary market. This coverage was limited to defined geographical areas in the state determined by the then Department of Insurance (Department). Eligibility was limited to structures in areas found by the Department, after public hearings, to meet three criteria:

- the lack of windstorm coverage in the area was deterring development, causing mortgages to be in default, and causing financial institutions to deny loans;
- the area was subject to the requirements of the Southern Standard Building Code or its equivalent; and
- extending windstorm coverage to the area was consistent with the policies and objectives of environmental and growth management.

The wind-only zones currently apply to 29 Florida counties. When the wind-only zones were established, only Monroe County was included. In 1992, when Hurricane Andrew hit South Florida, the wind-only zone did not include Miami-Dade, Broward, or Palm Beach counties. After Hurricane Andrew, the Department and the Legislature expanded the boundaries of the wind-only zones to the current ones. In July 2002, when Citizens was created, Citizens maintained the wind-only zones from the FWUA.

[25] Also called windstorm areas or windstorm boundaries.

Coastal Construction Control Line

According to the Department of Environmental Protection (DEP), the Coastal Construction Control Line Program (CCCL) is an essential element of Florida's coastal management program.[26] It provides protection for Florida's beaches and dunes while assuring reasonable use of private property. The Coastal Construction Control Line Program protects Florida's coastal system from improperly sited and designed structures which can destabilize or destroy the beach and dune system. Adoption of a coastal construction control line establishes an area of jurisdiction in which special siting and design criteria are applied for construction and related activities. These standards may be more stringent than those that apply in the rest of the coastal building zone because during a storm event greater forces are expected to occur in the more seaward zone of the beach. Chapter 62B-33, Florida Administrative Code, provides the design and siting requirements that must be met to obtain a coastal construction control line permit. Approval or denial of a permit application is based upon a review of the potential impacts to the beach dune system, adjacent properties, native salt resistant vegetation, and marine turtles.[27]

The DEP established the coastal construction control line by evaluating historical weather data (including past hurricanes which impacted the area under study, tide cycles, offshore bathymetry, erosion trends, upland topography, and existing vegetation and structures) using appropriate engineering predictive models and scientific principles to determine the upland limits of the effect of a one-hundred year coastal storm.[28] Importantly, the coastal construction control line 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 DEP. An interactive map showing the coastal construction control line is available online.[29]

Effect of Proposed Changes Relating to Eligibility Based on Location of Property

The PCS adds an eligibility restriction for insurance in Citizens based on the location of the property. Under the PCS, structures located seaward of the coastal construction control line for which construction begins on or after July 1, 2014, will be ineligible for insurance in Citizens.

Payment of Replacement Costs In Property Insurance Claims

Property insurance claims are adjusted on the basis of replacement costs or actual cash value, whichever method is provided in the property insurance policy. Property insurers must offer policyholders an option for replacement cost coverage.[30] If a claim is adjusted by the actual cash value method, the policyholder is paid the depreciated value of the property damaged or lost that is being replaced or repaired.

Until 2005, if a claim was adjusted by the replacement cost method, insurers could make an initial payment on the claim based on the actual cash value of the claim and require the policyholder to complete the repair before the insurer paid the balance of the full replacement cost. Following the multiple hurricanes of 2004 and 2005, regulators received complaints from policyholders who were given the actual cash value of the property damaged or lost, but could not afford to fund the balance necessary to make the repairs or replacements. In 2005, the Legislature addressed this issue by requiring if a claim was adjusted by the replacement cost method, the insurer must pay the full replacement cost up front, whether or not the policyholder replaces or repairs the damaged property.

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[26] A homeowner's guide to the Coastal Construction Control Line Program is available online. (See link for "Homeowners Guide to Coastal Construction Control Line (CCCL) Program," available at http://www.dep.state.fl.us/beaches/publications/index.htm#cccl, last viewed February 21, 2013).

[27] http://www.dep.state.fl.us/beaches/programs/ccclprog.htm (last viewed February 21, 2013).

[28] Some major storm effects, including wind and flooding may penetrate much farther inland than the control line, however the magnitude of the forces associated with those effects is considerably less than those which are anticipated seaward of the control line.

[29] See link for "How to determine if you (sic) property is seaward of the CCCL using 'Map Direct'," available at http://www.dep.state.fl.us/beaches/publications/index.htm#cccl (last viewed February 21, 2013).

[30] s. 627.7011, F.S.

Requiring insurers to pay the full replacement cost under replacement cost policies, without holding back depreciated value until the property is replaced or repaired, benefits policyholders who can collect such payments and then decide whether to actually replace or repair the property. But, this also likely increases loss payments by insurers and could cause an increase in fraudulent claims, both of which may increase premiums. Paying replacement costs whether the dwelling or property is replaced may also result in damaged property not being repaired, which could negatively impact financial institutions that hold mortgages and the secondary mortgage market.

In 2011, legislation was enacted which again changed the way replacement costs are paid in property insurance claims.[31] Under current law, for partial dwelling losses, the insurer must initially pay at least the actual cash value of the claim, less any insurance deductible. The remaining amount owed on the claim (i.e., the difference between the initial amount paid and the replacement cost) is paid by the insurer periodically as the repair work is done and expenses are incurred by the policyholder. For total dwelling losses, the insurer must pay full replacement cost up front without reservation or holdback of any depreciation, whether or not the policyholder replaces the dwelling (the same as the 2005 law).

For personal property losses (i.e., contents), there are two options for replacement cost coverage. The first option requires the insurer to pay full replacement cost up front without reservation or holdback of any depreciation, whether or not the policyholder replaces or repairs the personal property damaged or destroyed (the same as the 2005 law). The second option requires the insurer to initially pay the actual cash value of the claim with the remaining amount owed on the claim (i.e., the difference between the initial amount paid and the replacement cost) paid by the insurer as receipts are provided by the policyholder for the purchase of property that is replaced. The policyholder cannot be required to advance payment to replace the personal property lost. The insurer is not required to offer policyholders the second option for replacement cost coverage but is required to offer the first option. If the insurer decides to offer the second option, the policyholder must be given notice of the receipt submission process required to receive full payment of replacement costs under the policy and must be given an actuarially reasonable premium credit or discount for purchasing the policy.

Effect of Proposed Changes Relating to Repair or Replacement of Damaged Property by Citizens

The PCS provides an exception to the current law regarding payment of replacement costs for Citizens and for those private insurers who take policies out of Citizens. The PCS allows Citizens to decide whether to repair or replace damaged property (dwelling and personal property) with like kind and quality property in lieu of paying the policyholder the value of the damaged property. To do so, Citizens must file a policy form with the OIR for approval.[32] Furthermore, the PCS allows insurers who take policies out of Citizens to use Citizens' policy forms for three years without approval from the OIR to use the forms. Thus, if Citizens chooses to adopt a policy form allowing the corporation to repair property in lieu of paying the policyholder outright for the damage, then for three years, private insurers will be able to repair property in lieu of payment for any policy removed from Citizens without regulatory oversight or approval of the practice.

Use of Citizens' Policy Forms by Private Insurers

Recently, Citizens has significantly reduced the coverage on the property they insure and reduced the policy limits on certain coverage.[33] For example, Citizens no longer insures screen enclosures or carports. It does not write builder's risk insurance[34] anymore. And, Citizens now has a 10% mandatory sinkhole deductible and a policy limit for personal liability of $100,000, instead of $300,000. Some

[31] Section 19, ch. 2011-39, L.O.F.

[32] Section 627.410, F.S., generally requires all insurance forms to be filed with the OIR for approval before an insurer uses the form.

[33] See Presentation to the Financial Services Commission by Citizens Property Corporation, dated June 26, 2012, available at https://www.citizensfla.com/about/mediaresources.cfm (last viewed February 22, 2013).

[34] Builder's risk insurance is a property policy designed to provide coverage for buildings while under construction. http://buildersriskinsurance.org/ (last viewed February 22, 2013).

insurers in the private market have made coverage reductions similar to some of the ones made by Citizens, but no private insurer has made all of the reductions Citizens has made. To effectuate the coverage changes, Citizens changes their policy forms to delineate the reduced coverage and obtains approval of the form change from the OIR. Once a policy is issued or renewed after the effective date of the new policy form, the reduced coverage applies to the property insured by the policy.

The PCS allows insurers who take policies out of Citizens to use Citizens' policy forms for three years without approval from the OIR to use the forms. Thus, insurers taking property policies from Citizens will be able to insure that property with the same reduced coverage Citizens insured the property for, instead of the more comprehensive coverage the insurer uses for property not taken from Citizens. Additionally, insurers will be able to insure the property with reduced coverage without obtaining approval from the OIR.

B. SECTION DIRECTORY:

Section 1: Amends s. 20.055, F.S., relating to agency inspectors general.

Section 2: Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 3: Provides an effective date of July 1, 2013.

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 changes made by the bill restricting the eligibility for insurance in Citizens should reduce the number of policies in Citizens. Reducing the number of policies in Citizens decreases the amount of losses experienced by Citizens. Decreasing the amount of losses lessens the likelihood of a deficit for Citizens, which in turn, reduces the probability and amount of assessments on Citizens' and non-Citizens' policyholders.

Further restricting eligibility for insurance in Citizens, by premium comparison at renewal, by the insured value of the property, or by the location of the property will force some Citizens' policyholders into the private or surplus lines market for property insurance. These markets could charge more for insurance than Citizens which would increase the premiums for some current Citizens' policyholders.

As of December 31, 2012, Citizens writes almost 7,500 policies in the personal lines account and approximately 28,600 policies in the Coastal Account with a building coverage limit of $500,000 or more. Starting January 1, 2020, these policies will no longer obtain coverage in Citizens (after the phase out period in the bill fully takes effect).

