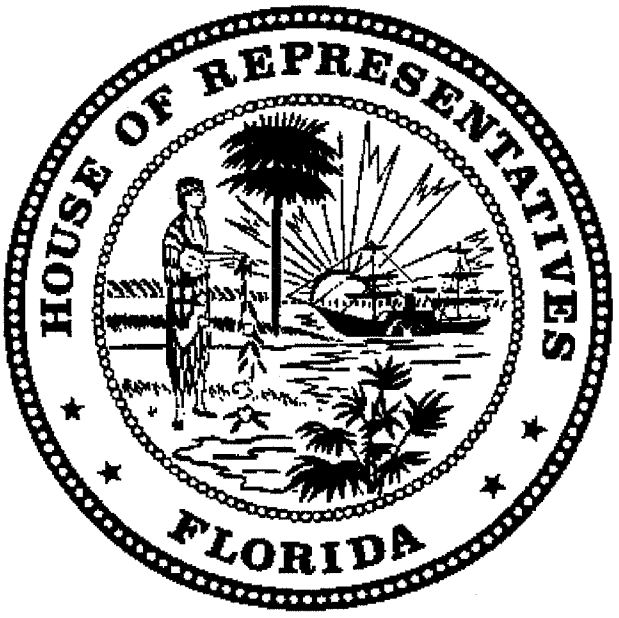

Insurance & Banking Subcommittee

Tuesday, January 24, 2012
2:00 PM
404 HOB

Dean Cannon
Speaker

Bryan Nelson
Chair

The Florida House of Representatives

Economic Affairs Committee

Insurance & Banking Subcommittee

Dean Cannon
Speaker

Bryan Nelson
Chair

AGENDA

January 24, 2012
404 House Office Building
2:00 p.m. - 4:30 p.m.

I. Introductory Remarks

II. HB 613 **Financial Institutions** *by Reps. Bernard, Corcoran*

III. HB 789 **Workers' Compensation** *by Rep. O'Toole*

IV. CS/HB 823 **Florida Uniform Principal and Income Act** *by Civil Justice Subcommittee and Rep. McBurney*

V. HB 1127 **Citizens Property Insurance Corporation** *by Rep. Albritton*

VI. PCS for HB 1101 **Insurance**

VII. Adjournment

204 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850)414-7365 Fax: (850)410-0129

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 613 Financial Institutions
SPONSOR(S): Bernard and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 792

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Barnum	Cooper
2) Economic Affairs Committee			

SUMMARY ANALYSIS

On July 1, 2010, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) was signed into law. Under the law, the Secretary of the Treasury may impose strict conditions on or prohibit the opening or maintaining of U.S. correspondent accounts or payable-through accounts for a foreign financial institution that is found to knowingly engage in specific sanctioned activities. Violators are subject to civil penalties up to $250,000 or twice the transaction value, and criminal penalties for willful violations of up to $1 million and 20 years in prison.

A provision of CISADA directs the Secretary of the Treasury to require U.S. banks maintaining a correspondent account or payable-through account in the United States for a foreign financial institution to do one or more of the following:

- Perform an audit of activities that may be carried out by the foreign financial institution.
- Report to the Department of the Treasury regarding transactions provided with any sanctioned activity.
- Certify that the foreign financial institution is not knowingly engaging in any such sanctioned activity.
- Establish due diligence policies designed to detect whether the Secretary of the Treasury has found the foreign financial institution to knowingly engage in sanctioned activity.

Under the current process, the US Department of Treasury's Financial Crimes Enforcement Network (FinCEN) sends a written request to a focused sub-group of U.S. banks to inquire regarding a specific foreign bank for which they maintain a correspondent account. FinCEN estimates that approximately 350 banks maintain correspondent accounts for foreign banks and that the number of U.S. banks receiving any one request to be approximately 5% or 18 banks.

All Florida-chartered financial institutions must comply with U.S. Department of the Treasury's Office of Foreign Assets Control and FinCEN regulations, and the promulgated federal Iranian sanctions. The types of activities targeted by CISADA would already be scrutinized as required by federal law and pursuant to state law based upon safety and soundness grounds, or under the Florida Control of Money Laundering in Financial Institutions Act.

HB 613 requires the Financial Services Commission to establish rules regarding minimum due diligence policies, procedures and controls to be followed by Florida-chartered financial institutions in complying with existing federal requirements.

The bill creates an annual reporting requirement for all Florida-chartered financial institutions whereby each certifies that it has adopted and substantially complies with the new rules. Furthermore, each certifies that it is not knowingly in violation of federal requirements stemming from the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. It creates a civil penalty, not to exceed $100,000 per occurrence, for failure to submit the annual certification.

The bill directs the Office of Financial Regulation to compile an annual report containing the rules and the status of the certifications of compliance. The report is to be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and made available on the Chief Financial Officer's website.

There is no fiscal impact on state or local governments, nor economic impact on the private sector.

The bill provides for an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

Countries that are determined by the United States Secretary of State to have repeatedly provided support for acts of international terrorism are designated as "State Sponsors of Terrorism" and are subject to sanctions. The four countries currently designated by the U.S. Secretary of State as "State Sponsors of Terrorism" are Cuba, Iran, Sudan, and Syria, with Iran being so designated on January 19, 1984.[1]

In 1987, President Reagan imposed an import embargo on goods and services of Iranian origin.[2] In 1995, President Clinton imposed prohibitions on U.S. involvement with any petroleum development in Iran,[3] and in 1997 prohibited most trade and investment activities by U.S. Citizens.[4]

On July 1, 2010, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) was signed into law.[5] Under the law, the Secretary of the Treasury may impose strict conditions on or prohibit the opening or maintaining of U.S. correspondent accounts[6] or payable-through accounts[7] for a foreign financial institution that is found to knowingly engage in the following sanctioned activities:

- Facilitating the efforts of the Government of Iran (GOI) to acquire or develop weapons of mass destruction (WMD) or delivery systems for WMD or to provide support for terrorist organizations or acts of international terrorism.
- Facilitating the activities of a person subject to financial sanctions pursuant to United Nations Security Council Resolutions 1737, 1747, 1803, or 1929, or any other Security Council Resolution that imposes sanctions with respect to Iran.
- Engaging in money laundering, or facilitating efforts by the Central Bank of Iran or any other Iranian financial institution, to carry out either of the above.
- Facilitating a significant transaction or transactions or providing significant financial services for Iran's Islamic Revolutionary Guard Corps (IRGC) or any of its agents or affiliates whose property or interests in property are blocked pursuant to the International Emergency Economic Powers Act (IEEPA) or a financial institution whose property or interests in property are blocked pursuant to IEEPA in connection with the GOI's proliferation of WMD or support for international terrorism.

Violators are subject to civil penalties up to $250,000 or twice the transaction value, and criminal penalties for willful violations of up to $1 million and 20 years in prison.[8]

A provision of CISADA directs the Secretary of the Treasury to require U.S. banks maintaining a correspondent account or payable-through account in the United States for a foreign financial institution to do one or more of the following:

- Perform an audit of activities that may be carried out by the foreign financial institution.
- Report to the Department of the Treasury regarding transactions provided with any sanctioned activity.
- Certify that the foreign financial institution is not knowingly engaging in any such sanctioned activity.

---

[1] http://www.state.gov/g/ct/c14151.htm (Last visited on January 22, 2012).
[2] Executive Order 12613, October 29, 1987.
[3] Executive Order 12957, March 16, 1995.
[4] Executive Order 13059, August 19, 1997.
[5] Pub. L. 111-195.
[6] An account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transaction related to such foreign bank.
[7] A correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking activities usually in connection with the business of banking in the United States.
[8] http://www.treasury.gov/press-center/press-releases/Pages/tg829.aspx (Last visited on January 22, 2012).

- Establish due diligence policies designed to detect whether the Secretary of the Treasury has found the foreign financial institution to knowingly engage in sanctioned activity. [9,10]

The US Department of Treasury's Financial Crimes Enforcement Network's (FinCEN) mission is to enhance U.S. national security, deter and detect criminal activity, and safeguard financial systems from abuse by promoting transparency in the U.S. and international financial systems. Under the current process, FinCEN sends a written request to a focused sub-group of U.S. banks to inquire regarding a specific foreign bank for which they maintain a correspondent account. FinCEN estimates that approximately 350 banks maintain correspondent accounts for foreign banks and that the number of U.S. banks receiving any one request to be approximately 5% or 18 banks.[11] The request is specific regarding the data being requested, and a "negative report" is required of U.S. banks which receive a request but do not maintain correspondent accounts with the subject foreign bank.

The names of foreign financial institutions that are found by the Secretary of the Treasury to knowingly engage in sanctionable activities, and for which U.S. financial institutions may not open or maintain correspondent accounts or payable-through accounts in the United States, will be published in the Federal Register and listed in Appendix A to the Iranian Financial Sanctions Regulations found at: http://www.treasury.gov/resource-center/sanctions/Programs/pages/iran.aspx. These listings are part of the List of Specially Designated Nationals and Blocked Persons, which is updated as names are added or removed. One can subscribe to receive e-mail updates when the information changes.[12]

Current Situation:

All Florida-chartered financial institutions must comply with U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and Financial Crimes Enforcement Network (FinCEN) regulations, and the promulgated federal Iranian sanctions. There exist information sharing agreements between state and federal banking regulators and both OFAC and FinCEN.

The bank examination processes, by both state and federal examiners, includes procedures for examining and assessing a financial institution's policies, procedures, and processes for ensuring compliance with federal regulatory requirements and sanctions. For Florida-chartered banks, the types of activities being targeted by CISADA would already be scrutinized as required by federal law and pursuant to state law based upon safety and soundness grounds, or under the Florida Control of Money Laundering in Financial Institutions Act.[13]

Effect of the Bill:

HB 613 requires the Financial Services Commission to establish rules regarding minimum due diligence policies, procedures and controls to be followed by Florida-chartered financial institutions in complying with existing federal requirements.

The bill creates an annual reporting requirement for all Florida-chartered financial institutions whereby each certifies that it has adopted and substantially complies with the new rules established by the Financial Services Commission. Furthermore, each certifies that it is not knowingly in violation of

---

[9] Bank is defined in 31 CFR 1010.100(d) to include:
- A commercial bank or trust company organized under the laws of any State or of the United States.
- A private bank.
- A savings and loan association or a building and loan association organized under the laws of any State or of the United States.
- An insured institution as defined in section 401 of the National Housing Act.
- A savings bank, industrial bank or other thrift institution.
- A credit union organized under the law of any State or of the United States.
- Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a State.

[10] Due diligence policies, procedures, and controls are specified in section 5318(i) of Title 31, United States Code.

[11] "Department of the Treasury, Financial Crimes Enforcement Network, 31 CFR Part 1060, Comprehensive Iran Sanctions, Accountability, and Divestment Reporting Requirements, Final rule," 76 Federal Register 196 (11 October 2011), 62621.

[12] http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx (Last visited on January 22, 2012).

[13] s. 655.50, F.S.

federal requirements stemming from the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. It creates a civil penalty, not to exceed $100,000 per occurrence, for failure to submit the annual certification.

The bill directs the Office of Financial Regulation (OFR) to compile an annual report containing the rules and the status of the certifications of compliance. The report is to be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and made available on the Chief Financial Officer's website.

B. SECTION DIRECTORY:

Section 1: Creates new law relating to financial institutions; transactions relating to Iran or terrorism.

Section 2: Provides an effective date of 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. According to a Florida Bankers Association representative, the bill will not have a financial impact on its members.[14]

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.

[14] Conversation with Insurance & Banking Subcommittee staff on January 17, 2012.

2. Other:

The bill adopts Federal laws and regulations that change frequently. Any future changes to the federal requirements after the bill were to become law would have to be readdressed by the legislature.

B. RULE-MAKING AUTHORITY:

The Financial Services Commission will be required to promulgate rules regarding minimum due diligence policies, procedures and controls to be followed by Florida-chartered financial institutions in order to comply with existing federal requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Federally-chartered financial institutions and financial institutions chartered by a state other than Florida will not be subject to compliance with the bill, the new rules, or the certification requirement, with its accompanying potential civil penalty for non-compliance.
- As noted by the OFR,[15] an administrative penalty or fine, rather than a civil penalty for non-compliance with certification submission, would be more consistent with other actions taken by the OFR.
- Because the OFR, which regulates financial institutions, will be receiving the compliance certifications, and will be producing and delivering the annual report, the posting of the report on the OFR's website may be more appropriate.[16]
- Should the federal government modify certain language or requirements in its rules and regulations, a change to the Florida Statutes and Florida Administrative Code may be necessary. Otherwise, as applied to Florida-chartered financial institutions, Florida law may be inconsistent with, or more restrictive than, federal requirements.
- Lines 94 and 103 specify that the OFR shall adopt rules. The Financial Services Commission is the only entity under current law authorized to adopt rules for the OFR. An amendment has been drafted to correct this scrivener's error.
- On line 113, the reference should be to subsection (3), rather than (2). An amendment has been drafted to correct this scrivener's error.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[15] Office of Financial Regulation HB 613 Bill Analysis dated December 5, 2011, on file with the Insurance & Banking Subcommittee.
[16] *Id.*

A bill to be entitled

An act relating to financial institutions; providing definitions; requiring a financial institution that is chartered in this state and that maintains certain accounts with a foreign financial institution to establish due diligence policies, procedures, and controls reasonably designed to detect whether the foreign financial institution engages in certain activities facilitating the development of weapons of mass destruction by the Government of Iran, provides support for certain foreign terrorist organizations, or participates in other related activities; requiring the Office of Financial Regulation to adopt rules establishing minimum standards for the due diligence policies, procedures, and controls; requiring a financial institution chartered in this state to annually file a compliance certificate with the Office of Financial Regulation; requiring the Office of Financial Regulation to submit an annual report relating to its rules and certifications from financial institutions to the Governor, the President of the Senate, and the Speaker of the House of Representatives; requiring the Office of the Chief Financial Officer to make the annual report available to the public on its website; authorizing the Office of Financial Regulation to impose a civil penalty against a financial institution that fails to make the annual certification required by the act; providing an

effective date.

WHEREAS, the United States Congress passed, and President Obama signed into law, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, and

WHEREAS, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 prohibits or strictly limits any foreign financial institution's ability to open or maintain a correspondent account or a payable-through account with American financial institutions if the United States Secretary of the Treasury determines that the foreign financial institution knowingly engages in certain activities facilitating the development of weapons of mass destruction by the Government of Iran, provides support for certain foreign terrorist organizations, or participates in other related activities, and

WHEREAS, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 imposes civil and criminal penalties against financial institutions based in the United States which know or should know that they are maintaining a correspondent account or a payable-through account with a foreign financial institution that engages in prohibited activities, and

WHEREAS, it is a sensible fiduciary responsibility of financial institutions chartered in the State of Florida to know the activities of foreign financial institutions with which they maintain correspondent or payable-through accounts, NOW, THEREFORE,

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

Section 1. Financial institutions; transactions relating to Iran or terrorism.—

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

(a) "Correspondent account" has the same meaning as defined in 31 U.S.C. s. 5318A.

(b) "Financial institution" has the same meaning as defined in s. 655.005(1)(i), Florida Statutes.

(c) "Payable-through account" has the same meaning as defined in 31 U.S.C. s. 5318A.

(2) A financial institution chartered in this state which maintains a correspondent account or a payable-through account with a foreign financial institution must establish due diligence policies, procedures, and controls reasonably designed to detect whether the United States Secretary of the Treasury has found that the foreign financial institution knowingly:

(a) Facilitates the efforts of the Government of Iran, including efforts of Iran's Revolutionary Guard Corps, to acquire or develop weapons of mass destruction or their delivery systems;

(b) Provides support for an organization designated by the United States as a foreign terrorist organization;

(c) Facilitates the activities of a person who is subject to financial sanctions pursuant to a resolution of the United Nations Security Council imposing sanctions on Iran;

(d) Engages in money laundering to carry out any activity listed in this subsection;

(e) Facilitates efforts by the Central Bank of Iran or any

other Iranian financial institution to carry out an activity listed in this subsection; or

(f) Facilitates a significant transaction or provides significant financial services for Iran's Revolutionary Guard Corps or its agents or affiliates, or any financial institution, whose property or interests in property are blocked pursuant to federal law in connection with Iran's proliferation of weapons of mass destruction, or delivery systems for those weapons, or Iran's support for international terrorism.

(3) By July 1, 2012, the Office of Financial Regulation shall adopt rules establishing minimum standards for due diligence policies, procedures, and controls required by this section.

(4) By January 1, 2013, and each January 1 thereafter, each financial institution chartered in this state must certify to the Office of Financial Regulation that the financial institution has adopted and substantially complies with its due diligence policies, procedures, and controls required by this section and the rules of the Office of Financial Regulation, and that to the best knowledge of the financial institution, the financial institution does not maintain a correspondent account or a payable-through account with a foreign financial institution that knowingly engages in any act described in subsection (2).

(5) By January 31, 2013, and each January 31 thereafter, the Office of Financial Regulation must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which contains a copy of the rules

required under subsection (2) and the status of the certifications of compliance received from the financial institutions charted in this state.

(6) The Office of the Chief Financial Officer shall make its annual compliance report under this section available on its website.

(7) The Office of Financial Regulation may impose a civil penalty, not to exceed $100,000 per occurrence, against a financial institution that fails to make the annual certification required under subsection (4).

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 789 Workers' Compensation
SPONSOR(S): O'Toole
TIED BILLS: **IDEN./SIM. BILLS:** SB 1094

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

SUMMARY ANALYSIS

Chapter 440, F.S., is Florida's Workers' Compensation Law. If an employer fails to comply with workers' compensation coverage requirements (does not secure the payment of workers' compensation), the Department of Financial Services (DFS) is required to issue a Stop-Work Order (SWO) within 72 hours of learning of the non-compliance. SWOs require the employer to cease all business operations. Additionally, such employers are assessed penalties for non-compliance equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding 3-year period or $1,000, whichever is greater. Thus, for penalty calculation purposes, the employer must provide 3 years of payroll records. SWOs remain in effect until released by the DFS upon finding that the employer has come into compliance with coverage requirements and has paid any penalty assessed. The DFS informs that employers often are unable to quickly provide all records required to calculate the penalty.

The bill reduces the look-back period for calculating the penalty for failure to comply with workers' compensation coverage requirements from 3 years to 1 year, thus requiring employers to produce only 1 year of payroll records. In conjunction with this change, the bill increases the penalty multiplier from 1.5 to 2 times the amount of payroll that was avoided in the preceding year.

The DFS informs that the 1-year look-back period will streamline the penalty calculation process, enabling employers to obtain a determination of their penalty amount more quickly, and to pay the amount due to obtain a release from the SWO.

The decreased reporting of payroll records provided by the bill will likely result in a small, but indeterminate savings in DFS staff hours in reviewing such records and calculating penalties.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Whether an employer is required to have workers' compensation insurance depends upon the employer's industry (construction, non-construction, or agricultural) and the number of employees. Construction industry employers with 1 or more employees are required to have workers' compensation insurance.[1] Non-construction industry employers with 4 or more employees are required to have workers' compensation insurance. Agricultural employers with more than 5 regular employees and 12 or more seasonal employees who work more than 30 days are required to have workers' compensation insurance.[2]

Failure to Comply with Coverage Requirements

If an employer fails to comply with workers' compensation coverage requirements, the Department of Financial Services (DFS) must issue a stop-work order (SWO) within 72 hours of knowledge of non-compliance. SWOs require the employer to cease business operations and remain in effect until the DFS issues an Order Releasing the Stop-Work Order. Additionally, employers are assessed penalties equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance, during the preceding 3-year period or $1,000, whichever is greater. SWOs are issued for the following violations: failure to obtain workers' compensation insurance; materially understating or concealing payroll; materially misrepresenting or concealing employee duties to avoid paying the proper premium; materially concealing information pertinent to the calculation of an experience modification factor; and failure to produce business records in a timely manner. For fiscal year 2010-2011, 2,174 SWOs were issued.[3]

Effect of the Bill

The bill amends the statutory formula for calculating the penalty for employers that fail to comply with workers' compensation coverage requirements. The bill reduces the look-back period from 3 years to 1 year; requiring employers to produce only 1 year of payroll records. In conjunction with this change, the bill increases the amount of the penalty from 1.5 to 2 times the amount of payroll that was avoided in the preceding year.

B. SECTION DIRECTORY:

Section 1. Amends s. 440.107, F.S., to revise a penalty calculation formula.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   To the extent that the penalty calculation process is streamlined by the 1-year look-back period, DFS will realize a reduction in costs associated with calculating penalties for non-compliance. It is unknown what effect the decreased penalty period together with the increased penalty multiplier will have on penalty amounts.

---

[1] Section 440.02(17) (b)2, F.S.
[2] Section 440.02(17)(c)2, F.S.
[3] "2011 Division of Workers' Compensation Annual Report." Available at: http://www.myfloridacfo.com/sitePages/agency/sections/WorkersComp.aspx (Last accessed January 20, 2012).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The extent to which the amended penalty calculation formula will change the amount for penalties assessed is unknown.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Requiring employers to whom stop-work orders have been issued to supply 1 year of payroll records (rather than 3 years) for penalty calculation purposes decreases the regulatory burden on such employers and provides the opportunity to more promptly obtain a release from the stop-work order. Also, with the decreased look-back period, the amount of some fines assessed may decrease even though the penalty multiplier has been increased. In other cases, the increased penalty multiplier will increase the penalty, even though the look-back period has been shortened.

D. FISCAL COMMENTS:

The bill will allow employers the opportunity to be released from a stop-work order more expeditiously, thus allowing them to resume business operations.

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:

DFS informs that several rule sections will need to be amended to align themselves with the new penalty calculation methodology.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to workers' compensation; amending s. 440.107, F.S.; revising penalties applicable to employers who fail to secure the payment of workers' compensation as required; providing an effective date.

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

Section 1. Paragraph (d) of subsection (7) of section 440.107, Florida Statutes, is amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 ~~1.5~~ times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 1-year ~~3-year~~ period or $1,000, whichever is greater.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

Section 2. This act shall take effect July 1, 2012.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 823 Florida Uniform Principal and Income Act
SPONSOR(S): Civil Justice Subcommittee, McBurney
TIED BILLS: **IDEN./SIM. BILLS:** SB 978

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N, As CS	Cary	Bond
2) Insurance & Banking Subcommittee		Read	Cooper
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law governs the creation of wills and trusts and the administration of such instruments. Drafters of wills and trusts have broad authority to create parameters for administering the instrument within the documents, but the Florida statutes serve to provide default guidelines where the instrument is silent.

The Florida Uniform Principal and Income Act is modeled after the Uniform Principal and Income Act as drafted by the National Conference of Commissioners on Uniform State Laws. The Florida act is similar to the model act.

Practitioners have identified several issues with the Act, including some misuse of the terms "fiduciary" and "trustee". Trustees are always fiduciaries, but fiduciaries are not always trustees. In some cases, the word "trustee" was used in a context where the provision should apply to all fiduciaries.

Fluctuations in the stock market make it difficult to evaluate assets and can lead to a wide variance in distributions from year to year. This bill implements a "smoothing rule" where fiduciaries calculate the average fair market value of the current year assets and the two preceding years' assets. The bill also provides clarification for allocating assets between principal and income, including providing a new definition for "carrying value," which is the fair market value at the time the assets are received by the fiduciary.

The bill also modifies the default guidelines for several other aspects, including unitrusts, distribution of income, the partial liquidation rule, marital deductions, liquidating assets, income taxes, and property improvements.

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

This bill takes effect on January 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2002, a modified version of the Uniform Principal and Income Act, as developed by the National Commissioners on Uniform State Laws in 1997, was enacted.[1] The Act provides procedures for trustees administering an estate in differentiating principal from income and ensuring that the intention of the trust creator is the guiding principal for trustees.[2] The Act provides default rules to trustees and fiduciaries where the will or trust instrument is silent.

The Act defines principal as property held in trust for distribution to a remainder beneficiary when the trust terminates.[3] Income is money or property that a fiduciary receives as current return from a principal asset.[4]

Effects of the Bill

Trustee and Fiduciary

Trustees and fiduciaries both have the responsibility to act primarily for another's benefit.[5] However, a trustee is the owner of the legal title to the property of the trust.[6] Current law defines a trustee to include an original, additional, or successor trustee, whether or not appointed or confirmed by a court.[7] A fiduciary is a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, or a person performing substantially the same function.[8] A trustee is always a fiduciary, but a fiduciary is not always a trustee.

The bill changes "trustee" to "fiduciary" throughout wherever the word "trustee" should also apply to fiduciaries that are not specifically designated as trustees. Furthermore, the bill amends s. 738.103, F.S., to provide that the chapter pertains to the administration of trusts administered in this state or under its law, and to any estate that is administered in this state unless the provision is limited in application to a trustee, rather than a fiduciary.

Carrying Value

The bill amends s. 738.102, F.S., to provide a new standard for valuing assets. The term "carrying value" is defined as the fair market value at the time the assets are received by the fiduciary, and a change in fiduciaries allows the majority of continuing fiduciaries to elect to adjust the carrying values to reflect the fair market value of the assets at the beginning of their administration. The bill amends s. 738.202, F.S. and s. 738.602(2), F.S., to apply the carrying value, which will simplify administration of trusts by not requiring the fiduciary to revalue the assets on each distribution date unless the there is a

---

[1] Chapter 2002-42, L.O.F.

[2] The National Conference of Commissioners on Uniform State Laws, http://www.nccusl.org/Narrative.aspx?title=Why States Should Adopt UPIA (last checked Jan. 4, 2012).

[3] Section 738.102(10), F.S.

[4] Section 738.102(4), F.S.

[5] *See, e.g., Black's Law Dictionary, which defines a fiduciary as* ". . . a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. A person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking." 5th Ed., at 563.

[6] *See, e.g., Black's Law Dictionary, which defines a trustee as a* "Person holding property in trust. The person appointed, or required by law, to execute a trust; one in whom an estate, interest, or power is vested, under an express or implied agreement to administer or exercise it for the benefit or to the use of another called the cestui que trust. Person who holds title to res and administers it for others' benefit." 5th Ed., at 1357.

[7] Section 738.102(13), F.S.

[8] Section 738.102(3), F.S.

non pro-rata distribution to one or more beneficiaries, in which case the bill provides guidelines on how to make the distribution.