Allowing insurers who take policies out of Citizens to use Citizens' policy forms which provide for reduced coverage on the insured property reduces the insurers' exposure for those policies for the three years the insurer is allowed to use the forms. However, policyholders previously insured by Citizens who are taken out by an insurer in the private market will not get the more comprehensive coverage offered by the insurer to its' other policyholders.

For damaged property covered by a Citizens' policy form that requires the property to be repaired instead of replaced, the Citizens' policyholder will not receive payment for replacement cost of the damaged property as allowed under current law. However, Citizens will be able to ensure the property insured is repaired. Former Citizens' policyholders who are taken out of Citizens by insurers in the private market and these insurers will have the same impact for three years as the insurers are allowed to use Citizens' policy forms for three years.

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 in the PCS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the establishment of a clearinghouse program within the Citizens Property Insurance Corporation; amending s. 626.752, F.S; exempting Citizens Property Insurance Corporation from exchange of business restrictions when placing business with authorized insurers; creating s. 627.3518, F.S.; providing definitions; authorizing the creation of a clearinghouse program within the corporation; specifying the purposes of the program; specifying certain rights and responsibilities with respect to the program; authorizing the corporation to take specified actions in establishing the program; providing conditions and requirements relating to the participation of insurers in the program; providing requirements and procedures applicable to offers of coverage with respect to applicants for coverage with the corporation and existing policyholders of the corporation; providing requirements for certain independent insurance agents and exclusive agents with respect to submitting applications for coverage or policies for renewal to the program; requiring the corporation to publish standards by a certain date for recognition of private entities as an alternative option to submitting risks to the program; providing conditions and requirements relating to such alternative options; providing for construction; providing an effective date.

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

Section 1. Subsection (4) of section 626.752, Florida Statutes, is amended to read:

626.752 Exchange of business.—

(4) The foregoing limitations and restrictions shall not be construed and shall not apply to the placing of surplus lines business under the provisions of part VIII or to the activities of Citizens Property Insurance Corporation in placing new and renewal business with authorized insurers in accordance with the provisions of 627.3518.

Section 2. Section 627.3518, Florida Statutes, is created to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—

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

(a) "Corporation" means Citizens Property Insurance Corporation.

(b) "Exclusive agent" means any licensed insurance agent that has, by contract, agreed to act exclusively for one company or group of affiliated insurance companies and is disallowed by the provisions of that contract to directly write for any other unaffiliated insurer absent express consent from the company or group of affiliated insurance companies.

(c) "Independent agent" means any licensed insurance agent not described in paragraph(b).

(d) "Program" means the clearinghouse created under this section.

(2) In order to confirm eligibility for coverage with the corporation, and to enhance access of applicants for coverage with the corporation and access of existing policyholders of the corporation to offers of coverage from authorized insurers at renewal, the corporation shall establish a clearinghouse program to facilitate the diversion of ineligible applicants and existing policyholders from the corporation into the voluntary insurance market.

(3) The corporation board shall establish the clearinghouse program as an organizational unit within the corporation. The program shall have all the rights and responsibilities in carrying out its duties as a licensed general lines agent, but may not be required to employ or engage a licensed general lines agent or to maintain an insurance agency license to carry out its activities in the solicitation and placement of insurance coverage. In establishing the program, the corporation may:

(a) Require all new applications, and all policies due for renewal, to be submitted for coverage to the program or private alternative in order to facilitate obtaining an offer of coverage from an authorized insurer before binding or renewing coverage by the corporation.

(b) Employ or otherwise contract with individuals or other entities for appropriate administrative or professional services to effectuate the plan within the corporation in accordance with the applicable purchasing requirements under s. 627.351.

(c) Enter into contracts with any authorized or surplus lines insurer to participate in the program and accept an

appointment by such insurer.

(d) Provide funds to operate the program and charge a reasonable fee as a percentage of agent commission to offset, or partially offset, the costs of the program. Insurers participating in the program may not be required to pay a fee or use the program for renewals of any policy initially written through the program.

(e) Develop an enhanced application that includes information to assist private insurers in determining whether to make an offer of coverage through the program.

(f) Require, before approving all new applications for coverage by the corporation, that every application be subject to a 48-hour period when any insurer participating in the program may select the application for coverage. The insurer may issue a binder on any policy selected for coverage for a period of at least 30 days but not more than 60 days.

(g) Allow eligible surplus lines insurers to participate and make offers of coverage. An offer of coverage may be made by an eligible surplus lines insurer only if an authorized insurer does not make an offer of coverage through the program. Surplus lines insurers may offer premiums and coverages that are more favorable than those offered in the corporation, and agents are not required to compile three declinations from authorized insurers before binding coverage with a surplus lines insurer.

(4) Any authorized or surplus lines insurer may participate in the program; however, participation is not mandatory for any insurer. Insurers making offers of coverage to new applicants or renewal policyholders through the program:

(a) May not be required to individually appoint any agent whose customer is underwritten and bound through the program. Notwithstanding s. 626.112, insurers are not required to appoint any agent on a policy underwritten through the program for as long as that policy remains with the insurer. Insurers may, at their election, appoint any agent whose customer is initially underwritten and bound through the program. In the event an insurer accepts a policy from an agent who is not appointed pursuant to this paragraph, and thereafter elects to accept a policy from such agent, the provisions of s. 626.112 requiring appointment apply to the agent.

(b) Must enter into a limited agency agreement with each agent that is not appointed in accordance with paragraph (a) and whose customer is underwritten and bound through the program.

(c) Must enter into its standard agency agreement with each agent whose customer is underwritten and bound through the program when that agent has been appointed by the insurer pursuant to s. 626.112.

(d) Must comply with s. 627.4133(2).

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation, if provided an offer of coverage from an authorized insurer through the program at premium that is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. and b. Whenever an offer of coverage for a personal lines or commercial lines risk is received for a policyholder of the corporation at renewal, notwithstanding any other provisions of law, if the offer is no more than 5 percent

above the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant is received from an insurer, and the premium offered exceeds the eligibility threshold contained in s. 627.351(6)(c)5.a. and b., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines or commercial lines risk is received from an insurer at renewal, and the premium offered is more than 5 percent above the corporation's renewal premium for comparable coverage, the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. Any applicant for new coverage from the corporation, and policyholders of all policies for renewal, if provided an offer of coverage from a surplus lines insurer, are not required to accept such offer, and may be accepted for coverage or renewed by the corporation at the applicant's or policyholder's option. Sub-sub-subparagraphs 627.351(6)(c)5.a.(I) and b.(I) do not apply to an offer of coverage from an authorized insurer obtained through the program.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in

the program, notwithstanding the provisions of s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) May accept an appointment from any insurer participating in the program.

(d) Must enter into either a standard or limited agency agreement with the insurer, at the insurer's option.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding the provisions of s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any

other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) Must accept an offer of coverage from any insurer whose limited servicing agreement is approved by that agent's exclusive insurer as eligible to participate in the program with that insurer's exclusive agents.

(d) Must enter into only a limited servicing agreement with the insurer making an offer of coverage, and only after the exclusive agent's insurer has approved the limited servicing agreement terms. The exclusive agent's insurer must approve a limited service agreement for the program for any insurer for which it has approved a service agreement for other purposes.

(8) To promote private market initiatives to obtain offers of coverage from authorized and surplus lines insurers for applicants for coverage by the corporation and the corporation's policyholders on renewal, the corporation shall, by January 1, 2014, publish reasonable standards for the recognition of private alternatives to the submission of a risk to the program. Such private alternatives to the program may act in a master agency arrangement for producing agents who may be appointed as sub-agents of the master agency utilizing such private alternatives for the submission of risks to the program. The alternative option permitted under this subsection is an alternative and not a replacement for the program established under this section. Neither the program nor any private entity

operating under this subsection may prohibit insurers that elect to participate from participating in more than one program or alternative; however, any insurer participating in the private entity must also participate in the program.

(9) Submission of an application for coverage by the corporation to the program does not constitute the binding of coverage by the corporation, and failure of the program to obtain an offer of coverage by an insurer may not be considered acceptance of coverage of the risk by the corporation.

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB IBS 13-01 Citizens Property Insurance Corporation Clearinghouse Program
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Callaway	Cooper

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. Although it operates like a private insurance company, it is not a private insurance company. As of January 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies and over $418 billion in exposure.

In general, current law prohibits a homeowner from buying insurance in Citizens if an insurer in the private market offers the homeowner property insurance for a premium that is up to 15 percent more than the Citizens' premium. Currently, to comply with this premium restriction, an insurance agent selling a property insurance policy checks with the insurers in the private market represented by the agent to see if any of them will write the policy for a premium up to 15 percent more than the Citizens' premium. If an insurer will do that, the agent puts the policy with that insurer. However, the agent can only check with the insurers he or she represents and because captive agents represent only one insurer, these agents can only check with one insurer. There is no mechanism for any agent to check with all insurers in the private market to see if any will write insurance within the premium restriction. This likely allows policies to be written by Citizens even though an insurer will write the policy for a premium up to 15 percent more than the Citizens' premium. Additionally, homeowners can circumvent the premium eligibility restriction and buy insurance in Citizens even when a private insurer will write insurance within the restriction by shopping for property insurance with multiple agents.

The bill establishes a clearinghouse program (clearinghouse) for use by Citizens before property insurance can be written or renewed by Citizens. The purpose of the clearinghouse is to ensure only property meeting the Citizens' premium eligibility restrictions obtains insurance in Citizens. The bill also implements a five percent premium eligibility restriction for policies renewed by Citizens.

The bill requires all new applications and all renewals for insurance in Citizens to be submitted to the clearinghouse to determine if the policy can be written or renewed by a property insurer operating in the private market within the premium eligibility restrictions. Insurers are not required to participate in the clearinghouse. When an application for insurance in Citizens is submitted to the clearinghouse, the insurers participating in the clearinghouse have 48 hours to select the property to insure. If no insurer selects the property, Citizens will insure it. If an insurer selects the property and the premium offered by that insurer is within the premium eligibility guidelines, then the homeowner is not eligible for insurance in Citizens. Surplus lines insurers are allowed to participate in the clearinghouse, but the homeowner remains eligible for insurance in Citizens if the property is selected by a surplus lines insurer, regardless of the premium for the insurance. The same clearinghouse submission and selection process applies to Citizens' renewals, but there is no 48 hour waiting period. Citizens' renewals will be submitted to the clearinghouse for selection during the time period provided by law for notifying the policyholder their policy is being renewed, which is 45 days before renewal. The bill also allows Citizens to recognize a clearinghouse-type mechanism that is administered by a private entity as an alternative to the one administered by Citizens.

The bill has no fiscal impact on state or local government. The bill has a myriad of fiscal impacts on homeowners in Citizens, on homeowners not in Citizens, on some insurance agents, and on Citizens. These impacts are outlined in the Fiscal Analysis. The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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. Although it operates like a private insurance company, it is not a private insurance company. As of January 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies and over $418 billion in exposure. Citizens insures over 444,000 residential and commercial policies in Florida's coastal areas and over 835,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas.

Current law allows homeowners with offers for property insurance from an insurer in the private market to still obtain insurance from Citizens if certain Citizens' eligibility requirements are met and requires Citizens to have a procedure to determine the eligibility of a potential risk. A major eligibility requirement for insurance in Citizens provided in current law is a 15 percent premium restriction. This restriction prohibits a homeowner from buying insurance in Citizens if an insurer in the private market offers the homeowner insurance for a premium that is up to 15 percent more than the Citizens' premium. In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage. Thus, a homeowner can buy insurance from Citizens only if the private insurer's premium is more than 15 percent than the Citizens' premium.

Currently, an insurance agent selling a property insurance policy checks with the insurers in the private market represented by the agent to see if any of them will write the policy for a premium up to 15 percent more than the Citizens' premium. If an insurer will do that, the agent puts the policy with that insurer. However, the agent can only check with the insurers he or she represents and because captive agents represent only one insurer, these agents can only check with one insurer. There is no mechanism for any agent, either captive or not, to check with all insurers in the private market to see if any will write insurance within the premium restriction. This likely allows policies to be written by Citizens even though an insurer will write the policy for a premium up to 15 percent more than the Citizens' premium.

Additionally, homeowners can circumvent the premium eligibility restriction and buy insurance in Citizens even when an insurer in the private market will write insurance within the restriction by shopping for property insurance with multiple agents. If one agent denies the homeowner insurance in Citizens because he or she represents a private insurer that will write the policy for a premium up to 15 percent more than the Citizens' premium, the homeowner can go to a different agent. If that agent does not represent a private insurer willing to write the policy within the 15 percent premium eligibility restriction, the agent can place the policy into Citizens. Thus, the policy goes into Citizens even though there is a private insurer willing to write it within the 15 percent premium restriction simply because the agent selling the policy does not represent that private insurer.

Effect of Proposed Changes

The bill establishes a clearinghouse program (clearinghouse) for use by Citizens before property insurance can be written or renewed by Citizens. The purpose of the clearinghouse is to ensure only property meeting the Citizens' premium eligibility restrictions obtains insurance in Citizens.

The bill also implements a five percent premium eligibility restriction for policies renewed by Citizens. This is a new premium eligibility restriction for Citizens. Currently, the only eligibility restriction for coverage by Citizens applies to new coverage and not renewals. The renewal restriction provided in the bill prevents a homeowner from renewing insurance in Citizens if an insurer in the private market

offers the homeowner insurance for a premium up to 5 percent more than the Citizens' renewal premium.

All applications for insurance in Citizens and all policies to be renewed in Citizens must be submitted to the clearinghouse to determine if the policy can be written or renewed by a property insurer operating in the private market within the statutory premium eligibility restrictions of 15 percent for new insurance applications and five percent for renewals. Insurers are not required to participate in the clearinghouse.

When an application for insurance in Citizens is submitted to the clearinghouse, the insurers participating in the clearinghouse have 48 hours to select the property to insure. If the 48 hour period expires and no insurer has elected to insure the property, Citizens will insure it. If the property is selected by an insurer and the premium offered by the insurer is within the statutory premium eligibility guideline for new applications, then the homeowner is not eligible for insurance in Citizens. If more than one insurer offers insurance within the guideline, the homeowner can choose from which insurer to purchase insurance. If an insurer offers to write insurance, but the premium is more than the guideline, then the homeowner can choose to buy insurance with the insurer or buy insurance with Citizens.

The same clearinghouse submission and selection process applies to Citizens' renewals, but there is no 48 hour waiting period. Citizens' renewals will be submitted to the clearinghouse for selection during the time period provided by law for notifying the policyholder their policy is being renewed, which is 45 days before renewal. If property insured by Citizens is up for renewal and is selected from the clearinghouse by an insurer with a premium from the insurer within the statutory renewal premium eligibility guidelines, then the homeowner is not eligible to renew insurance in Citizens. If more than one insurer offers insurance at premiums within the renewal guideline, the homeowner can choose from which insurer to purchase insurance. If an insurer offers to write insurance, but the premium is more than the renewal guideline, then the homeowner can choose to buy insurance with the insurer or renew their insurance with Citizens.

Surplus lines insurers[1] can also participate in the clearinghouse. A surplus lines insurer cannot offer to insure a property if a Florida licensed insurer[2] makes an offer. Unlike offers of insurance made to homeowners through the clearinghouse from Florida licensed insurers, if a homeowner receives an offer of insurance through the clearinghouse from a surplus lines insurer within the Citizens' premium eligibility restrictions, the homeowner can still be insured by Citizens if they choose. Likewise, homeowners can choose to have their insurance renewed in Citizens even if they receive an offer of insurance from a surplus lines insurer within the renewal premium eligibility guidelines.

The bill specifies additional parameters for the clearinghouse. The clearinghouse must be an organizational unit within Citizens. Citizens is authorized to employ or contract with outside vendors for operation of the clearinghouse. To fund the clearinghouse, the bill allows Citizens to charge a reasonable percentage fee of the agent commission on policies written by an insurer through the clearinghouse. The bill provides exceptions to current law requiring insurance agents to be appointed by each insurer the agent sells insurance for in order to effectuate efficient implementation of the clearinghouse by independent and captive insurance agents.[3]

In order to allow homeowners to stay with their insurance agent, even if the agent is not appointed by the insurer that selected the property from the clearinghouse, the bill allows agents and insurers to enter into limited agency or service agreements. In effect, a limited agency or service agreement

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[1] Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code and thus do not obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact insurance in Florida. Rather, surplus lines insurers are "unauthorized" insurers, but are eligible to transact surplus lines insurance under the surplus lines law as "eligible surplus insurers". The OIR determines whether a surplus lines insurer is "eligible" based on statutory guidelines.

[2] Admitted insurer is one licensed to transact insurance in Florida.

[3] Independent insurance agents are those that are authorized by multiple insurers to place insurance with the insurers. Captive agents are those that are authorized to place insurance with one insurer only and operate as an exclusive agent for that insurer. Independent agents cannot place insurance with insurers that use captive agents.

allows the agent to keep his or her book of business, continue to be the agent on the policy, and to continue to continue to service the policy, which gives the homeowner a smooth transition to their new insurer. Independent agents are required to enter into limited agency agreements with insurers that do not currently appoint the agent but who write insurance through the clearinghouse for the agent's existing customer. Exclusive agents (i.e., captive agents) must enter into limited servicing agreements with these insurers only if the insurer appointing the exclusive agent approves the agreement.

The bill also provides exceptions to current law relating to payment of agent commissions for risks kept out of Citizens or taken out within the first 30 days of the policy to effectuate implementation of the clearinghouse. Finally, the bill requires insurance agents to retain expirations and records related to any insurance written through the clearinghouse.

The bill allows Citizens to recognize a clearinghouse-type mechanism that is administered by a private entity as an alternative to the one administered by Citizens. Citizens must publish standards for this private alternative by January 1, 2014. If this alternative is recognized, new applications for Citizens and Citizens' renewals can be submitted to the alternative instead of the Citizens' clearinghouse. Insurers are allowed to choose to participate only in the clearinghouse, but are not allowed to choose to participate only in the private alternative. Thus, insurers participating in the private alternative must also participate in the clearinghouse.

The clearinghouse established in the bill does not replace or supplant other depopulation programs by Citizens.[4] Depopulation of Citizens can occur two ways. One way is by keeping policies currently insured in the private market out of Citizens and keeping them in the private market. The second way is by taking policies out of Citizens by insurers in the private market. To date, most of Citizens' depopulation programs have focused on taking policies out of Citizens and the bill provides a new option for keeping policies out of Citizens.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.752, F.S., relating to exchange of business.

Section 2: Creates s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.

Section 3: Provides an effective date of July 1, 2013.

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.