Unitrusts

A "unitrust" is a "trust from which a fixed percentage of the net fair market value of the trust's assets, valued annually, is paid each year to the beneficiary."[9] The value of assets in a unitrust are calculated by the "fair market value" method, which is the fair market value of assets held by the trust as otherwise determined under this chapter, reduced by all known noncontingent liabilities.[10]

The bill provides new rules for valuing assets for unitrusts. The bill amends s. 738.1041(1)(a), F.S., to add a definition for "average fair market value" which includes what is commonly referred to as the "smoothing rule." This rule is intended to reduce the large differences in amounts distributable to a beneficiary from year to year depending on large market fluctuations by using the average fair market value over the past three years to value assets. The bill then implements the smoothing rule in the definition of "unitrust amount" in s. 738.1041(1)(f), F.S.

Determination and Distribution of Net Income

Current law requires a fiduciary, in certain situations, to distribute to the beneficiary who receives a pecuniary amount outright the interest provided by will, the terms of the trust, or applicable law. However, this was model act language and there are no situations where this law applies in Florida. Current law also contains language from the model act that implies that there is a statutory right to income on an outright pecuniary device in Florida, where such a right does not exist.[11]

The bill amends s. 738.201(3), F.S., to remove unnecessary language referencing "applicable law" where there is no applicable law and to remove model act language pertaining to a statutory right to income on an outright pecuniary device, which is not a right in Florida.

Character of Receipts

Current law provides a default provision for determining whether assets should be allocated to principal or income: payments in excess of 20% of the entities' assets are presumed to be liquidating distributions which are allocated to principal (the 20% partial liquidation rule). However, certain entities pay large dividends that may exceed this limit despite not being liquidating assets.[12]

The bill amends s. 738.401, F.S., to retain the 20% partial liquidation rule for non-publicly-traded entities, but only after the trust or estate has received a cumulative minimum return of 3% annually. The bill provides a framework for allocating dividends and other stock payments which exceed 10% of fair market value of the trust's interest in that entity, and provides rules for different types of entities, such as publicly-traded companies, partnerships, subchapter S corporations, and other entities.

Marital Trusts and Deductions

Current law contains one method of computing income from assets held in marital trusts and another more complex method of computing the allocation of principal and income for non-marital trusts.[13]

The bill amends s. 738.602(4), F.S., to simplify the method for computing income held in non-marital trusts. The bill also amends s. 738.602(5), F.S., to ensure that the estate or gift tax marital deduction applies to not only federal tax laws, but tax laws of other states where the trust is administered in

[9] Black's Law Dictionary, 5th Ed., at 1376.
[10] Section 738.1041(1)(b), F.S.
[11] Section 738.201. F.S.
[12] Section 738.401, F.S.
[13] *Compare* s. 738.602(4) and (5), F.S.

Florida. The bill also amends s. 738.606(1), F.S., to clarify that the marital deduction in that section can apply to the IRS or a comparable law of any state.

Liquidating Asset

Assets in a trust that are expected to produce receipts for a limited period of time are allocated such that 10% of the payments go to income and the rest is applied to principal. The Internal Revenue Service (IRS) recently ruled that the safe harbor was between 3 % and 5% to income, putting Florida trusts at risk for additional tax liabilities.

The bill amends s. 738.603(2), F.S., to change the percentage of limited-duration assets applied to income from 10% to 5% to comply with an IRS ruling that 5% is the maximum safe harbor for such an allocation.

Disbursements from Income

Current law requires fiduciaries to make certain disbursements from income, providing that the disbursements are not income from property used to discharge liabilities or disbursements paying from principal which were incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest.[14]

The bill amends s. 738.701, F.S., to add an additional exclusion from disbursements from income, payments from income or principal including, at the fiduciary's discretion, attorney, accountant, or fiduciary fees, court costs, other administration expenses, and interest on death taxes.

Income Taxes

Current law provides guidelines for paying income taxes out of a trust, including guidelines specifically for paying taxes on an entity's taxable income. Current law also requires payment from income to the extent receipts from the entity are allocated to income and from principal to the extent that receipts from the entity are allocated to principal and the trust's share of the entity's taxable income exceeds the total of such receipts. Receipts allocated to principal or income are reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.[15]

The bill amends s. 738.705, F.S., to provide new guidelines for paying income taxes out of a trust. The bill provides that an income tax required to be paid on the trust or estate's share of an entity's taxable income is to be paid proportionally from income to the extent the receipts from the entity are allocated to income, from principal to the extent the receipts from the entity are allocated to principal, and from principal to the extent that the income taxes payable by the trust or estate exceed the total distributions from the entity. Then, the fiduciary is to adjust income or principal receipts to the extent that the trust or estate's income taxes are reduced, but not eliminated, because the trust or estate receives a deduction for payments made to a beneficiary, with additional guidelines to provide clarity to the fiduciary.

Improvements

Under the common law, when a tenant of a property had a life estate, the tenant was generally responsible for the maintenance of the property while the holder of the remainder interest, or the remainderman, was responsible for capital improvements. The original adoption of the act attempted to codify the common law rule, but the wording of the act could lead to different conclusion for the apportionment of expenses because the act used terms common in trust law, which did not exist at common law.

The bill amends s. 738.801, F.S., to provide definitions and additional guidelines for apportioning expenses between the life tenant and the remainderman. Life tenants are responsible for paying

[14] Section 738.701, F.S.
[15] Section 738.705, F.S.

ordinary expenses and maintenance, recurring insurance premiums, and other expenses which are the result of the property's use by the tenant. The remainderman is responsible for paying mortgage debt not allocated to the tenant, expenses due to title other than the tenant's estate, environmental expenses, and extraordinary repairs. If either party incurs an expense for personal benefit without the consent of the other, that party bears the expense in full. For improvements that add value to the property forming part of the principal, the expense is split between the tenant and the remainderman, with the tenant paying to the extent that the improvement increases the value of the tenant's estate.

Effective Date

The bill provides an effective date of January 1, 2013, in order to provide practitioners enough lead time to prepare for the changes in the law.

B. SECTION DIRECTORY:

Section 1 amends s. 738.102, F.S., providing an additional definition.

Section 2 amends s. 738.103, F.S., relating to fiduciary duties.

Section 3 amends s. 738.104, F.S., relating to the trustee's power to adjust between principal and income.

Section 4 amends s. 738.1041, F.S., relating to total return unitrusts.

Section 5 amends s. 738.105, F.S., relating to judicial control of discretionary powers.

Section 6 amends s. 738.201, F.S., relating to determination and distribution of net income.

Section 7 amends s. 738.202, F.S., relating to distribution to residuary and remainder beneficiaries.

Section 8 amends s. 738.301, F.S., relating to right to income.

Section 9 amends s. 738.302, F.S., relating to apportionment of receipts and disbursements.

Section 10 amends s. 738.303, F.S., relating to apportionment when income interest ends.

Section 11 amends s. 738.401, F.S., relating to the character of receipts.

Section 12 amends s. 738.402, F.S., relating to distribution from trust or estate.

Section 13 amends s. 738.403, F.S., relating to business and other activities conducted by fiduciaries.

Section 14 amends s. 738.501, F.S., relating to principal receipts.

Section 15 amends s. 738.502, F.S., relating to rental property.

Section 16 amends s. 738.503, F.S., relating to the obligation to pay money.

Section 17 amends s. 738.504, F.S., relating to insurance policies and similar contracts.

Section 18 amends s. 738.601, F.S., relating to insubstantial allocations.

Section 19 amends s. 738.602, F.S., relating to payments from deferred compensation plans, annuities, and retirement plans or accounts.

Section 20 amends s. 738.603, F.S., relating to liquidating assets.

Section 21 amends s. 738.604, F.S., relating to minerals, water, and other natural resources.

Section 22 amends s. 738.605, F.S., relating to timber.

Section 23 amends s. 738.606, F.S., relating to property not productive of income.

Section 24 amends s. 738.607, F.S., relating to derivatives and options.

Section 25 amends s. 738.608, F.S., relating to asset-backed securities.

Section 26 amends s. 738.701, F.S., relating to disbursements from income.

Section 27 amends s. 738.702, F.S., relating to disbursements from principal.

Section 28 amends s. 738.703, F.S., relating to transfers from income to principal for depreciation.

Section 29 amends s. 738.704, F.S., relating to transfers from income to reimburse principal.

Section 30 amends s. 738.705, F.S., relating to income taxes.

Section 31 amends s. 738.801, F.S., relating to apportionment of expenses for improvements.

Section 32 provides an effective date of January 1, 2013.

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:
   None.

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 require 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 January 18, 2012, the Civil Justice Subcommittee approved a proposed committee substitute which made numerous minor grammatical and stylistic changes throughout. It also changes "trustee" to "fiduciary", as appropriate. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to the Florida Uniform Principal and Income Act; amending s. 738.102, F.S.; defining the term "carrying value"; amending s. 738.103, F.S.; providing application; amending s. 738.104, F.S.; deleting a provision authorizing a trustee to release the power to adjust between principal and income if the trustee desires to convert the form of certain trusts; limiting the power to adjust a trust; deleting a provision that provides construction and application relating to the administration of trusts in this state or under this state's law; amending s. 738.1041, F.S.; defining the term "average fair market value" and revising the term "unitrust amount"; deleting a duplicative provision relating to conclusive determinations of the terms of a unitrust; revising provisions relating to an express total return unitrust; amending s. 738.105, F.S.; substituting the term "trustee" for "fiduciary" with respect to judicial control of discretionary powers; amending s. 738.201, F.S.; revising provisions relating to the determination and distribution of net income; amending s. 738.202, F.S.; revising provisions relating to distributions to residuary and remainder beneficiaries; amending ss. 738.301, 738.302, and 738.303, F.S.; substituting the term "fiduciary" for "trustee" to clarify that provisions apply to all fiduciaries; amending s. 738.401, F.S.; substituting

the term "fiduciary" for "trustee" to clarify that provisions apply to all fiduciaries; revising how distributions from entities are allocated between income and principal; amending ss. 738.402, 738.403, 738.501, 738.502, 738.503, 738.504, and 738.601, F.S.; substituting the term "fiduciary" for "trustee" to clarify that provisions apply to all fiduciaries; amending s. 738.602, F.S.; substituting the term "fiduciary" for "trustee" to clarify that provisions apply to all fiduciaries; revising provisions relating to allocations to trusts; amending s. 738.603, F.S.; substituting the term "fiduciary" for "trustee" to clarify that provisions apply to all fiduciaries; revising provisions relating to the allocation between income and principal when liquidating assets; amending ss. 738.604, 738.605, 738.606, 738.607, 738.608, 738.701, 738.702, 738.703, and 738.704, F.S.; substituting the term "fiduciary" for "trustee" to clarify that provisions apply to all fiduciaries; amending s. 738.705, F.S.; substituting the term "fiduciary" for "trustee" to clarify that provisions apply to all fiduciaries; revising the method for allocating income taxes between income and principal; amending s. 738.801, F.S.; clarifying the apportionment of expenses between tenants and remaindermen; providing an effective date.

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

Section 1. Present subsections (3) through (13) of section 738.102, Florida Statutes, are renumbered as subsections (4) through (14), respectively, and a new subsection (3) is added to that section, to read:

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

(3) "Carrying value" means the fair market value at the time the assets are received by the fiduciary. For the estates of decedents and trusts described in s. 733.707(3), after the grantor's death, the assets are considered received as of the date of death. If there is a change in fiduciaries, a majority of the continuing fiduciaries may elect to adjust the carrying values to reflect the fair market value of the assets at the beginning of their administration. If such election is made, it must be reflected on the first accounting filed after the election. For assets acquired during the administration of the estate or trust, the carrying value is equal to the acquisition costs of the asset.

Section 2. Subsection (3) is added to section 738.103, Florida Statutes, to read:

738.103 Fiduciary duties; general principles.—

(3) Except as provided in s. 738.1041(9), this chapter pertains to the administration of a trust and is applicable to any trust that is administered in this state or under its law. This chapter also applies to any estate that is administered in this state unless the provision is limited in application to a trustee, rather than a fiduciary.

Section 3. Subsections (5) and (11) of section 738.104,

Florida Statutes, are amended to read:

738.104 Trustee's power to adjust.—

(5)(a) ~~A trustee may release the entire power to adjust conferred by subsection (1) if the trustee desires to convert an income trust to a total return unitrust pursuant to s. 738.1041.~~

~~(b)~~ A trustee may release the entire power to adjust conferred by subsection (1) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in paragraphs (3)(a)-(e) or paragraph (3)(g) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (3).

(b) ~~(c)~~ A release under this subsection may be permanent or for a specified period, including a period measured by the life of an individual. ~~Notwithstanding anything contrary to this subsection, a release of the power to adjust pursuant to paragraph (a) shall remain effective only for as long as the trust is administered as a unitrust pursuant to s. 738.1041.~~

~~(11) This section shall be construed as pertaining to the administration of a trust and is applicable to any trust that is administered either in this state or under Florida law.~~

Section 4. Section 738.1041, Florida Statutes, is amended to read:

738.1041 Total return unitrust.—

(1) For purposes of this section, the term:

(a) "Average fair market value" means the average of the

fair market values of assets held by the trust at the beginning of the current and each of the 2 preceding years, or for the entire term of the trust if there are less than 2 preceding years, and adjusted as follows:

1. If assets have been added to the trust during the years used to determine the average, the amount of each addition is added to all years in which such addition was not included.

2. If assets have been distributed from the trust during the years used to determine the average, other than in satisfaction of the unitrust amount, the amount of each distribution is subtracted from all years in which such distribution was not included.

(b) ~~(a)~~ "Disinterested person" means a person who is not a ~~"~~related or subordinate party~~" as defined in s. 672(c) of the United States Internal Revenue Code, 26 U.S.C. ss. 1 et seq., or any successor provision thereof,~~ with respect to the person ~~then~~ acting as trustee of the trust and excludes the grantor and any interested trustee.

(c) ~~(b)~~ "Fair market value" means the fair market value of the assets held by the trust as otherwise determined under this chapter, reduced by all known noncontingent liabilities.

(d) ~~(c)~~ "Income trust" means a trust, created by ~~either~~ an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, ~~either~~ in fixed proportions or in amounts or proportions determined by the trustee and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one or more such persons.

(e) ~~(d)~~ "Interested distributee" means a person to whom distributions of income or principal can currently be made and who has the power to remove the existing trustee and designate as successor a person who may be a ~~"~~related or subordinate party~~," as defined in the Internal Revenue Code, 26 U.S.C. s. 672(c),~~ with respect to such distributee.

(f) ~~(e)~~ "Interested trustee" means an individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were ~~then~~ to terminate and be distributed, any trustee whom an interested distributee has the power to remove and replace with a related or subordinate party ~~as defined in paragraph (d)~~, or an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(g) "Related or subordinate party" has the same meaning as provided in 26 U.S.C. s. 672(c) of the Internal Revenue Code, or any successor provision thereof.

(h) ~~(f)~~ "Unitrust amount" means the amount determined by multiplying the average fair market value of the assets as calculated ~~defined~~ in paragraph (a) ~~(b)~~ by the percentage calculated under paragraph (2)(b).

(2) A trustee may, without court approval, convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

(a) The trustee adopts a written statement regarding trust

distributions which ~~that~~ provides:

1. In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income, and indicates the manner in which the unitrust amount will be calculated and the method in which the fair market value of the trust will be determined.

2. In the case of a trust being administered as a total return unitrust, that:

a. Future distributions from the trust will be net income rather than unitrust amounts; or

b. The percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed, and indicates the manner in which the new unitrust amount will be calculated and the method in which the new fair market value of the trust will be determined;

(b) The trustee determines the terms of the unitrust under one of the following methods:

1. A disinterested trustee determines, or if there is no trustee other than an interested trustee, the interested trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the interested trustee:

a. The percentage to be used to calculate the unitrust amount, provided the percentage used is not greater than 5 percent nor less than 3 percent;

b. The method to be used in determining the fair market value of the trust; and

c. Which assets, if any, are to be excluded in determining

the unitrust amount; or

2. The interested trustee or disinterested trustee administers the trust such that:

a. The percentage used to calculate the unitrust amount is 50 percent of the ~~applicable federal~~ rate as defined in the Internal Revenue Code, 26 U.S.C. s. 7520, in effect for the month the conversion under this section becomes effective and for each January thereafter; however, if the percentage calculated exceeds 5 percent, the unitrust percentage is ~~shall be~~ 5 percent and if the percentage calculated is less than 3 percent, the unitrust percentage is ~~shall be~~ 3 percent; and

b. The fair market value of the trust shall be determined at least annually on an asset-by-asset basis, reasonably and in good faith, in accordance with ~~the provisions of~~ s. 738.202(5), except the following property shall not be included in determining the value of the trust:

(I) Any residential property or any tangible personal property that, as of the first business day of the current valuation year, one or more current beneficiaries of the trust have or have had the right to occupy, or have or have had the right to possess or control, ~~(~~other than in his or her capacity as trustee of the trust~~)~~, and instead the right of occupancy or the right to possession and control is ~~shall be deemed to be~~ the unitrust amount with respect to such property; however, the unitrust amount must ~~shall~~ be adjusted to take into account partial distributions from or receipt into the trust of such property during the valuation year;~~.~~

(II) Any asset specifically given to a beneficiary and the

return on investment on such property, which return on investment shall be distributable to the ~~such~~ beneficiary; or~~.~~

(III) Any asset ~~while~~ held in a decedent's ~~testator's~~ estate;

(c) The trustee sends written notice of its intention to take such action, along with copies of the ~~such~~ written statement regarding trust distributions and this section, and, if applicable, the determinations of ~~either~~ the trustee or the disinterested person to:

1. The grantor of the trust, if living.

2. All living persons who are currently receiving or eligible to receive distributions of income from ~~of~~ the trust.

3. All living persons who would receive distributions of principal of the trust if the trust were to terminate at the time of ~~the~~ giving ~~of~~ such notice ~~(~~without regard to the exercise of any power of appointment,~~)~~ or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in subparagraph 2. were deceased.

4. All persons acting as advisers or protectors of the trust.

Notice under this paragraph shall be served informally~~,~~ in the manner provided in the Florida Rules of Civil Procedure relating to service of pleadings subsequent to the initial pleading. Notice may be served on a legal representative or natural guardian of a person without ~~the~~ filing ~~of~~ any proceeding or

approval of any court;

(d) At least one person receiving notice under each of subparagraphs (c)2. and 3. is legally competent; and

(e) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee or the determinations of the disinterested person within 60 days after service of such notice. An objection ~~under this section~~ may be executed by a legal representative or natural guardian of a person without ~~the~~ filing ~~of~~ any proceeding or approval of any court.

(3) If a trustee desires to convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine a fair market value of the trust but does not have the ability to or elects not to do it under subsection (2), the trustee may petition the circuit court for such order as the trustee deems appropriate. In that event, the court, in its own discretion or on the petition of such trustee or any person having an income or remainder interest in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as is ~~shall be~~ necessary for the court to make a determination hereunder.

~~(4) All determinations made pursuant to sub-subparagraph (2)(b)2.b. shall be conclusive if reasonable and made in good faith. Such determination shall be conclusively presumed to have been made reasonably and in good faith unless proven otherwise in a proceeding commenced by or on behalf of a person interested~~

~~in the trust within the time provided in s. 736.1008. The burden will be on the objecting interested party to prove that the determinations were not made reasonably and in good faith.~~

(4)~~(5)~~ Following the conversion of an income trust to a total return unitrust, the trustee:

(a) Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust.

(b) May allocate to trust income for each taxable year of the trust, or portion thereof:

1. Net short-term capital gain described in the Internal Revenue Code, 26 U.S.C. s. 1222(5), for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts allocated to trust income, as determined under the provisions of this chapter without regard to this section and s. 738.104, for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof.

2. Net long-term capital gain described in the Internal Revenue Code, 26 U.S.C. s. 1222(7), for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts, including amounts described in subparagraph 1., allocated to trust income for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof.

(5)~~(6)~~ In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

(a) The effective date of the conversion.

(b) The timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases.

(c) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind.

(d) If the trust is reconverted to an income trust, the effective date of such reconversion.

(e) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this section.

(6) ~~(7)~~ Conversion to a total return unitrust under ~~the provisions of~~ this section does ~~shall~~ not affect any other provision of the governing instrument, if any, regarding distributions of principal.

(7) ~~(8)~~ Any trustee or disinterested person who in good faith takes or fails to take any action under this section is ~~shall~~ not ~~be~~ liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section or ~~and regardless of whether~~ such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy is ~~shall be~~ to obtain, under subsection (8) ~~(9)~~, an order of the court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust amount. If a court determines that the trustee or disinterested person has not acted in good faith in taking or failing to take any action under this section, ~~the provisions of~~

s. 738.105(3) applies ~~apply~~.

(8)~~(9)~~ If a majority in interest of ~~either~~ the income or remainder beneficiaries of an income trust has delivered to the trustee a written objection to the amount of the income distributions of the trust, and, if the trustee has failed to resolve the objection to the satisfaction of the objecting beneficiaries within 6 months after ~~from the~~ receipt of such written objection, ~~then~~ the objecting beneficiaries may petition the court in accordance with subsection (3).

(9)~~(10)~~ This section pertains ~~shall be construed as pertaining~~ to the administration of a trust and is applicable to any trust that is administered ~~either~~ in this state or under Florida law unless:

(a) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(b) The trust is a trust described in the Internal Revenue Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s. 2702(a)(3), or s. 2702(b);

(c) One or more persons to whom the trustee could distribute income have a power of withdrawal over the trust:

1. That is not subject to an ascertainable standard under the Internal Revenue Code, 26 U.S.C. s. 2041 or s. 2514, and exceeds in any calendar year the amount set forth in the Internal Revenue Code, 26 U.S.C. s. 2041(b)(2) or s. 2514(e); or

2. A power of withdrawal over the trust that can be exercised to discharge a duty of support he or she possesses; or

(d) The governing instrument expressly prohibits use of

this section by specific reference to the section. A provision in the governing instrument that, "The provisions of section 738.1041, Florida Statutes, as amended, or any corresponding provision of future law, may ~~shall~~ not be used in the administration of this trust," or similar words reflecting such intent are ~~shall be~~ sufficient to preclude the use of this section~~; or~~

~~(c) The trust is a trust with respect to which a trustee currently possesses the power to adjust under s. 738.104~~.

(10)~~(11)~~ The grantor of a trust may create an express total return unitrust that ~~which~~ will be ~~become~~ effective as provided in the trust instrument ~~document~~ without requiring a conversion under this section.

(a) An express total return unitrust created by the grantor of the trust is ~~shall be~~ treated as a unitrust ~~under this section~~ only if the terms of the trust instrument ~~document~~ contain all of the following provisions:

1.~~(a)~~ That distributions from the trust will be unitrust amounts and the manner in which the unitrust amount will be calculated; and ~~the method in which the fair market value of the trust will be determined.~~

2.~~(b)~~ The percentage to be used to calculate the unitrust amount, provided the percentage used is not greater than 5 percent nor less than 3 percent.

(b) The trust instrument may also contain provisions specifying:

1.~~(c)~~ The method to be used in determining the fair market value of the trust, including whether to use an average fair

market value or the fair market value of the assets held by the trust at the beginning of the current year; or~~.~~

2.~~(d)~~ Which assets, if any, are to be excluded in determining the unitrust amount.

(c) This section establishes the method of determining the fair market value of the trust if the trust instrument is silent as to subparagraph (b)1., and to specify those assets, if any, which are to be excluded in determining the unitrust amount if the trust instrument is silent as to subparagraph (b)2.

Section 5. Subsections (1), (3), and (4) of section 738.105, Florida Statutes, are amended to read:

738.105 Judicial control of discretionary powers.—

(1) A court may ~~shall~~ not change a trustee's ~~fiduciary's~~ decision to exercise or not to exercise a discretionary power conferred by this chapter unless the court determines that the decision was an abuse of the trustee's ~~fiduciary's~~ discretion. A court may ~~shall~~ not determine that a trustee ~~fiduciary~~ abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(3) If a court determines that a trustee ~~fiduciary~~ has abused its discretion, the remedy is ~~shall be~~ to restore the income and remainder beneficiaries to the positions they would have occupied if the trustee ~~fiduciary~~ had not abused its discretion, in accordance with ~~according to~~ the following ~~rules~~:

(a) To the extent the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the trustee ~~fiduciary~~ to

distribute from the trust to the beneficiary an amount the court determines will restore the beneficiary, in whole or in part, to his or her appropriate position.

(b) To the extent the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries, the trust, or both, in whole or in part, to their appropriate positions by requiring the trustee ~~fiduciary~~ to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or requiring that beneficiary to return some or all of the distribution to the trust.

(c) To the extent the court is unable, after applying paragraphs (a) and (b), to restore the beneficiaries or~~,~~ the trust, or both, to the positions they would have occupied if the trustee ~~fiduciary~~ had not abused its discretion, the court may require the trustee ~~fiduciary~~ to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

(4) Upon the filing of a petition by the trustee ~~fiduciary~~, the court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise by the trustee ~~fiduciary~~ of a discretionary power conferred by this chapter will result in an abuse of the trustee's ~~fiduciary's~~ discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the trustee ~~fiduciary~~ relies, and an explanation of how the income and

remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that such exercise or nonexercise will result in an abuse of discretion.

Section 6. Subsections (1) through (4) of section 738.201, Florida Statutes, are amended to read:

738.201 Determination and distribution of net income.—After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under ~~the rules in~~ ss. 738.301-738.706 ~~which apply to trustees~~ and ~~the rules in~~ subsection (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under ~~the rules in~~ ss. 738.301-738.706 ~~which apply to trustees~~ and by:

(a) Including in net income all income from property used to discharge liabilities.

(b) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes.~~, but~~ The fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction under the

Internal Revenue Code or comparable law of any state only to the extent the payment of those expenses from income will not cause the reduction or loss of the deduction.

(c) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) If ~~A fiduciary shall distribute to~~ a beneficiary who receives a pecuniary devise ~~amount~~ outright is also entitled to receive ~~the~~ interest or any other amount on the devise under the terms of ~~provided by~~ the will or~~, the terms of the~~ trust, the fiduciary shall distribute the interest or other amount ~~applicable law~~ from net income determined under subsection (2) or from principal to the extent net income is insufficient. ~~If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.~~

(4) A fiduciary shall distribute the net income remaining after distributions required under subsections (1)-(3) ~~by subsection (3)~~ in the manner described in s. 738.202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an

unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

Section 7. Section 738.202, Florida Statutes, is amended to read:

738.202 Distribution to residuary and remainder beneficiaries.—

(1) Each beneficiary described in s. 738.201(4) is entitled to receive a portion of the net income remaining after the application of s. 738.201(1)-(3), which is equal to the beneficiary's fractional interest in undistributed principal assets, using carrying values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary ~~has~~ received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(2) In determining a beneficiary's share of net income, the following applies ~~rules apply~~:

(a) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the carrying value of the undistributed principal assets immediately before the distribution date, excluding the amount of unpaid liabilities ~~including assets that later may be sold to meet principal obligations~~.