[4] Section 627.351(6)(q)3., F.S., requires Citizens to develop and maintain one or more depopulation programs to reduce its policy count and exposure. The depopulation programs must be approved by the Office of Insurance Regulation and be prudent and not unfairly discriminatory.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The number of policies obtaining insurance in Citizens and the number of policies currently insured by Citizens is expected to decline under the bill because the clearinghouse provides a way to ensure Citizens' eligibility restrictions are met before a policy is insured or renewed by them. A decline in the number of policies in Citizens will lower Citizens' exposure which in turn lowers the likelihood and amount of assessments levied by Citizens against Citizens' and non-Citizens' policyholders.[5] Homeowners insured by Citizens that are selected by an insurer in the private market through the clearinghouse are no longer subject to a maximum 45 percent assessment levied by Citizens against its policyholders.[6]

Some homeowners currently insured in Citizens may not be able to renew their insurance in Citizens under the bill if their policy is selected by an insurer participating in the clearinghouse. In addition, these homeowners may see premium increases for property insurance under the bill. Insurers using the clearinghouse to select a policy currently insured by Citizens can charge a premium for that policy that is up to 5 percent more than the Citizens' renewal premium. Conversely, some homeowners currently insured by Citizens may see a premium decrease if the private market insurer selecting their policy from the clearinghouse has premiums lower than Citizens.

Homeowners insured by Citizens that are selected by an insurer in the private market through the clearinghouse may obtain property insurance with expanded coverages. Recently, Citizens has significantly reduced coverages and reduced the policy limits on certain coverage.[7] For example, Citizens no longer insures screen enclosures or carports. And, Citizens now has a 10 percent mandatory sinkhole deductible and a policy limit for personal liability of $100,000, instead of $300,000. Some insurers in the private market have made coverage reductions similar to some of the ones made by Citizens, but no private insurer has made all of the reductions Citizens has made.

Insurance agents that enter into a limited agency arrangement with insurers participating in the clearinghouse with which they do not have an appointment should not be impacted by the bill. The limited agency agreement should allow the agent to continue to receive commissions on the policy, continue to service the policy, and continue to have the policy in the agent's book of business. However, exclusive insurance agents (i.e., captive agents) not approved by their insurer to enter into limited service arrangements with other insurers participating in the clearinghouse may lose some of their current business. These agents will no longer be able to renew or service the policy because they

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[5] In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute. If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders (Citizens Policyholder Assessment) of up to 15 percent of premium per account in deficit, for a maximum total of 45 percent. If the Coastal Account incurs a deficit that the levy of a Citizens Policyholder Assessment does not cure, then Citizens may levy another assessment, a regular assessment, of up to 2 percent of premium or 2 percent of the remaining deficit in the Coastal Account. The regular assessment is levied on virtually all property and casualty policies in the state, but not on Citizens' policies. The assessment is also not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. If the PLA or CLA incurs a deficit that a Citizens Policyholder Assessment levy does not cure, then Citizens may levy another assessment, an emergency assessment, to cure the deficit. An emergency assessment may also be levied for deficits in the Coastal Account that a Citizens Policyholder Assessment and regular assessment do not cure. Emergency assessments are limited to 10 percent of premium or 10 percent of the deficit per account, for a maximum total of 30 percent. This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies. However, this assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

[6] In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute. If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders (Citizens Policyholder Assessment) of up to 15 percent of premium per account in deficit, for a maximum total of 45 percent.

[7] See Presentation to the Financial Services Commission by Citizens Property Corporation, dated June 26, 2012, available at https://www.citizensfla.com/about/mediaresources.cfm (last viewed February 22, 2013).

will have no contractual relationship with the new insurer on the policy. And, homeowners who use these agents will no longer be able to use them and will have to change agents.

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 in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Because the clearinghouse checks all participating private insurers to determine if one of them will insure the property within the statutory premium eligibility restrictions, use of the clearinghouse should ensure the current law relating to Citizens' eligibility is implemented. Use of the clearinghouse should mean only policies meeting the premium eligibility for new and renewal insurance in Citizens' are insured by Citizens. The clearinghouse will also prevent homeowners from shopping for insurance through various agents to work around the Citizens' eligibility premium restrictions.

The effectiveness of the clearinghouse to keep policies out of Citizens at issuance or renewal depends on the number of private insurers participating in the clearinghouse. If many or all private insurers participate, then the clearinghouse should be a more effective method of ensuring only policies eligible for Citizens are insured by Citizens.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

PCS IBS 13-02 ORIGINAL 2013

A bill to be entitled

An act relating to public records; amending s. 627.3518, F.S.; providing an exemption from public records requirements for all underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the corporation's policyholder eligibility clearinghouse program which are used to identify and select risks from the program; providing for future review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (10) is added to section 627.3518, Florida Statutes, as created by PCB IBS 13-01, 2013 Regular Session, to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—

(10) All underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the corporation's policyholder eligibility clearinghouse program which are used to identify and select risks from the program are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review

Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is public necessity that all underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the Citizens Property Insurance Corporation's policyholder eligibility clearinghouse program which are used to identify and select risks from the program be made confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The program will facilitate obtaining offers of coverage from insurers for applicants for insurance coverage with Citizens Property Insurance Corporation and for policyholders with existing insurance coverage with Citizens Property Insurance Corporation. Obtaining offers of coverage from insurers through the program will provide more choices for consumers and reduce Citizens Property Insurance Corporation's exposure and potential for assessments on its policyholders and policyholders in the private market. In order for the program to efficiently determine whether there are insurers interested in making an offer of coverage for a particular risk, a substantial amount of detailed data from participating insurers must be provided to the program. Public disclosure of the detailed data could result in a substantial chilling effect on insurer participation in the program, thereby undermining the program's success. Therefore, the Legislature declares that it is a public necessity that all underwriting guidelines, manuals, rating

information, and other underwriting criteria or instructions submitted by an insurer to the Citizens Property Insurance Corporation's policyholder eligibility clearinghouse program which are used to identify and select risks from the program be made confidential and exempt from public records requirements.

Section 3. This act shall take effect on the same date that PCB IBS 13-01 or similar legislation creating s. 627.3518, Florida Statutes, the Citizen's Property Insurance Corporation policyholder eligibility clearinghouse program, takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB IBS 13-02 Public Records / Citizens Property Insurance Corporation Clearinghouse Program
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: PCB IBS 13-01 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Callaway	Cooper

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. Although it operates like a private insurance company, it is not a private insurance company. As of January 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies and over $418 billion in exposure.

Current law allows homeowners with offers for property insurance from an insurer in the private market to still obtain insurance from Citizens if certain Citizens' eligibility requirements are met and requires Citizens to have a procedure to determine the eligibility of a potential risk. A major eligibility requirement for insurance in Citizens provided in current law is a 15 percent premium restriction. This restriction prohibits a homeowner from buying insurance in Citizens if an insurer in the private market offers the homeowner insurance for a premium that is up to 15 percent more than the Citizens' premium. Thus, a homeowner can buy insurance from Citizens only if the private insurer's premium is more than 15 percent than the Citizens' premium. There is no mechanism for any insurance agent to check with all insurers in the private market to see if any will write insurance within the premium restriction. This likely allows policies to be written by Citizens even though an insurer will write the policy for a premium up to 15 percent more than the Citizens' premium. Additionally, homeowners can circumvent the premium eligibility restriction and buy insurance in Citizens even when an insurer in the private market will write insurance within the restriction by shopping for property insurance with multiple agents.

PCB IBS 13-01 establishes a clearinghouse program (clearinghouse) for use by Citizens before property insurance can be written or renewed by Citizens. The bill also implements a five percent premium eligibility restriction for policies renewed by Citizens. The purpose of the clearinghouse is to ensure only property meeting the Citizens' premium eligibility restrictions obtains insurance in Citizens. All applications for insurance in Citizens and all policies to be renewed in Citizens must be submitted to the clearinghouse to determine if the policy can be written or renewed by a property insurer operating in the private market within the premium eligibility restrictions. Insurers are not required to participate in the clearinghouse.

This bill provides that underwriting guidelines, manuals, rating information, or other underwriting criteria or instructions submitted by an insurer to the Citizens' clearinghouse program that are used by the clearinghouse to identify and select risks from the clearinghouse are confidential and exempt from public records requirements.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

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. Although it operates like a private insurance company, it is not a private insurance company. As of January 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies and over $418 billion in exposure.[3] Citizens insures over 444,000 residential and commercial policies in Florida's coastal areas and over 835,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas.[4]

Current law allows homeowners with offers for property insurance from an insurer in the private market to still obtain insurance from Citizens if certain Citizens' eligibility requirements are met and requires Citizens to have a procedure to determine the eligibility of a potential risk. A major eligibility requirement for insurance in Citizens provided in current law is a 15 percent premium restriction. This restriction prohibits a homeowner from buying insurance in Citizens if an insurer in the private market offers the homeowner insurance for a premium that is up to 15 percent more than the Citizens' premium. In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage. Thus, a homeowner can buy insurance from Citizens only if the private insurer's premium is more than 15 percent than the Citizens' premium.

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[1] Section 24(c), Art. I of the State Constitution.
[2] s. 119.15, F.S.
[3] https://www.citizensfla.com/about/corpfinancials.cfm (last viewed February 23, 2013).
[4] *Id.*

Currently, an insurance agent selling a property insurance policy checks with the insurers in the private market represented by the agent to see if any of them will write the policy for a premium up to 15 percent more than the Citizens' premium. If an insurer will do that, the agent puts the policy with that insurer. However, the agent can only check with the insurers he or she represents and because captive agents represent only one insurer, these agents can only check with one insurer. There is no mechanism for any agent, either captive or not, to check with all insurers in the private market to see if any will write insurance within the premium restriction. This likely allows policies to be written by Citizens even though an insurer will write the policy for a premium up to 15 percent more than the Citizens' premium.