(b) The beneficiary's fractional interest in the

undistributed principal assets shall be calculated: ~~without regard to~~

1. At the time the interest began and adjusted for any disproportionate distributions since the interest began;

2. By excluding any liabilities of the estate or trust from the calculation;

3. By also excluding property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust; and~~.~~

4.~~(c) The beneficiary's fractional interest in the undistributed principal assets shall be calculated~~ On the basis of the aggregate carrying value of those assets determined under subsection (1) ~~as of the distribution date without reducing the value by any unpaid principal obligation~~.

(c) If a disproportionate distribution of principal is made to any beneficiary, the respective fractional interests of all beneficiaries in the remaining underlying assets shall be recomputed by:

1. Adjusting the carrying value of the principal assets to their fair market value before the distribution;

2. Reducing the fractional interest of the recipient of the disproportionate distribution in the remaining principal assets by the fair market value of the principal distribution; and

3. Recomputing the fractional interests of all beneficiaries in the remaining principal assets based upon the now restated carrying values.

~~(d) The distribution date for purposes of this section may~~

~~be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.~~

(3) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(4) A fiduciary may apply the provisions of ~~rules in~~ this section, to the extent the fiduciary considers appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

(5) The carrying value or fair market value of trust assets shall be determined on an asset-by-asset basis and are ~~shall be~~ conclusive if reasonable and determined in good faith. Determinations of fair market value based on appraisals performed within 2 years before or after the valuation date are ~~shall be~~ presumed reasonable. The values ~~value~~ of trust assets are ~~shall be~~ conclusively presumed to be reasonable and determined in good faith unless proven otherwise in a proceeding commenced by or on behalf of a person interested in the trust within the time provided in s. 736.1008.

(6) All distributions to a beneficiary shall be valued based on their fair market value on the date of distribution.

Section 8. Subsection (4) of section 738.301, Florida Statutes, is amended to read:

738.301 When right to income begins and ends.—An income beneficiary is entitled to net income from the date on which the income interest begins.

(4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a fiduciary ~~trustee~~ may distribute income.

Section 9. Subsections (1) and (2) of section 738.302, Florida Statutes, are amended to read:

738.302 Apportionment of receipts and disbursements when decedent dies or income interest begins.—

(1) A fiduciary ~~trustee~~ shall allocate an income receipt or disbursement other than one to which s. 738.201(1) applies to principal if the due date of the receipt or disbursement occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(2) A fiduciary ~~trustee~~ shall allocate an income receipt or disbursement to income if the due date of the receipt or disbursement occurs on or after the date on which a decedent dies or an income interest begins and the due date is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if the due date of the receipt or disbursement is not periodic or the receipt or disbursement has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal and the balance shall be allocated to income.

Section 10. Subsections (2) and (3) of section 738.303, Florida Statutes, are amended to read:

738.303 Apportionment when income interest ends.—

(2) When a mandatory income interest ends, the fiduciary ~~trustee~~ shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than 5 percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

(3) When a fiduciary's ~~trustee's~~ obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the fiduciary ~~trustee~~ shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its grantor relating to income, gift, estate, or other tax requirements.

Section 11. Section 738.401, Florida Statutes, is amended to read:

738.401 Character of receipts.—

(1) For purposes of this section, the term "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a fiduciary ~~trustee~~ has an interest other than a trust or estate to which s. 738.402 applies, a business or activity to which s. 738.403 applies, or

an asset-backed security to which s. 738.608 applies.

(2) Except as otherwise provided in this section, a fiduciary ~~trustee~~ shall allocate to income money received from an entity.

(3) Except as otherwise provided in this section, a fiduciary ~~trustee~~ shall allocate the following receipts from an entity to principal:

(a) Property other than money.

(b) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's or estate's interest in the entity.

(c) Money received in total or partial liquidation of the entity.

(d) Money received from an entity that is a regulated investment company or a real estate investment trust if the money received ~~distributed~~ represents short-term or long-term capital gain realized within the entity.

(e) Money received from an entity listed on a public stock exchange during any year of the trust or estate which exceeds 10 percent of the fair market value of the trust's or estate's interest in the entity on the first day of that year. The amount to be allocated to principal must be reduced to the extent that the cumulative distributions from the entity to the trust or estate allocated to income does not exceed a cumulative annual return of 3 percent of the fair market value of the interest in the entity at the beginning of each year or portion of a year for the number of years or portion of years in the period that the interest in the entity has been held by the trust or estate.

If a trustee has exercised a power to adjust under s. 738.104 during any period the interest in the entity has been held by the trust, the trustee, in determining the total income distributions from that entity, must take into account the extent to which the exercise of that power resulted in income to the trust from that entity for that period. If the income of the trust for any period has been computed under s. 738.1041, the trustee, in determining the total income distributions from that entity for that period, must take into account the portion of the unitrust amount paid as a result of the ownership of the trust's interest in the entity for that period.

(4) If a fiduciary ~~trustee~~ elects, or continues an election made by its predecessor, to reinvest dividends in shares of stock of a distributing corporation or fund, whether evidenced by new certificates or entries on the books of the distributing entity, the new shares ~~shall~~ retain their character as income.

(5) Money is received in partial liquidation:

(a) To the extent the entity, at or near the time of a distribution, indicates that such money is a distribution in partial liquidation; or

(b) To the extent ~~If~~ the total amount of money and property received in a distribution or series of related distributions from an entity that is not listed on a public stock exchange exceeds ~~is greater than~~ 20 percent of the trust's or estate's pro rata share of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

This subsection does not apply to an entity to which subsection (7) applies.

(6) Money may not ~~is not received in partial liquidation, nor may money~~ be taken into account in determining any excess under paragraph (5)(b), to the extent that the cumulative distributions from the entity to the trust or the estate allocated to income do not exceed the greater of: ~~such money does not exceed the amount of income tax a trustee or beneficiary must pay on taxable income of the entity that distributes the money.~~

(a) A cumulative annual return of 3 percent of the entity's carrying value computed at the beginning of each period for the number of years or portion of years that the entity was held by the fiduciary. If a trustee has exercised a power to adjust under s. 738.104 during any period the interest in the entity has been held by the trust, the trustee, in determining the total income distributions from that entity, must take into account the extent to which exercise of the power resulted in income to the trust from that entity for that period. If the income of a trust for any period has been computed pursuant to s. 738.1041, the trustee, in determining the total income distributions from the entity for that period, must take into account the portion of the unitrust amount paid as a result of the ownership of the trust's interest in the entity for that period; or

(b) If the entity is treated as a partnership, subchapter S corporation, or a disregarded entity pursuant to the Internal

Revenue Code of 1986, as amended, the amount of income tax attributable to the trust's or estate's ownership share of the entity, based on its pro rata share of the taxable income of the entity that distributes the money, for the number of years or portion of years that the interest in the entity was held by the fiduciary, calculated as if all of that tax was incurred by the fiduciary.

(7) The following applies ~~special rules shall apply~~ to money ~~moneys~~ or property received by a private trustee as a distribution from an investment entity ~~entities~~ described in this subsection:

(a) The trustee shall first treat as income of the trust all of the money or property received from the investment entity in the current year which would be considered income under this chapter if the trustee had directly held the trust's pro rata share of the assets of the investment entity. For this purpose, all distributions received in the current year must be aggregated.

(b) The trustee shall next treat as income of the trust any additional money or property received in the current year which would have been considered income in the prior 2 years under paragraph (a) if additional money or property had been received from the investment entity in any of those prior 2 years. The amount to be treated as income shall be reduced by any distributions of money or property made by the investment entity to the trust during the current and prior 2 years which were treated as income under this paragraph.

(c) The remainder of the distribution, if any, is treated

as principal.

(d) As used in this subsection, the term:

1. "Investment entity" means an entity, other than a business activity conducted by the trustee described in s. 738.403 or an entity that is listed on a public stock exchange, which is treated as a partnership, subchapter S corporation, or disregarded entity pursuant to the Internal Revenue Code of 1986, as amended, and which normally derives 50 percent or more of its annual cumulative net income from interest, dividends, annuities, royalties, rental activity, or other passive investments, including income from the sale or exchange of such passive investments.

2. "Private trustee" means a trustee who is a natural person, but only if the trustee is unable to use the power to adjust between income and principal with respect to receipts from entities described in this subsection pursuant to s. 738.104. A bank, trust company, or other commercial trustee is not considered a private trustee.

(8) This section shall be applied before ss. 738.705 and 738.706 and does not modify or change any of the provisions of those sections.

~~(a) Moneys or property received from a targeted entity that is not an investment entity which do not exceed the trust's pro rata share of the undistributed cumulative net income of the targeted entity during the time an ownership interest in the targeted entity was held by the trust shall be allocated to income. The balance of moneys or property received from a targeted entity shall be allocated to principal.~~

~~(b) If trust assets include any interest in an investment entity, the designated amount of moneys or property received from the investment entity shall be treated by the trustee in the same manner as if the trustee had directly held the trust's pro rata share of the assets of the investment entity attributable to the distribution of such designated amount. Thereafter, distributions shall be treated as principal.~~

~~(c) For purposes of this subsection, the following definitions shall apply:~~

~~1. "Cumulative net income" means the targeted entity's net income as determined using the method of accounting regularly used by the targeted entity in preparing its financial statements, or if no financial statements are prepared, the net book income computed for federal income tax purposes, for every year an ownership interest in the entity is held by the trust. The trust's pro rata share shall be the cumulative net income multiplied by the percentage ownership of the trust.~~

~~2. "Designated amount" means moneys or property received from an investment entity during any year that is equal to the amount of the distribution that does not exceed the greater of:~~

~~a. The amount of income of the investment entity for the current year, as reported to the trustee by the investment entity for federal income tax purposes; or~~

~~b. The amount of income of the investment entity for the current year and the prior 2 years, as reported to the trustee by the investment entity for federal income tax purposes, less any distributions of moneys or property made by the investment entity to the trustee during the prior 2 years.~~

~~3. "Investment entity" means a targeted entity that normally derives 50 percent or more of its annual cumulative net income from interest, dividends, annuities, royalties, rental activity, or other passive investments, including income from the sale or exchange of such passive investments.~~

~~4. "Private trustee" means a trustee who is an individual, but only if the trustee is unable to utilize the power to adjust between income and principal with respect to receipts from entities described in this subsection pursuant to s. 738.104. A bank, trust company, or other commercial trustee shall not be considered to be a private trustee.~~

~~5. "Targeted entity" means any entity that is treated as a partnership, subchapter S corporation, or disregarded entity pursuant to the Internal Revenue Code of 1986, as amended, other than an entity described in s. 738.403.~~

~~6. "Undistributed cumulative net income" means the trust's pro rata share of cumulative net income, less all prior distributions from the targeted entity to the trust that have been allocated to income.~~

~~(d) This subsection shall not be construed to modify or change any of the provisions of ss. 738.705 and 738.706 relating to income taxes.~~

~~(8) A trustee may rely upon a statement made by an entity about the source or character of a distribution, about the amount of profits of a targeted entity, or about the nature and value of assets of an investment entity if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to~~

~~exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.~~

Section 12. Section 738.402, Florida Statutes, is amended to read:

738.402 Distribution from trust or estate.—A fiduciary ~~trustee~~ shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest and ~~shall~~ allocate to principal an amount received as a distribution of principal from such a trust or estate. If a fiduciary ~~trustee~~ purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a fiduciary ~~trustee~~, s. 738.401 or s. 738.608 applies to a receipt from the trust.

Section 13. Section 738.403, Florida Statutes, is amended to read:

738.403 Business and other activities conducted by fiduciary ~~trustee~~.—

(1) If a fiduciary ~~trustee~~ who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for the business or activity as part of the trust's general accounting records, the fiduciary ~~trustee~~ may maintain separate accounting records for the transactions of the ~~such~~ business or other activity, whether or not the assets of such business or activity are segregated from other trust assets.

(2) A fiduciary ~~trustee~~ who accounts separately for a

business or other activity may determine the extent to which the net cash receipts of the ~~such~~ business or activity must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a fiduciary ~~trustee~~ sells assets of the business or other activity, other than in the ordinary course of the business or activity, the fiduciary must ~~trustee shall~~ account for the net amount received as principal in the trust's general accounting records to the extent the fiduciary ~~trustee~~ determines that the amount received is no longer required in the conduct of the business.

(3) Activities for which a fiduciary ~~trustee~~ may maintain separate accounting records include:

(a) Retail, manufacturing, service, and other traditional business activities.

(b) Farming.

(c) Raising and selling livestock and other animals.

(d) Management of rental properties.

(e) Extraction of minerals and other natural resources.

(f) Timber operations.

(g) Activities to which s. 738.607 ~~738.608~~ applies.

Section 14. Section 738.501, Florida Statutes, is amended to read:

738.501 Principal receipts.—A fiduciary ~~trustee~~ shall allocate to principal:

(1) To the extent not allocated to income under this

chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payor under a contract naming the trust or its fiduciary ~~trustee~~ as beneficiary.

(2) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this section.

(3) Amounts recovered from third parties to reimburse the trust because of disbursements described in s. 738.702(1)(g) or for other reasons to the extent not based on the loss of income.

(4) Proceeds of property taken by eminent domain; however ~~but~~ a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income.

(5) Net income received in an accounting period during which there is no beneficiary to whom a fiduciary ~~trustee~~ may or shall distribute income.

(6) Other receipts as provided in ss. 738.601-738.608.

Section 15. Section 738.502, Florida Statutes, is amended to read:

738.502 Rental property.—If ~~To the extent~~ a fiduciary ~~trustee~~ accounts for receipts from rental property pursuant to this section, the fiduciary ~~trustee~~ shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must ~~shall~~ be added to principal and held subject to

the terms of the lease and is not available for distribution to a beneficiary until the fiduciary's ~~trustee's~~ contractual obligations have been satisfied with respect to that amount.

Section 16. Subsections (1), (2), and (3) of section 738.503, Florida Statutes, are amended to read:

738.503 Obligation to pay money.—

(1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the fiduciary ~~trustee~~, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

(2) Except as otherwise provided herein, a fiduciary ~~trustee~~ shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the fiduciary ~~trustee~~.

(3) The increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable at a future time in excess of the price at which it was issued or purchased, if purchased after issuance, is distributable as income. If the increment in value accrues and becomes payable pursuant to a fixed schedule of appreciation, it may be distributed to the beneficiary who was the income beneficiary at the ~~this~~ time of increment from the first principal cash available or, if none is available, when the increment is realized by sale, redemption, or other disposition. If ~~When~~ unrealized increment is distributed as income but out of principal, the principal must ~~shall~~ be reimbursed for the increment when realized. If, in the reasonable judgment of the

fiduciary ~~trustee~~, exercised in good faith, the ultimate payment of the bond principal is in doubt, the fiduciary ~~trustee~~ may withhold the payment of incremental interest to the income beneficiary.

Section 17. Subsections (1) and (2) of section 738.504, Florida Statutes, are amended to read:

738.504 Insurance policies and similar contracts.—

(1) Except as otherwise provided in subsection (2), a fiduciary ~~trustee~~ shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its fiduciary ~~trustee~~ is named as beneficiary, including a contract that insures the trust or its fiduciary ~~trustee~~ against loss for damage to, destruction of, or loss of title to a trust asset. The fiduciary ~~trustee~~ shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income and to principal if the premiums are paid from principal.

(2) A fiduciary ~~trustee~~ shall allocate to income the proceeds of a contract that insures the fiduciary ~~trustee~~ against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to s. 738.403, loss of profits from a business.

Section 18. Section 738.601, Florida Statutes, is amended to read:

738.601 Insubstantial allocations not required.—If a fiduciary ~~trustee~~ determines that an allocation between principal and income required by s. 738.602, s. 738.603, s. 738.604, s. 738.605, or s. 738.608 is insubstantial, the

fiduciary ~~trustee~~ may allocate the entire amount to principal unless one of the circumstances described in s. 738.104(3) applies to the allocation. This power may be exercised by a cofiduciary under ~~cotrustee in~~ the circumstances described in s. 738.104(4) and may be released for the reasons and in the manner described in s. 738.104(5). An allocation is presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; or

(2) The value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.

Section 19. Section 738.602, Florida Statutes, is amended to read:

738.602 Payments from deferred compensation plans, annuities, and retirement plans or accounts.—

(1) As used in ~~For purposes of~~ this section, the term:

(a) "Fund" means a private or commercial annuity, an individual retirement account, an individual retirement annuity, a deferred compensation plan, a pension plan, a profit-sharing plan, a stock-bonus plan, an employee stock-ownership plan, or another similar arrangement in which federal income tax is deferred.

(b) "Income of the fund" means income that is determined according to subsection (2) or subsection (3).

(c) "Nonseparate account" means a fund for which the value

of the participant's or account owner's right to receive benefits can be determined only by the occurrence of a date or event as defined in the instrument governing the fund.

(d) "Payment" means a distribution from a fund that a fiduciary ~~trustee~~ may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments. The term includes a distribution made in money or property from the payor's general assets or from a fund created by the payor or payee.

(e) "Separate account" means a fund holding assets exclusively for the benefit of a participant or account owner and:

1. The value of such assets or the value of the separate account is ascertainable at any time; or

2. The administrator of the fund maintains records that show receipts and disbursements associated with such assets.

(2)(a) For a fund that is a separate account, income of the fund shall be determined:

1. As if the fund were a trust subject to the provisions of ss. 738.401-738.706; or

2. As a unitrust amount calculated by multiplying the fair market value of the fund as of the first day of the first accounting period and, thereafter, as of the last day of the accounting period that immediately precedes the accounting period during which a payment is received by the percentage determined in accordance with s. 738.1041(2)(b)2.a. The fiduciary ~~trustee~~ shall determine such percentage as of the

first month that the fiduciary's ~~trustee's~~ election to treat the income of the fund as a unitrust amount becomes effective. For purposes of this subparagraph, "fair market value" means the fair market value of the assets held in the fund as of the applicable valuation date determined as provided in this subparagraph. The fiduciary ~~trustee~~ is not liable for good faith reliance upon any valuation supplied by the person or persons in possession of the fund. If the fiduciary ~~trustee~~ makes or terminates an election under this subparagraph, the fiduciary ~~trustee~~ shall make such disclosure in a trust disclosure document that satisfies the requirements of s. 736.1008(4)(a).

(b) The fiduciary may ~~trustee shall have discretion to~~ elect the method of determining the income of the fund pursuant to this subsection and may change the method of determining income of the fund for any future accounting period.

(3) For a fund that is a nonseparate account, income of the fund is a unitrust amount determined by calculating the present value of the right to receive the remaining payments under 26 U.S.C. s. 7520 of the Internal Revenue Code as of the first day of the accounting period and multiplying it by the percentage determined in accordance with s. 738.1041(2)(b)2.a. The fiduciary ~~trustee~~ shall determine the unitrust amount as of the first month that the fiduciary's ~~trustee's~~ election to treat the income of the fund as a unitrust amount becomes effective.

(4) Except for those trusts described in subsection (5), the fiduciary ~~trustee~~ shall allocate to income the lesser of the payment received from a fund or the income determined under subsection (2) or subsection (3). Any remaining amount of the

payment shall be allocated to principal ~~a payment from a fund as follows:~~

~~(a) That portion of the payment the payor characterizes as income shall be allocated to income, and any remaining portion of the payment shall be allocated to principal~~.

~~(b) To the extent that the payor does not characterize any portion of a payment as income or principal and the trustee can ascertain the income of the fund by the fund's account statements or any other reasonable source, the trustee shall allocate to income the lesser of the income of the fund or the entire payment and shall allocate to principal any remaining portion of the payment.~~

~~(c) If the trustee, acting reasonably and in good faith, determines that neither paragraph (a) nor paragraph (b) applies and all or part of the payment is required to be made, the trustee shall allocate to income 10 percent of the portion of the payment that is required to be made during the accounting period and shall allocate the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this paragraph, a payment is not "required to be made" to the extent the payment is made because the trustee exercises a right of withdrawal.~~

(5) For a trust that ~~which~~, in order to qualify for the estate or gift tax marital deduction under the Internal Revenue Code or comparable law of any state, entitles the spouse to all of the income of the trust, and the terms of the trust are

silent as to the time and frequency for distribution of the income of the fund~~, then~~:

(a) For a fund that is a separate account, unless the spouse directs the fiduciary ~~trustee~~ to leave the income of the fund in the fund, the fiduciary ~~trustee~~ shall withdraw and pay to the spouse, at least ~~no less frequently than~~ annually:

1. All of the income of the fund determined in accordance with subparagraph (2)(a)1.; or

2. The income of the fund as a unitrust amount determined in accordance with subparagraph (2)(a)2.

(b) For a fund that is a nonseparate account, the fiduciary ~~trustee~~ shall withdraw and pay to the spouse, at least ~~no less frequently than~~ annually, the income of the fund as a unitrust amount determined in accordance with subsection (3).

(6) This section does not apply to payments to which s. 738.603 applies.

Section 20. Section 738.603, Florida Statutes, is amended to read:

738.603 Liquidating asset.—

(1) For purposes of this section, the term "liquidating asset" means an asset the value of which will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments for ~~during a period of~~ more than 1 year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to s. 738.602, resources subject to s. 738.604, timber subject to s.

738.605, an activity subject to s. 738.607, an asset subject to s. 738.608, or any asset for which the fiduciary ~~trustee~~ establishes a reserve for depreciation under s. 738.703.

(2) A fiduciary ~~trustee~~ shall allocate to income 5 ~~10~~ percent of the receipts from the carrying value of a liquidating asset and the balance to principal. Amounts allocated to principal shall reduce the carrying value of the liquidating asset, but not below zero. Amounts received in excess of the remaining carrying value must be allocated to principal.

Section 21. Subsections (1) and (4) of section 738.604, Florida Statutes, are amended to read:

738.604 Minerals, water, and other natural resources.—

(1) If ~~To the extent~~ a fiduciary ~~trustee~~ accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the fiduciary ~~trustee~~ shall allocate such receipts as follows:

(a) If received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income.

(b) If received from a production payment, a receipt shall be allocated to income if and to the extent the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal.

(c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90 percent shall be allocated to principal and the balance to income.

(d) If an amount is received from a working interest or any other interest not provided for in paragraph (a), paragraph

(b), or paragraph (c), 90 percent of the net amount received shall be allocated to principal and the balance to income.

(4) If a trust or estate owns an interest in minerals, water, or other natural resources on January 1, 2003, the fiduciary ~~trustee~~ may allocate receipts from the interest as provided in this chapter or in the manner used by the fiduciary ~~trustee~~ before January 1, 2003. If the trust or estate acquires an interest in minerals, water, or other natural resources after January 1, 2003, the fiduciary ~~trustee~~ shall allocate receipts from the interest as provided in this chapter.

Section 22. Subsections (1), (2), and (4) of section 738.605, Florida Statutes, are amended to read:

738.605 Timber.—

(1) If ~~To the extent~~ a fiduciary ~~trustee~~ accounts for receipts from the sale of timber and related products pursuant to this section, the fiduciary ~~trustee~~ shall allocate such ~~the~~ net receipts as follows:

(a) To income to the extent the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(b) To principal to the extent the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(c) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust or estate by determining the amount of timber removed from the land under the lease or

contract and applying the rules in paragraphs (a) and (b); or

(d) To principal to the extent advance payments, bonuses, and other payments are not allocated pursuant to paragraph (a), paragraph (b), or paragraph (c).

(2) In determining net receipts to be allocated pursuant to subsection (1), a fiduciary ~~trustee~~ shall deduct and transfer to principal a reasonable amount for depletion.

(4) If a trust or estate owns an interest in timberland on January 1, 2003, the fiduciary ~~trustee~~ may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the fiduciary ~~trustee~~ before January 1, 2003. If the trust or estate acquires an interest in timberland after January 1, 2003, the fiduciary ~~trustee~~ shall allocate net receipts from the sale of timber and related products as provided in this chapter.

Section 23. Subsection (1) of section 738.606, Florida Statutes, is amended to read:

738.606 Property not productive of income.—

(1) If a marital deduction under the Internal Revenue Code or comparable law of any state is allowed for all or part of a trust the income of which must ~~is required to~~ be distributed to the grantor's spouse and the assets of which consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts the trustee transfers from principal to income under s. 738.104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital

deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by ss. 738.104 and 738.1041. The trustee may decide which action or combination of actions to take.

Section 24. Subsections (2) and (3) of section 738.607, Florida Statutes, are amended to read:

738.607 Derivatives and options.—

(2) To the extent a fiduciary ~~trustee~~ does not account under s. 738.403 for transactions in derivatives, the fiduciary ~~trustee~~ shall allocate to principal receipts from and disbursements made in connection with those transactions.

(3) If a fiduciary ~~trustee~~ grants an option to buy property from the trust or estate whether or not the trust or estate owns the property when the option is granted, grants an option that permits another person to sell property to the trust or estate, or acquires an option to buy property for the trust or estate or an option to sell an asset owned by the trust or estate, and the fiduciary ~~trustee~~ or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to principal. An amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a grantor of the trust or estate for services rendered, shall be allocated to principal.

Section 25. Subsections (2) and (3) of section 738.608, Florida Statutes, are amended to read:

738.608 Asset-backed securities.—

(2) If a trust or estate receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the fiduciary ~~trustee~~ shall allocate to income the portion of the payment which the payor identifies as being from interest or other current return and ~~shall~~ allocate the balance of the payment to principal.

(3) If a trust or estate receives one or more payments in exchange for the trust's or estate's entire interest in an asset-backed security during a single accounting period, the fiduciary ~~trustee~~ shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's or estate's interest in the security over more than a single accounting period, the fiduciary ~~trustee~~ shall allocate 10 percent of the payment to income and the balance to principal.

Section 26. Section 738.701, Florida Statutes, is amended to read:

738.701 Disbursements from income.—A fiduciary ~~trustee~~ shall make the following disbursements from income to the extent they are not disbursements to which s. 738.201(2)~~(a) or (c)~~ applies:

(1) One-half of the regular compensation of the fiduciary ~~trustee~~ and of any person providing investment advisory or custodial services to the fiduciary ~~trustee~~.

(2) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests.

(3) All of the other ordinary expenses incurred in

connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest.

(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

Section 27. Subsection (1) of section 738.702, Florida Statutes, is amended to read:

738.702 Disbursements from principal.—

(1) A fiduciary ~~trustee~~ shall make the following disbursements from principal:

(a) The remaining one-half of the disbursements described in s. 738.701(1) and (2).