Additionally, homeowners can circumvent the premium eligibility restriction and buy insurance in Citizens even when an insurer in the private market will write insurance within the restriction by shopping for property insurance with multiple agents. If one agent denies the homeowner insurance in Citizens because he or she represents a private insurer that will write the policy for a premium up to 15 percent more than the Citizens' premium, the homeowner can go to a different agent. If that agent does not represent a private insurer willing to write the policy within the 15 percent premium eligibility restriction, the agent can place the policy into Citizens. Thus, the policy goes into Citizens even though there is a private insurer willing to write it within the 15 percent premium restriction simply because the agent selling the policy does not represent that private insurer.

PCB IBS 13-01

PCB IBS 13-01 establishes a clearinghouse program (clearinghouse) for use by Citizens before property insurance can be written or renewed by Citizens. The purpose of the clearinghouse is to ensure only property meeting the Citizens' premium eligibility restrictions obtains insurance in Citizens. The bill also implements a five percent premium eligibility restriction for policies renewed by Citizens.

All applications for insurance in Citizens and all policies to be renewed in Citizens must be submitted to the clearinghouse to determine if the policy can be written or renewed by a property insurer operating in the private market within the statutory premium eligibility restrictions of 15 percent for new insurance applications and five percent for renewals. Insurers are not required to participate in the clearinghouse.

When an application for insurance in Citizens is submitted to the clearinghouse, the insurers participating in the clearinghouse have 48 hours to select the property to insure. If the 48 hour period expires and no insurer has elected to insure the property, Citizens will insure it. If the property is selected by an insurer and the premium offered by the insurer is within the statutory premium eligibility guideline for new applications, then the homeowner is not eligible for insurance in Citizens. If more than one insurer offers insurance within the guideline, the homeowner can choose from which insurer to purchase insurance. If an insurer offers to write insurance, but the premium is more than the guideline, then the homeowner can choose to buy insurance with the insurer or buy insurance with Citizens.

The same clearinghouse submission and selection process applies to Citizens' renewals, but there is no 48 hour waiting period. Citizens' renewals will be submitted to the clearinghouse for selection during the time period provided by law for notifying the policyholder their policy is being renewed, which is 45 days before renewal. If property insured by Citizens is up for renewal and is selected from the clearinghouse by an insurer with a premium from the insurer within the statutory renewal premium eligibility guidelines, then the homeowner is not eligible to renew insurance in Citizens. If more than one insurer offers insurance at premiums within the renewal guideline, the homeowner can choose from which insurer to purchase insurance. If an insurer offers to write insurance, but the premium is more than the renewal guideline, then the homeowner can choose to buy insurance with the insurer or renew their insurance with Citizens.

Surplus lines insurers[5] can also participate in the clearinghouse. A surplus lines insurer cannot offer to insure a property if a Florida licensed insurer[6] makes an offer. Unlike offers of insurance made to homeowners through the clearinghouse from Florida licensed insurers, if a homeowner receives an offer of insurance through the clearinghouse from a surplus lines insurer within the Citizens' premium eligibility restrictions, the homeowner can still be insured by Citizens if they choose. Likewise, homeowners can choose to have their insurance renewed in Citizens even if they receive an offer of insurance from a surplus lines insurer within the renewal premium eligibility guidelines.

Effect of the Bill

The bill provides that underwriting guidelines, manuals, rating information, or other underwriting criteria or instructions submitted by an insurer to the Citizens' clearinghouse that are used by the clearinghouse to identify and select risks from the clearinghouse are confidential and exempt[7] from public records requirements.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.[8]

B. SECTION DIRECTORY:

Section 1: Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program to create a public record exemption for certain information provided by insurers to the clearinghouse.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date that is contingent upon the passage of PCB IBS 13-01 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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[5] Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code and thus do not obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact insurance in Florida. Rather, surplus lines insurers are "unauthorized" insurers, but are eligible to transact surplus lines insurance under the surplus lines law as "eligible surplus insurers". The OIR determines whether a surplus lines insurer is "eligible" based on statutory guidelines.

[6] Admitted insurer is one licensed to transact insurance in Florida.

[7] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See WFTV, Inc. v. The School Board of Seminole, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); City of Riviera Beach v. Barfield, 642 So.2d 1135 (Fla. 4th DCA 1994); Williams v. City of Minneola, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

[8] Section 24(c), Art. I of the State Constitution.

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 provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Insurance & Banking Subcommittee

Wednesday, March 6, 2013
1:00 PM
404 HOB

Amendment Packet

Will Weatherford
Speaker

Bryan Nelson
Chair

INSURANCE & BANKING SUBCOMMITTEE

HB 635 by Rep. Edwards
Insurance

AMENDMENT SUMMARY
March 6, 2013

Amendment 1 by Rep. Caldwell (Lines 126-248): Allows only residential property policyholders to be assessed for deficits in the Florida Hurricane Catastrophe Fund by removing current law requiring the assessment to be levied against all property and casualty policyholders, including surplus lines policyholders, but excluding workers' compensation and medical malpractice.

Amendment 2 by Rep. Edwards (Lines 254-264): Provides that when an electronic device is presented to a law enforcement officer for purposes of displaying an electronic proof-of-insurance card that the motorist is not consenting to a search of any other information on the device. Further, the officer is not liable if the device is damaged while in the officer's possession.

Amendment 3 by Rep. Edwards (Lines 318 and 319): Adds new provisions to the bill relating to boiler inspectors. These provisions:

- change who is qualified to be a special inspector for boiler inspection purposes from an employee of a company licensed in Florida to insure boilers to an "authorized inspection agency,"
- provide a definition of an "authorized inspection agency," and
- require insurers to annually report to the DFS the names of the authorized inspection agencies performing boiler inspections for the insurer.

Amendment 4 by Rep. Edwards (Lines 341 and 342): Adds new provisions to the bill relating to insurance agency licensure. These provisions:

- repeal the requirement in current law that insurance agents that are sole proprietors must also hold an insurance agency license.
- eliminate the licensing requirement in current law for each branch location of an insurance agency.
- eliminate expiration of an insurance agency license.
- eliminate registration of insurance agencies that are not licensed and converts existing agency registrations to licenses.

Amendment 5 by Rep. Edwards (Lines 738-765): Expands the time period property insurers have to use hurricane models in rate filings from 120 to 180 days and allows insurers to use a straight average of multiple models instead of having to use only one model.

Amendment 6 by Rep. Edwards (Line 804): Changes the time period property insurers have to notify a policyholder of a cancellation, nonrenewal, or termination to 120 days and maintains the other changes to the notice of cancellation, nonrenewal, or termination time period made by the bill.

Amendment 7 by Rep. Edwards (Lines 935-939): Requires policyholders to affirmatively elect to receive their insurance policies electronically instead of mail. This election applies to all types of insurance.
Amendment 8 by Rep. Edwards (Lines 943-953): Requires a sample Notice of Policy Change be sent to the policyholder's agent at or before it is sent to the policyholder and maintains the other changes to the Notice of Policy Change made by the bill.

Amendment 9 by Rep. Edwards (Lines 986-990): Rewords one of the grounds that can be used by a policyholder or insurer to disqualify an umpire in the appraisal process.

Amendment 10 by Rep. Edwards (Lines 997-1013): Removes the changes to sinkhole deductibles from the bill to maintain current law.

Amendment 11 by Rep. Edwards (Lines 1109-1120): Provides, for purposes of personal injury protection reimbursement, that the Medicare fee schedule in effect on March 1st of the year in which services are rendered remains in effect until the last day of February of the following year, rather than until the following March 1st .

Amendment 12 by Rep. Edwards (Lines 1185-1188): Authorizes DFS to suspend approval of a mediator or certification of a neutral evaluator to conform with the other changes in the bill to the DFS mediation and neutral evaluation programs.

Amendment 13 by Rep. Edwards (Lines 1221-1222): Requires surplus lines agents that are not Florida residents to hold a license as a nonresident surplus lines agent to place insurance for purchase groups and risk retention groups.

Amendment 14 by Rep. Edwards (Lines 1283-1289): Allows a trusteed reinsurer to be a qualifying reinsurer parent company for captive insurance purposes and maintains the other changes to the definition of qualifying reinsurer parent company made by the bill.

Amendment 15 by Rep. Edwards (Lines 1310-1332): For purposes of an exception to the writing ratio required for service warranty associations, repeals the requirement in current law that an insurer issuing a contractual liability policy to a service warranty association cannot be affiliated with the warranty association

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 635 (2013)

Amendment No. 1

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Caldwell offered the following:

Amendment (with title amendment)

Remove lines 126-248 and insert:

1. If the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct premiums for all covered policies as defined in subsection (2)(c). ~~property and casualty lines of business in this state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums~~. ~~As used in this subsection, the term "property and casualty business" includes all lines of~~

~~business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers by s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program.~~ The assessment shall be specified as a percentage of direct written premium and is subject to annual adjustments by the board in order to meet debt obligations. The same percentage shall apply to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

2. A premium is not subject to an annual assessment under this paragraph in excess of 6 percent of premium with respect to obligations arising out of losses attributable to any one contract year, and a premium is not subject to an aggregate annual assessment under this paragraph in excess of 10 percent of premium. An annual assessment under this paragraph shall continue as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

3. Emergency assessments shall be collected from policyholders. Emergency assessments shall be remitted by insurers as a percentage of direct written premium for the preceding calendar quarter as specified in the order from the

Office of Insurance Regulation. The office shall verify the accurate and timely collection and remittance of emergency assessments and shall report the information to the board in a form and at a time specified by the board. Each insurer collecting assessments shall provide the information with respect to premiums and collections as may be required by the office to enable the office to monitor and verify compliance with this paragraph.