(b) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination and disbursements made to prepare property for sale.

(c) Payments on the principal of a trust debt.

(d) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or will, or to protect the trust, estate, or its property.

(e) Premiums paid on a policy of insurance not described in s. 738.701(4) of which the trust or estate is the owner and beneficiary.

(f) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust.

(g) Disbursements related to environmental matters, including reclamation, assessing environmental conditions,

remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of such activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(h) Payments representing extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments; however, a fiduciary ~~trustee~~ may establish an allowance for depreciation out of income to the extent permitted by s. 738.703.

Section 28. Subsection (2) of section 738.703, Florida Statutes, is amended to read:

738.703 Transfers from income to principal for depreciation.—

(2) A fiduciary ~~trustee~~ may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation but may not transfer any amount for depreciation:

(a) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(b) During the administration of a decedent's estate; or

(c) Under this section if the fiduciary ~~trustee~~ is accounting under s. 738.403 for the business or activity in

which the asset is used.

Section 29. Subsections (1), (2), and (3) of section 738.704, Florida Statutes, are amended to read:

738.704 Transfers from income to reimburse principal.—

(1) If a fiduciary ~~trustee~~ makes or expects to make a principal disbursement described in this section, the fiduciary ~~trustee~~ may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(2) Principal disbursements to which subsection (1) applies include the following, but only to the extent the fiduciary ~~trustee~~ has not been and does not expect to be reimbursed by a third party:

(a) An amount chargeable to income but paid from principal because the amount is unusually large.

(b) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions.

(c) Disbursements described in s. 738.702(1)(g).

(3) If the asset the ownership of which gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a fiduciary ~~trustee~~ may continue to transfer amounts from income to principal as provided in subsection (1).

Section 30. Section 738.705, Florida Statutes, is amended to read:

738.705 Income taxes.—

(1) A tax required to be paid by a fiduciary ~~trustee~~ based on receipts allocated to income shall be paid from income.

(2) A tax required to be paid by a fiduciary ~~trustee~~ based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a fiduciary ~~trustee~~ on the trust's or estate's share of an entity's taxable income shall be paid proportionately:

(a) From income to the extent receipts from the entity are allocated to income; ~~and~~

(b) From principal to the extent~~:~~

~~1.~~ receipts from the entity are allocated to principal; and

~~2. The trust's share of the entity's taxable income exceeds the total receipts described in paragraph (a) and subparagraph 1~~.

(c) From principal to the extent that the income taxes payable by the trust or estate exceed the total distributions from the entity.

(4) After applying subsections (1)-(3), the fiduciary shall adjust income or principal receipts to the extent that the trust's or estate's income taxes are reduced, but not eliminated, because the trust or estate receives a deduction for payments made to a beneficiary. The amount distributable to that beneficiary as income as a result of this adjustment shall be equal to the cash received by the trust or estate, reduced, but not below zero, by the entity's taxable income allocable to the trust or estate multiplied by the trust's or estate's income tax

rate. The reduced amount shall be divided by the difference between 1 and the trust's or estate's income tax rate in order to determine the amount distributable to that beneficiary as income before giving effect to other receipts or disbursements allocable to that beneficiary's interest. ~~For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.~~

Section 31. Section 738.801, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.801, F.S., for present text.)

738.801 Apportionment of expenses; improvements.—

(1) For purposes of this section, the term:

(a) "Remainderman" means the holder of the remainder interests after the expiration of a tenant's estate in property.

(b) "Tenant" means the holder of an estate for life or term of years in real property or personal property, or both.

(2) If a trust has not been created, expenses shall be apportioned between the tenant and remainderman as follows:

(a) The following expenses are allocated to and shall be paid by the tenant:

1. All ordinary expenses incurred in connection with the administration, management, or preservation of the property, including interest, ordinary repairs, regularly recurring taxes assessed against the property, and expenses of a proceeding or other matter that concerns primarily the tenant's estate or use

of the property.

2. Recurring premiums on insurance covering the loss of the property or the loss of income from or use of the property.

3. Any of the expenses described in subparagraph (b)3. which are attributable to the use of the property by the tenant.

(b) The following expenses are allocated to and shall be paid by the remainderman:

1. Payments on the principal of a debt secured by the property, except to the extent the debt is for expenses allocated to the tenant.

2. Expenses of a proceeding or other matter that concerns primarily the title to the property, other than title to the tenant's estate.

3. Except as provided in subparagraph (a)3., expenses related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of such activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

4. Extraordinary repairs.

(c) If the tenant or remainderman incurred an expense for the benefit of his or her own estate without consent or agreement of the other, he or she must pay such expense in full.

(d) Except as provided in paragraph (c), the cost of, or special taxes or assessments for, an improvement representing an addition of value to property forming part of the principal shall be paid by the tenant if the improvement is not reasonably expected to outlast the estate of the tenant. In all other cases, only a part shall be paid by the tenant while the remainder shall be paid by the remainderman. The part payable by the tenant is ascertainable by taking that percentage of the total that is found by dividing the present value of the tenant's estate by the present value of an estate of the same form as that of the tenant, except that it is limited for a period corresponding to the reasonably expected duration of the improvement. The computation of present values of the estates shall be made by using the rate defined in 26 U.S.C. s. 7520, then in effect and, in the case of an estate for life, the official mortality tables then in effect under 26 U.S.C. s. 7520. Other evidence of duration or expectancy may not be considered.

(3) This section does not apply to the extent it is inconsistent with the instrument creating the estates, the agreement of the parties, or the specific direction of the taxing or other statutes.

(4) The common law applicable to tenants and remaindermen supplements this section, except as modified by this section or other laws.

Section 32. This act shall take effect January 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1127 Citizens Property Insurance Corporation
SPONSOR(S): Albritton
TIED BILLS: **IDEN./SIM. BILLS:** SB 1346

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

SUMMARY ANALYSIS

Citizens Property Insurance Corporation (Citizens or corporation) 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 November 30, 2011, Citizens is the largest property insurer in Florida with almost 1.5 million policies extending over $515 billion of property coverage to Floridians. Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts within the corporation: the Personal Lines Account, the Commercial Lines Account, and the Coastal Account.

In the event Citizens incurs a deficit, the corporation can levy assessments on most of Florida's property and casualty insurance policyholders in the following sequence set by statute:

1. Citizens Policyholder Assessments: Citizens assess its policyholders of up to 15% of premium per account in deficit, for a maximum total of 45%.
2. Regular Assessments: Upon the exhaustion of the Citizens Policyholder Assessment for a particular account, Citizens levies a regular assessment of up to 6% of premium or 6% of the deficit per account, for a maximum total of 18%. The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies.
3. Emergency Assessments: Upon the exhaustion of the Citizens Policyholder Assessment and regular assessment for a particular account, Citizens levies an emergency assessment of up to 10% of premium or 10% of the deficit per account, for a maximum total of 30%. 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.

The bill eliminates the regular assessment for the Personal Lines Account and the Commercial Lines Account and reduces the assessment amount for the Coastal Account from 6% to 2%. The bill does not change the amount of or collection process for the Citizens Policyholder Surcharge. The bill also does not change the amount of or collection process for the emergency assessment, but specifies the Office of Insurance Regulation (OIR) cannot order policyholders to pay this assessment sooner than 90 days after Citizens levies the assessment. The bill also extends the time period limited apportionment companies have to pay a regular assessment to Citizens from 12 months to 15 months. Generally, limited apportionment companies are property insurers with less than $25 million in surplus.

The bill has no fiscal impact on state or local governments, but does impact the private sector. For example, the bill increases the amount of assessments paid by Citizens' policyholders. It prevents a drain on the surplus of property insurers in the private market caused by the insurers having to prepay a Citizens' regular assessment and recoup it from policyholders over the following year. Citizens may issue more pre-event and post-event bonds than it does currently to ensure the corporation has sufficient cash to pay claims as the corporation will no longer receive the quick influx of cash the regular assessment levy provides. A more detailed fiscal impact on the private sector is provided in the Fiscal Analysis.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Citizens Property Insurance Corporation (Citizens or corporation) 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 November 30, 2011, Citizens is the largest property insurer in Florida with almost 1.5 million policies extending over $515 billion of property coverage to Floridians.[1]

Citizens was created by the Legislature in 2002 by the merger of two existing property insurance associations that provided property insurance to those homeowners and businesses who could not find coverage in the private market.

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) – Multi-peril Policies[2]
   Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2. Commercial Lines Account (CLA) – Multi-peril Policies
   Consists of condominium association, apartment building, homeowner's association policies, and commercial non-residential multi-peril policies on property located outside the Coastal Account area; and
3. Coastal Account – Wind-only[3] and Multi-peril Policies
   Consists of wind-only and multi-peril policies for personal residential, commercial residential, and commercial non-residential issued in limited eligible coastal areas.

Citizens' financial resources to pay property insurance claims 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.

In the event Citizens incurs a deficit (i.e., its obligations to pay claims exceeds its capital plus reinsurance recoveries), it can levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute.[4] The three Citizens' accounts calculate deficits and resulting assessment needs independently, so assessments can be levied when any one or more of the three Citizens' accounts has a deficit.

---

[1] https://www.citizensfla.com/

[2] 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] 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.

[4] s. 627.351(6)(b)3.a.,d., and i., F.S.

The Citizens' assessment scheme is as follows:

1. Citizens Policyholder Assessments: If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15% of premium per account in deficit, for a maximum total of 45%.[5] This surcharge is collected over twelve months and is collected at the time a new Citizens' policy is written or an existing Citizens" policy is renewed.

2. Regular Assessments: Upon the exhaustion of the Citizens Policyholder Assessment for a particular account, Citizens levies a regular assessment of up to 6% of premium or 6% of the deficit per account, for a maximum total of 18%.[6] The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies. The assessment is also not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. Mechanically, property casualty insurers with policies subject to the regular assessment "front" the assessment to Citizens and recover it from their policyholders at the issuance of a new policy or at renewal of existing policies. Thus, Citizens will collect funds raised by a regular assessment quickly after the assessment is levied, usually within 30 days after levy.

3. Emergency Assessments: Upon the exhaustion of the Citizens Policyholder Assessment and regular assessment for a particular account, Citizens levies an emergency assessment of up to 10% of premium or 10% of the deficit per account, for a maximum total of 30%.[7] 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. Mechanically, property and casualty insurers with policies subject to the emergency assessment collect the assessment from policyholders at the issuance of a new policy or at renewal of existing policies and then remit the assessments periodically to Citizens. Thus, Citizens will not collect funds raised by an emergency assessment immediately after the assessment is levied but will collect funds intermittently throughout the collection period as policies are renewed and new policies written.

Citizens projects the corporation will have over $5.7 billion in surplus to pay claims during the 2011 hurricane season.[8] In addition, Citizens could be reimbursed another $6.5 billion for claims paid by the Florida Hurricane Catastrophe Fund. Citizens purchased private reinsurance for the Coastal Account that would reimburse the corporation up to $575 million for claims paid in this Account. Thus, the maximum amount Citizens has to pay claims in all accounts for the 2011 hurricane season is approximately $12.775 billion.[9]

As of November 30, 2011, Citizens' total exposure is over $515 billion. Citizens estimates the 1-in-100 year hurricane would cost over $23.2 billion.[10] The $10.4 billion difference between Citizens' resources to pay claims ($12.775 billion) and its 1-in-100 year exposure ($23.2 billion) would be covered by assessments levied by Citizens on its own policyholders and on policyholders of most property and casualty insurance. Specifically, Citizens is able to assess the following maximum amounts with their current assessment authority:

1. Citizens Policyholder Surcharge – approximately $1.172 billion ($391 million for the Coastal Account and $781 million for the PLA/CLA).
2. Regular Assessment – approximately $5.580 billion ($1.860 billion for the Coastal Account and $3.720 billion for the PLA/CLA).

---

[5] s. 627.351(6)(b)3.i., F.S.
[6] s. 627.351(6)(b)3.a. and b., F.S.
[7] s. 627.352(6)(b)3.d., F.S.
[8] Data as of July 13, 2011. Information on file with the Insurance & Banking Subcommittee.
[9] Although Citizens has another $3.82 billion in pre-event bonding for the Coastal Account that would be available to pay claims, this bonding would have to be repaid through assessments, so is not included in the calculations. If this amount were included, Citizens would have $16.5 billion to pay claims during the 2011 hurricane season.
[10] A 1-in-100 year hurricane has a 1% probability of occurring. Information obtained from Citizens' presentation to the Financial Services Commission dated November 1, 2011.

3. Emergency Assessment –Unlimited maximum assessment in the aggregate because the length of the assessment is not limited. However, yearly assessments are limited to 10% of premium or 10% of the deficit per account.

Effect of Proposed Changes

The bill eliminates the regular assessment for the PLA and CLA and reduces the assessment amount for the Coastal Account from 6% to 2%. The bill does not change the amount of or collection process for the Citizens Policyholder Surcharge. The bill also does not change the amount of or collection process for the emergency assessment, but specifies the Office of Insurance Regulation (OIR) cannot order policyholders to pay this assessment sooner than 90 days after Citizens levies the assessment. No time frame is given in current law for the OIR to order payment of emergency assessments. Nevertheless, for the emergency assessment levied by Citizens in 2007 due to losses from the 2005 hurricanes, Citizens requested, and OIR approved, a start date for the levy of emergency assessments over six months after the date the levy was requested and approved.[11]

The bill also makes revisions designed to assist Citizens in the promulgation and collection of assessments. The bill authorizes Citizens' Board of Governors to levy Citizens Policyholder Surcharges and regular and emergency assessments upon their projection that a Citizens' account will incur a deficit. Current law requires the Citizens' account to actually incur a deficit prior to the levy of the Citizens Policyholder Surcharge or assessments.