4. ~~With respect to assessments of surplus lines premiums, each surplus lines agent shall collect the assessment at the same time as the agent collects the surplus lines tax required by s. 626.932, and the surplus lines agent shall remit the assessment to the Florida Surplus Lines Service Office created by s. 626.921 at the same time as the agent remits the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessment on each insured procuring coverage and filing under s. 626.938 shall be remitted by the insured to the Florida Surplus Lines Service Office at the time the insured pays the surplus lines tax to the Florida Surplus Lines Service Office. The Florida Surplus Lines Service Office shall remit the collected assessments to the fund or corporation as provided in the order levied by the Office of Insurance Regulation. The Florida Surplus Lines Service Office shall verify the proper application of such emergency assessments and shall assist the board in ensuring the accurate and timely collection and remittance of assessments as required by the board. The Florida Surplus Lines Service Office shall annually calculate the aggregate~~

~~written premium on property and casualty business, other than workers' compensation and medical malpractice, procured through surplus lines agents and insureds procuring coverage and filing under s. 626.938 and shall report the information to the board in a form and at a time specified by the board.~~

~~5.~~ Any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not exceeding the amount of unused assessment authority from a previous contract year or years, plus an additional 4 percent provided that the assessments in the aggregate do not exceed the limits specified in subparagraph 2.

5.~~6.~~ The assessments otherwise payable to the corporation under this paragraph shall be paid to the fund unless and until the Office of Insurance Regulation ~~and the Florida Surplus Lines Service Office~~ have received from the corporation and the fund a notice, which shall be conclusive and upon which they may rely without further inquiry, that the corporation has issued bonds and the fund has no agreements in effect with local governments under paragraph (c). On or after the date of the notice and until the date the corporation has no bonds outstanding, the fund shall have no right, title, or

interest in or to the assessments, except as provided in the fund's agreement with the corporation.

6.~~7.~~ Emergency assessments are not premium and are not subject to the premium tax, to the surplus lines tax, to any fees, or to any commissions. An insurer is liable for all assessments that it collects and must treat the failure of an insured to pay an assessment as a failure to pay the premium. An insurer is not liable for uncollectible assessments.

7.~~8.~~ When an insurer is required to return an unearned premium, it shall also return any collected assessment attributable to the unearned premium. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances that are payable to the fund or corporation, but the insurer is not entitled to a refund.

~~9. When a surplus lines insured or an insured who has procured coverage and filed under s. 626.938 is entitled to the return of an unearned premium, the Florida Surplus Lines Service Office shall provide a credit or refund to the agent or such insured for the collected assessment attributable to the unearned premium prior to remitting the emergency assessment collected to the fund or corporation.~~

~~10. The exemption of medical malpractice insurance premiums from emergency assessments under this paragraph is repealed May 31, 2013, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2013.~~

Amendment No. 1

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

Remove line 3 and insert:

F.S.; revising the types of insurance that are subject to an emergency assessment imposed by the Florida Hurricane Catastrophe Fund; deleting the method of collecting emergency assessments by surplus lines insurers; deleting the required credit or refund for emergency assessments related to unearned premium on surplus lines insurance; deleting the future repeal of an exemption of

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 635 (2013)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION		
ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Edwards offered the following:

Amendment (with title amendment)

Remove lines 254-264 and insert:

(1) Any person required by s. 324.022 to maintain property damage liability security, required by s. 324.023 to maintain liability security for bodily injury or death, or required by s. 627.733 to maintain personal injury protection security on a motor vehicle shall have in his or her immediate possession at all times while operating such motor vehicle proper proof of maintenance of the required security. Such proof shall be a uniform proof-of-insurance card, in paper or electronic format, in a form prescribed by the department, a valid insurance policy, an insurance policy binder, a certificate of insurance, or such other proof as may be prescribed by the department. If a person presents an electronic device to a law enforcement officer for the purpose of displaying a proof-of-insurance card in an electronic format:

(a) The person presenting the device is not consenting to access to any information on the electronic device other than the displayed proof-of-insurance card.

(b) The law enforcement officer is not liable for any damage to the electronic device.

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

Remove line 10 and insert:

card to be in an electronic format; providing construction with respect to the parameters of a person's consent to access information on an electronic device presented to provide proof of insurance; providing immunity from liability to a law enforcement officer for damage to an electronic device presented to provide proof of insurance; authorizing the

Amendment No. 3

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Edwards offered the following:

Amendment (with title amendment)

Between lines 318 and 319, insert:

Section 4. Subsection (8) is added to section 554.1021, Florida Statutes, to read:

554.1021 Definitions.—As used in ss. 554.1011-554.115:

(8) "Authorized inspection agency" means:

(a) Any county, city, town, or other governmental subdivision that has adopted and administers, at a minimum, Section I of the A.S.M.E. Boiler and Pressure Vessel Code as a legal requirement and whose inspectors hold valid certificates of competency in accordance with s. 554.113; or

(b) Any insurance company that is licensed or registered by an appropriate authority of any state of the United States or province of Canada and whose inspectors hold valid certificates of competency in accordance with s. 554.113.

Section 5. Section 554.107, Florida Statutes, is amended to read:

554.107 Special inspectors.—

(1) Upon application by any authorized inspection agency ~~company licensed to insure boilers in this state~~, the chief inspector shall issue a certificate of competency as a special inspector to any inspector employed by the authorized inspection agency ~~company~~, provided that such inspector satisfies the competency requirements for inspectors as provided in s. 554.113.

(2) The certificate of competency of a special inspector shall remain in effect only so long as the special inspector is employed by an authorized inspection agency ~~a company licensed to insure boilers in this state~~. Upon termination of employment with such agency ~~company~~, a special inspector shall, in writing, notify the chief inspector of such termination. Such notice shall be given within 15 days following the date of termination.

Section 6. Subsection (1) of section 554.109, Florida Statutes, is amended to read:

554.109 Exemptions.—

(1) Any insurance company insuring a boiler located in a public assembly location in this state shall inspect or contract with an authorized inspection agency to inspect such boiler ~~so insured,~~ and shall annually report to the department the identity of any authorized inspection agency performing any required boiler inspection on behalf of the company. A ~~any~~ county, city, town, or other governmental subdivision which has adopted into law the Boiler and Pressure Vessel Code of the

American Society of Mechanical Engineers and the National Board Inspection Code for the construction, installation, inspection, maintenance, and repair of boilers, regulating such boilers in public assembly locations, shall inspect such boilers so regulated; provided that such inspection shall be conducted by a special inspector licensed pursuant to ss. 554.1011-554.115. Upon filing of a report of satisfactory inspection with the department, such boiler is exempt from inspection by the department.

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

Remove line 16 and insert:
registering a motor vehicle; amending s. 554.1021, F.S.; defining the term "authorized inspection agency"; amending s. 554.107, F.S.; requiring the chief inspector of the state boiler inspection program to issue a certificate of competency as a special inspector to certain individuals; specifying how long such certificate remains in effect; amending s. 554.109, F.S.; authorizing specified insurers to contract with an authorized inspection agency for boiler inspections; requiring certain insurers to annually report the identity of authorized inspection agencies to the Department of Financial Services; amending s. 624.413,

Amendment No. 4

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Edwards offered the following:

Amendment (with title amendment)

Between lines 341 and 342, insert:

Section 5. Subsection (4) is added to section 626.0428, Florida Statutes, to read:

626.0428 Agency personnel powers, duties, and limitations.—

(4)(a) Each branch place of business established by an agent or agency, firm, corporation, or association shall be in the active full-time charge of a licensed general lines agent or life or health agent who is appointed to represent one or more insurers. Any agent or agency, firm, corporation, or association which has established one or more branch places of business shall be required to have at least one licensed general lines agent or life or health agent who is appointed to represent one

or more insurers at each location of the agency including its headquarters location.

(b) Notwithstanding paragraph (a), the licensed agent in charge of an insurance agency may also be the agent in charge of additional branch office locations of the agency if insurance activities requiring licensure as an insurance agent do not occur at any location when the agent is not physically present and unlicensed employees at the location do not engage in any insurance activities requiring licensure as an insurance agent or customer representative.

(c) An insurance agency and each branch place of business of an insurance agency shall designate an agent in charge and file the name and license number of the agent in charge and the physical address of the insurance agency location with the department at its designated web site. The designation of the agent in charge may be changed at the option of the agency, and any change shall be effective upon notification to the department. Notice to the department must be provided within 30 days after such change.

(d) For the purposes of this section, an "agent in charge" is the licensed and appointed agent who is responsible for the hiring and supervision of all individuals within an insurance agency location whether or not such individuals deal with the general public in the solicitation or negotiation of insurance contracts or the collection or accounting of moneys.

(e) An insurance agency location may not conduct the business of insurance unless an agent in charge is designated at all times. Failure to designate and notify the department of the

designation of an agent in charge within 30 days after a change of agent in charge constitutes grounds for the department to issue an immediate final order requiring the agency location to cease operations until such time as an agent in charge is properly designated.

Section 6. Subsection (7) of section 626.112, Florida Statutes, is amended to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.—

(7)(a) ~~Effective October 1, 2006,~~ No individual, firm, partnership, corporation, association, or any other entity shall act in its own name or under a trade name, directly or indirectly, as an insurance agency, unless it complies with s. 626.172 with respect to possessing an insurance agency license for each place of business at which it engages in any activity which may be performed only by a licensed insurance agent. However, an insurance agency that is owned and operated by a single licensed agent conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees shall be exempt from the agency licensing requirements of this subsection. A branch place of business that is established by a licensed agency is considered a branch agency and is not required to be licensed so long as it transacts business under the same name and federal tax identification number as the licensed agency, has designated a licensed agent in charge of the location as required by s. 626.0428, and the address and telephone number of the location

have been submitted to the department for inclusion in the licensing record of the licensed agency within 30 days after insurance transactions began at the location ~~Each agency engaged in business in this state before January 1, 2003, which is wholly owned by insurance agents currently licensed and appointed under this chapter, each incorporated agency whose voting shares are traded on a securities exchange, each agency designated and subject to supervision and inspection as a branch office under the rules of the National Association of Securities Dealers, and each agency whose primary function is offering insurance as a service or member benefit to members of a nonprofit corporation may file an application for registration in lieu of licensure in accordance with s. 626.172(3). Each agency engaged in business before October 1, 2006, shall file an application for licensure or registration on or before October 1, 2006~~.

(b)~~1.~~ If an agency is required to be licensed but fails to file an application for licensure in accordance with this section, the department shall impose on the agency an administrative penalty in an amount of up to $10,000.

~~2. If an agency is eligible for registration but fails to file an application for registration or an application for licensure in accordance with this section, the department shall impose on the agency an administrative penalty in an amount of up to $5,000.~~

(c)~~(b)~~ Effective October 1, 2013, the department must automatically convert the registration of an approved ~~a~~ registered insurance agency to ~~shall, as a condition precedent~~

~~to continuing business, obtain~~ an insurance agency license ~~if the department finds that, with respect to any majority owner, partner, manager, director, officer, or other person who manages or controls the agency, any person has:~~

~~1. Been found guilty of, or has pleaded guilty or nolo contendere to, a felony in this state or any other state relating to the business of insurance or to an insurance agency, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the cases.~~

~~2. Employed any individual in a managerial capacity or in a capacity dealing with the public who is under an order of revocation or suspension issued by the department. An insurance agency may request, on forms prescribed by the department, verification of any person's license status. If a request is mailed within 5 working days after an employee is hired, and the employee's license is currently suspended or revoked, the agency shall not be required to obtain a license, if the unlicensed person's employment is immediately terminated.~~

~~3. Operated the agency or permitted the agency to be operated in violation of s. 626.747.~~

~~4. With such frequency as to have made the operation of the agency hazardous to the insurance-buying public or other persons:~~

~~a. Solicited or handled controlled business. This subparagraph shall not prohibit the licensing of any lending or financing institution or creditor, with respect to insurance only, under credit life or disability insurance policies of~~

~~borrowers from the institutions, which policies are subject to part IX of chapter 627.~~

~~b. Misappropriated, converted, or unlawfully withheld moneys belonging to insurers, insureds, beneficiaries, or others and received in the conduct of business under the license.~~

~~c. Unlawfully rebated, attempted to unlawfully rebate, or unlawfully divided or offered to divide commissions with another.~~

~~d. Misrepresented any insurance policy or annuity contract, or used deception with regard to any policy or contract, done either in person or by any form of dissemination of information or advertising.~~

~~e. Violated any provision of this code or any other law applicable to the business of insurance in the course of dealing under the license.~~

~~f. Violated any lawful order or rule of the department.~~

~~g. Failed or refused, upon demand, to pay over to any insurer he or she represents or has represented any money coming into his or her hands belonging to the insurer.~~

~~h. Violated the provision against twisting as defined in s. 626.9541(1)(l).~~

~~i. In the conduct of business, engaged in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter.~~

~~j. Willfully overinsured any property insurance risk.~~

~~k. Engaged in fraudulent or dishonest practices in the conduct of business arising out of activities related to insurance or the insurance agency.~~

~~1. Demonstrated lack of fitness or trustworthiness to engage in the business of insurance arising out of activities related to insurance or the insurance agency.~~

~~m. Authorized or knowingly allowed individuals to transact insurance who were not then licensed as required by this code.~~

~~5. Knowingly employed any person who within the preceding 3 years has had his or her relationship with an agency terminated in accordance with paragraph (d).~~

~~6. Willfully circumvented the requirements or prohibitions of this code.~~

Section 7. Subsections (2), (3), and (4) of section 626.172, Florida Statutes, are amended to read:

626.172 Application for insurance agency license.—

(2) An application for an insurance agency license must ~~shall~~ be signed by the owner or owners of the agency. If the agency is incorporated, the application must ~~shall~~ be signed by the president and secretary of the corporation. The application for an insurance agency license must ~~shall~~ include:

(a) The name of each majority owner, partner, officer, and director of the insurance agency.

(b) The residence address of each person required to be listed in the application under paragraph (a).

(c) The name of the insurance agency, ~~and~~ its principal business street address and a valid email address.

(d) The physical address ~~location~~ of each branch agency, including the name, email address, telephone number and the date the branch location began transacting insurance ~~office and the~~

~~name under which each agency office conducts or will conduct business~~.

(e) The name of each agent to be in full-time charge of an agency office and specification of which office, including branch locations.

(f) The fingerprints of each of the following:

1. A sole proprietor;

2. Each partner;

3. Each owner of an unincorporated agency;

4. Each owner who directs or participates in the management or control of an incorporated agency whose shares are not traded on a securities exchange;

5. The president, senior vice presidents, treasurer, secretary, and directors of the agency; and

6. Any other person who directs or participates in the management or control of the agency, whether through the ownership of voting securities, by contract, or otherwise.

Fingerprints must be taken by a law enforcement agency or other entity approved by the department and must be accompanied by the fingerprint processing fee specified in s. 624.501. Fingerprints must ~~shall~~ be processed in accordance with s. 624.34. However, fingerprints need not be filed for any individual who is currently licensed and appointed under this chapter. This paragraph does not apply to corporations whose voting shares are traded on a securities exchange.

(g) Such additional information as the department requires by rule to ascertain the trustworthiness and competence of

persons required to be listed on the application and to ascertain that such persons meet the requirements of this code. However, the department may not require that credit or character reports be submitted for persons required to be listed on the application.

(h) ~~Beginning October 1, 2005,~~ The department must ~~shall~~ accept the uniform application for nonresident agency licensure. The department may adopt by rule revised versions of the uniform application.

~~(3) The department shall issue a registration as an insurance agency to any agency that files a written application with the department and qualifies for registration. The application for registration shall require the agency to provide the same information required for an agency licensed under subsection (2), the agent identification number for each owner who is a licensed agent, proof that the agency qualifies for registration as provided in s. 626.112(7), and any other additional information that the department determines is necessary in order to demonstrate that the agency qualifies for registration. The application must be signed by the owner or owners of the agency. If the agency is incorporated, the application must be signed by the president and the secretary of the corporation. An agent who owns the agency need not file fingerprints with the department if the agent obtained a license under this chapter and the license is currently valid.~~

~~(a) If an application for registration is denied, the agency must file an application for licensure no later than 30 days after the date of the denial of registration.~~

~~(b) A registered insurance agency must file an application for licensure no later than 30 days after the date that any person who is not a licensed and appointed agent in this state acquires any ownership interest in the agency. If an agency fails to file an application for licensure in compliance with this paragraph, the department shall impose an administrative penalty in an amount of up to $5,000 on the agency.~~

~~(c) Sections 626.6115 and 626.6215 do not apply to agencies registered under this subsection.~~

(3)~~(4)~~ The department must ~~shall~~ issue a license ~~or registration~~ to each agency upon approval of the application, and each agency location must ~~shall~~ display the license ~~or registration~~ prominently in a manner that makes it clearly visible to any customer or potential customer who enters the agency.

Section 8. Section 626.382, Florida Statutes, is amended to read:

626.382 Continuation, expiration of license; insurance agencies.—The license of any insurance agency ~~shall be issued for a period of 3 years and~~ shall continue in force until canceled, suspended, revoked, or otherwise terminated. ~~A license may be renewed by submitting a renewal request to the department on a form adopted by department rule.~~

Between lines 462 and 463, insert:

Section. 7 Section 626.747, Florida Statutes, is repealed.

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

Remove line 20 and insert:

authority; amending s. 626.0428, F.S.; requiring a branch place of business to have an agent in charge and a general lines agent appointed to represent one or more insurers; authorizing an agent to be in charge of more than one branch office under certain circumstances; providing requirements relating to the designation of an agent in charge; prohibiting an insurance agency from conducting insurance business at a location without a designated agent in charge; providing grounds for the Department of Financial Services to order operations to cease at certain insurance agency locations until an agent in charge is properly designated; amending s. 626.112, F.S.; providing licensure exemptions that allow specified individuals or entities to conduct insurance business at specified locations under certain circumstances; revising licensure requirements and penalties with respect to registered insurance agencies; providing that the registration of an approved registered insurance agency automatically converts to an insurance agency license on a specified date; amending s. 626.172, F.S.; revising requirements relating to applications for insurance agency licenses; deleting provisions relating to registration as an insurance agency to conform to changes made by the act; amending s. 626.382, F.S.; providing that an insurance agency license

continues in force until canceled, suspended, revoked, or terminated; amending s. 626.321, F.S.; providing that a

Remove line 28 and insert:

entities involved in the insurance industry; repealing s. 626.747 F.S., relating to branch agencies, agents in charge, and the payment of additional county tax under certain circumstances; amending

5

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 635 (2013)

Amendment No. 5

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Edwards offered the following:

Amendment

Remove lines 738-765 and insert:

be estimated using a model or method, or a straight average of model results or output ranges, independently found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in s. 627.0628.

12. A reasonable margin for underwriting profit and contingencies.

13. The cost of medical services, if applicable.

14. Other relevant factors that affect the frequency or severity of claims or expenses.

Section 14. Paragraph (d) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

(d) With respect to a rate filing under s. 627.062, an insurer shall employ and may not modify or adjust actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable in determining hurricane loss factors for use in a rate filing under s. 627.062. An insurer shall employ and may not modify or adjust models found by the commission to be accurate or reliable in determining probable maximum loss levels pursuant to paragraph (b) with respect to a rate filing under s. 627.062 made more than 180 ~~60~~ days after the commission has made such findings. This paragraph shall not be construed to prohibit an insurer from using a straight average of model results or output ranges or using straight averages for the purposes of a rate filing under s. 627.062.

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 635 (2013)

Amendment No. 6

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Edwards offered the following:

Amendment (with title amendment)

Remove line 804 and insert:

notice of nonrenewal, cancellation, or termination at least 120 ~~100~~

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

Remove lines 62-63 and insert:

Corporation; amending s. 627.4133, F.S.; increasing the amount of prior notice required with respect to the nonrenewal, cancellation, or termination of certain insurance policies; deleting certain provisions that require extended periods of prior

7

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 635 (2013)

Amendment No. 7

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Edwards offered the following:

Amendment

Remove lines 935-939 and insert:

after the effectuation of coverage. Notwithstanding any other provision of law, an insurer may allow a policyholder to affirmatively elect delivery of the policy documents, including, but not limited to, policies, endorsements, notices, or documents, by electronic means in lieu of delivery by mail.

8

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 635 (2013)

Amendment No. 8

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Edwards offered the following:

Amendment

Remove lines 943-953 and insert:

(2) A renewal policy may contain a change in policy terms. If a renewal policy contains ~~does contain~~ such change, the insurer must give the named insured written notice of the change, which may either ~~must~~ be enclosed along with the written notice of renewal premium required by ss. 627.4133 and 627.728 or sent in a separate notice that complies with the nonrenewal mailing time requirement for that particular line of business. The insurer must also provide a sample copy of the notice to the insured's insurance agent before or at the same time notice is given to the insured. Such notice shall be entitled "Notice of Change in Policy Terms."

9

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 635 (2013)

Amendment No. 9

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Edwards offered the following:

Amendment

Remove lines 986-990 and insert:

(3) The umpire has represented another person in a professional capacity on the same or a substantially related matter which includes the claim, same property, or an adjacent property and that other person's interests are materially adverse to the interests of any party; or

10

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 635 (2013)

Amendment No. 10

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Edwards offered the following:

Amendment (with directory and title amendments)

Remove lines 997-1013

D I R E C T O R Y A M E N D M E N T

Remove lines 993-994 and insert:

Section 24. Paragraph (c) of subsection (2) of section 627.706, Florida Statutes, is amended to read:

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

Remove lines 86-89 and insert:

umpire; amending s. 627.706, F.S.; revising the definition of the term

(11)

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 635 (2013)

Amendment No. 11

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Edwards offered the following:

Amendment

Remove lines 1109-1120 and insert:

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 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 from March 1 until the last day of the following February ~~throughout the remainder of that 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.

12

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 635 (2013)

Amendment No. 12

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Edwards offered the following:

Amendment (with title amendment)

Remove lines 1185-1188 and insert:

(4) The department shall deny an application, or suspend or revoke its approval of a mediator or certification of a neutral evaluator to serve in such capacity, if the department finds that any of the following grounds exist:

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

Remove lines 98-99 and insert:

to deny an application, or suspend or revoke approval of a mediator or certification of neutral evaluator; authorizing the

13

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 635 (2013)

Amendment No. 13

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Edwards offered the following:

Amendment (with title amendment)

Remove lines 1221-1222 and insert:

appointed as a nonresident surplus lines agent in this ~~her or his~~ state ~~of residence and file and maintain a fidelity bond in favor of the~~

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

Remove lines 101-103 and insert:

providing that certain persons who are not residents of this state must be licensed and appointed as nonresident surplus lines agents in this state in order to engage in specified activities with respect to servicing insurance contracts, certificates, or agreements for purchasing or risk retention

groups; deleting a fidelity bond requirement applicable to certain nonresident agents who are licensed as surplus lines agents in another state;

14

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 635 (2013)

Amendment No. 14

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Edwards offered the following:

Amendment (with title amendment)

Remove lines 1283-1289 and insert:

(13) "Qualifying reinsurer parent company" means a reinsurer that ~~which~~ currently holds a certificate of authority or a~~,~~ letter of eligibility or is a trusteed reinsurer or an accredited ~~or a satisfactory non-approved~~ reinsurer in this state possessing a consolidated GAAP net worth of at least $500 million and a consolidated debt to total capital ratio of not greater than 0.50.

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

Remove line 108 and insert:

reinsurer parent company";

15

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 635 (2013)

Amendment No. 15

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Edwards offered the following:

Amendment

Remove lines 1310-1332 and insert:

(6) An association which holds a license under this part ~~and which does not hold any other license under this chapter~~ may allow its premiums for service warranties written under this part to exceed the ratio to net assets limitations of this section if the association meets all of the following:

(a) Maintains net assets of at least $750,000.

(b) Utilizes a contractual liability insurance policy approved by the office which:

1. Reimburses the service warranty association for 100 percent of its claims liability and is issued by an insurer that maintains a policyholder surplus of at least $100 million; or

2. Complies with the requirements of subsection (3) and is issued by an insurer that maintains a policyholder surplus of at least $200 million.

(c) The insurer issuing the contractual liability insurance policy:

~~1. Maintains a policyholder surplus of at least $100 million.~~

1.~~2.~~ Is rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the office.

~~3. Is in no way affiliated with the warranty association.~~

2.~~4.~~ In conjunction with the warranty association's filing

INSURANCE & BANKING SUBCOMMITTEE

HB 665 by Rep. La Rosa
Licensure by Office of Financial Regulation

AMENDMENT SUMMARY
March 6, 2013

Amendment 1 by Rep. La Rosa (Lines 210-211): Provides that money services businesses that become initially licensed before the bill's effective date (October 1, 2013) must submit fingerprints for live-scan processing before seeking license renewal between April 30, 2014 and December 31, 2015.

Amendment 2 by Rep. La Rosa (Lines 215-216): Restores current statutory language regarding licensing fees for money services businesses, and clarifies that applicants and licensees must submit fingerprint retention fees, as set by rule, to the OFR upon initial application and renewal.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 665 (2013)

Amendment No. 1

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative La Rosa offered the following:

Amendment (with title amendment)

Between lines 210 and 211, insert:

7. Licensees initially approved before October 1, 2013 seeking renewal must submit fingerprints for live-scan processing in accordance with this paragraph. Such fingerprints must be submitted before renewing licenses set to expire between April 30, 2014 and December 31, 2015.

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

Remove line 20 and insert:

language; requiring licensees approved before effective date to submit live-scan fingerprints before the next renewal period; repealing s. 560.143(1)(f), F.S., relating

Amendment No. 2

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative La Rosa offered the following:

Amendment (with title amendment)

Remove lines 215-216 and insert:

Section 5. Section 560.143, Florida Statutes, is amended to read:

560.143 Fees.—

(1) LICENSE APPLICATION FEES.—The applicable non-refundable fees must accompany an application for licensure:

(a) Part II ..... $375.

(b) Part III ..... $188.

(c) Per branch office ..... $38.

(d) For each location of an authorized vendor ..... $38.

(e) Declaration as a deferred presentment provider ..... $1,000.

(f) Fingerprint retention fees as prescribed by rule.

(g) License application fees for branch offices and authorized vendors are limited to $20,000 when such fees are assessed as a result of a change in controlling interest as defined in s. 560.127.

(2) LICENSE RENEWAL FEES.—The applicable non-refundable license renewal fees must accompany a renewal of licensure:

(a) Part II ..... $750.

(b) Part III ..... $375.

(c) Per branch office ..... $38.

(d) For each location of an authorized vendor ..... $38.

(e) Declaration as a deferred presentment provider ..... $1,000.

(f) Renewal fees for branch offices and authorized vendors are limited to $20,000 biennially.

(g) Fingerprint retention fees as prescribed by rule.

(3) LATE LICENSE RENEWAL FEES.—

(a) Part II ..... $500.

(b) Part III ..... $250.

(c) Declaration as a deferred presentment provider ..... $500.

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

Remove lines 20-21 and insert:

language; amending s. 560.143, F.S., relating to fingerprint retention fees when applying for and renewing a license as a

INSURANCE & BANKING SUBCOMMITTEE

HB 675 by Rep. Ingram
Health Insurance Marketing Materials

AMENDMENT SUMMARY
March 6, 2013

Amendment 1 by Rep. Ingram (Lines 82-83): Provides that advertising materials for long-term care insurance may be used immediately by insurers upon filing without prior approval of OIR, but allows OIR to disapprove subsequently.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Ingram offered the following:

Amendment (with title amendment)

Remove lines 82-83 and insert:

in this state. The materials may be effective immediately, subject to disapproval by the office. Following receipt of notice of such disapproval, no long-term care insurer shall issue or use any advertisement disapproved by the office or as to which the office has withdrawn approval. ~~at least 30 days before the date of use of the~~

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

Remove line 7 and insert:

review and approval; establishing procedures for disapproval of long-term care insurance advertising materials; providing an effective date.