Under current law, a limited apportionment property insurance company[12] must pay the regular assessment to Citizens within 12 months after Citizens levies the assessment. Generally, limited apportionment companies are property insurers with less than $25 million in surplus. All other types of insurers subject to the regular assessment pay the assessment amount to Citizens within 30 days after Citizens levies the assessment. The bill extends the time period limited apportionment companies have to pay a regular assessment to Citizens from 12 months to 15 months. Because regular assessments for the PLA and CLA are eliminated by the bill, the 15 month payment timeframe would apply to only regular assessments for the Coastal Account.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.351, F.S., relating to Citizens Property Insurance Corporation.

Section 2: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[11]Due to the 2005 hurricanes, Citizens sustained a deficit of almost $1.8 billion. In the 2006 Legislative Session, the Legislature appropriated $715 million to defray the Citizens' deficit associated with the 2005 hurricanes, making the deficit amount passed on to property owners in Florida over $887 million. To cover the deficit, in addition to a one-time regular assessment of 2.04%, Citizens levied an emergency assessment 1.4% for 10 years. Citizens requested the emergency assessment levy on December 7, 2006 and the OIR approved the levy on January 1, 2007. The start date of the levy, as stated in the request and approved by the OIR, was July 1, 2007. On July 1, 2011 the 1.4% assessment amount was reduced to 1% due to an increase in the assessment premium base.
(see http://www.floir.com/sections/pandc/CitizensEmergencyAssessment.aspx; OIR 11-03M (Informational Memorandum issued by OIR April 4, 2011 available at http://www.floir.com/Office/Memoranda/index.aspx)).

[12]Generally, a limited apportionment insurance company is an insurer with a surplus of $25 million or less writing 25% or more of its total countrywide property insurance premiums in Florida. (see s. 627.351(6)(c)13., F.S.)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The elimination of regular assessments for the PLA and CLA and the reduction of these assessments for the Coastal Account impacts Citizens' policyholders because they could pay more in assessments under than bill than under current law. Because regular assessments are eliminated for the PLA and CLA and reduced for the Coastal Account and the Citizens Policyholder Surcharge is unchanged, if a deficit occurs, amounts that would be collected by regular assessments to offset the deficit will no longer be collected (or will be reduced for Coastal Account deficits). Thus, the deficit amount that must be collected with emergency assessments is potentially greater than it would be under current law, leading to a larger emergency assessment or a longer assessment levy. Citizens' policyholders pay only the Citizens Policyholder Surcharge and the emergency assessment. Consequently, if there is a larger emergency assessment, then Citizens' policyholders could pay more in emergency assessments or could pay emergency assessments for a longer period under the bill than they would under current law. However, if all three Citizens' accounts levied assessments in the first year after a storm, under the bill, a Citizens' policyholder would pay less in assessments for that year due to the bill's reduction of the regular assessment in the Coastal Account and elimination of the regular assessment in the PLA and CLA, which are paid for one year only. But, in this scenario, the Citizens' policyholder would likely pay assessments over a longer period of time under the bill than under current law because the amount of deficit to be cured with emergency assessments would be larger and the time period emergency assessments can be levied is not limited.

The timing of payment of Citizens' assessments by non-Citizens' policyholders will change under the bill. Non-Citizens' property and casualty policyholders have assessments spread out over multiple years under the bill because the amount they would pay in regular assessments under current law, which is paid in one year, is transferred to emergency assessments, which are paid over multiple years. However, the total assessment amount to be paid by non-Citizens' policyholders should not change under the bill, just the timing of the payment changes.

The bill allows limited apportionment property insurance companies three additional months to pay regular assessments, from 12 months after the assessment is levied, to 15 months.

Because the bill eliminates regular assessments in the PLA and CLA, property insurers would not have to prepay these assessments up front to Citizens and recover the amount prepaid from their policyholders. Similarly, because the bill reduces the maximum regular assessment percentage in the Coastal Account, the amount prepaid by insurers for this assessment is lower than under current law. Accordingly, the drain on insurer surplus from having to prepay regular assessments up front and collecting the assessments over a year from policyholders is avoided for the PLA and CLA and reduced for the Coastal Account.

In addition, a 2011 change to statutory accounting principles relating to how regular assessments are treated on an insurer's financial statement now negatively impacts some insurer's net worth.[13] The bill reduces that impact. Most insurers produce financial statements using both statutory and generally accepted accounting principles. Insurer financial information prepared in accordance with Generally Accepted Accounting Principles (GAAP) are typically used by investors, whereas, insurer financial information prepared in accordance with statutory accounting is used by the OIR. Citizens' levy of regular assessments reduces an insurer's net worth under both statutory and GAAP accounting. Under

[13] The changes to the statutory accounting principles that negatively impact insurer net worth paying regular assessments to Citizens were effective January 1, 2011.

both GAAP and statutory accounting, insurers incur a liability in the form of a direct charge to surplus (i.e., a loss in surplus) in the amount of the regular assessment when the company is billed for the assessment. However, GAAP and statutory accounting treat an asset to offset that liability differently. Under GAAP accounting, the full regular assessment paid by the insurer to Citizens is a direct charge to surplus (i.e. reduces surplus) and there is no an offsetting asset allowed, which immediately reduces the insurer's net worth in the amount of the assessment. Under statutory accounting, however, the full regular assessment is also a direct charge to surplus, but there is an offsetting asset that is included on the insurer's financial statement when the assessment is paid to Citizens.[14] Limited apportionment companies are allowed 12 months to pay a regular assessment to Citizens, so these companies can incur a direct charge to surplus with an offsetting asset incrementally booked over a 12 month period, decreasing the net worth of the insurer until the offsetting asset is booked in full.

The bill's elimination of the regular assessment for the PLA and CLA will prevent the impact on insurer net worth associated with the assessments. The reduction of the regular assessment for the Coastal Account will reduce the impact on insurer net worth. Insurers who are not limited apportionment companies pay the regular assessment within 30 days of levy, so their net worth is not impacted as much by the accounting principles. Citizens' emergency assessments are treated the same under statutory and GAAP accounting and are not a direct charge to an insurer's surplus, thus do not impact an insurer's net worth.

Representatives from Citizens state the bill will not have a negative impact on the corporation's ability to timely pay claims in the event of a hurricane that triggers emergency assessments. Because Citizens will no longer collect assessments from insurers within 30 days of a levy and instead will collect assessments as they are paid by policyholders throughout the year, in order to obtain liquidity needed to pay claims in the event of a hurricane, Citizens may issue more pre-event bonds than is currently issued. The bond proceeds would be invested by Citizens and the interest income used to pay the debt service on the bonds. However, if the interest income earned is not enough to pay the debt service, Citizens would use surplus to pay the difference. Surplus is used to pay claims, so if surplus is used for debt service, less is available to pay claims.

Because the bill eliminates the regular assessment for the PLA and CLA, Citizens no longer has a source for a quick influx of cash to pay claims (i.e., regular assessments paid by insurers within 30 days of levy) and may instead obtain cash to pay claims after a hurricane by issuing post-event bonds supported by emergency assessments paid over multiple years. If the Florida Hurricane Catastrophe Fund is also issuing post-event bonds to raise additional funds to pay their claims after a hurricane, then both entities could receive less favorable bonding terms which, in turn, results in higher assessments levied by both entities to support the debt service on the bonds.

D. FISCAL COMMENTS:

Insurers having to prepay regular assessments up front to Citizens could imperil the solvency of insurers that do not have sufficient funds on hand or the ability to borrow the funds to pay the regular assessment to Citizens. If an insurer becomes insolvent, it cannot pay the claims filed by its own policyholders and the Florida Insurance Guaranty Fund (FIGA) would likely take over the insurer and pay its claims. To raise funds to pay claims of insolvent insurers, FIGA can levy regular and emergency assessments against property and casualty insurers which are passed through to policyholders to raise funds to pay claims.

[14] Prior to January 1, 2011, insurers were allowed to book an offsetting asset of an account receivable to the direct charge to surplus from a regular assessment when the charge was booked, rather than waiting to book the offsetting asset when the assessment is paid by the insurer.

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 and none repealed by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Representatives from the OIR report that some non-admitted property and casualty insurers have cited the requirement that insurers prepay the regular assessment up front to Citizens as the reason they have chosen not to write residential property insurance in Florida.

Representatives from multiple Florida admitted insurance companies assert the requirement that property and casualty insurers with policies subject to the regular assessment prepay the assessment to Citizens up front and subsequently recoup it from their policyholders may delay the ability of some insurers to timely pay claims of their own policyholders.

Allowing Citizens to levy surcharges and assessments upon a projection by the Citizens Board of Governors that a deficit exists in a Citizens account will allow Citizens to begin the process of collecting those levies at an earlier time than under current law.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to Citizens Property Insurance Corporation; amending s. 627.351, F.S.; conforming cross-references; reducing to 2 percent from 6 percent the amount of the projected deficit in the coastal account for the prior calendar year which is recovered through regular assessments; requiring that remaining projected deficits in personal and commercial lines accounts be recovered through emergency assessments after accounting for the Citizens policyholder surcharge; requiring the Office of Insurance Regulation of the Financial Services Commission to notify assessable insurers and the Florida Surplus Lines Service Office of the dates assessable insurers shall collect and pay emergency assessments; removing reference to recoupment of residual market deficit assessments; requiring the board of governors to make a determination that an account has a projected deficit before it levies a Citizens policy holder surcharge; requiring that a limited apportionment company begin collecting regular assessments within 90 days and pay in full within 15 months after the assessment is levied; authorizing the Office of Insurance Regulation to assist the Citizens Property Insurance Corporation in the collection of assessments; replacing the term "market equalization surcharge" with the term "policyholder surcharge"; providing an effective date.

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

Section 1. Paragraphs (b), (c), (q), and (w) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers, but insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate accounts as follows:

(I) A personal lines account for personal residential

policies issued by the corporation, or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation, which provides comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;

(II) A commercial lines account for commercial residential and commercial nonresidential policies issued by the corporation, or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation, which provides coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

(III) A coastal account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation, or transferred to the corporation, which provides coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and the corporation shall continue to offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage

in the coastal account. In issuing multiperil coverage, the corporation may use its approved policy forms and rates for the personal lines account. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. It is the goal of the Legislature that there be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines account. The coastal account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the coastal account also includes the area within

Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. If the financing obligations are no longer outstanding, the corporation may use a single account for all revenues, assets, liabilities, losses, and expenses of the corporation. Consistent with this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or obtain the approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan to consolidate the three separate accounts into a single account.

c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).

d. Revenues, assets, liabilities, losses, and expenses not

attributable to particular accounts shall be prorated among the accounts.

e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.

f. ~~No part of~~ The income of the corporation may not inure to the benefit of any private person.

3. With respect to a deficit in an account:

a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i. ~~h.~~, if the remaining projected deficit incurred in the coastal account in a particular calendar year:

(I) Is not greater than 2 ~~6~~ percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.

(II) Exceeds 2 ~~6~~ percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 ~~6~~ percent of the projected deficit or 2 ~~6~~ percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph d. ~~e.~~

b. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraph a. must be paid as required by the corporation's plan of operation and paragraph (q). Assessments levied by the corporation on assessable insureds under sub-subparagraph a. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

c. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., the remaining projected deficits in the personal lines account and in the commercial lines account in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph d.

d.~~e.~~ Upon a determination by the board of governors that a projected deficit in an account exceeds the amount that is expected to ~~will~~ be recovered through regular assessments under sub-subparagraph a., plus the amount that is expected to be recovered through surcharges under sub-subparagraph i. ~~h.~~, the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date may be not less than 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit,

limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account under this sub-subparagraph in any calendar year may be less than but not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

e.~~d.~~ The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of

deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a. or subparagraph (q)1. and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments under sub-subparagraph d. ~~c.~~ shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

f.~~e.~~ As used in this subsection for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required

of authorized insurers under 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 or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

g.~~f.~~ The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h.~~g.~~ The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

i.~~h.~~ ~~If a deficit is incurred in any account~~ In 2008 or thereafter, upon a determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such

premium, which funds shall be used to offset the deficit.

(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.

(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.

j.~~i.~~ If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.

(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.

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 ~~market equalization~~ 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. 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 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. 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 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.

673
674 If the producing agent is unwilling or unable to accept
675 appointment, the new insurer shall pay the agent in accordance
676 with sub-sub-sub-subparagraph (A).
677 c. For purposes of determining comparable coverage under
678 sub-subparagraphs a. and b., the comparison must be based on
679 those forms and coverages that are reasonably comparable. The
680 corporation may rely on a determination of comparable coverage
681 and premium made by the producing agent who submits the
682 application to the corporation, made in the agent's capacity as
683 the corporation's agent. A comparison may be made solely of the
684 premium with respect to the main building or structure only on
685 the following basis: the same coverage A or other building
686 limits; the same percentage hurricane deductible that applies on
687 an annual basis or that applies to each hurricane for commercial
688 residential property; the same percentage of ordinance and law
689 coverage, if the same limit is offered by both the corporation
690 and the authorized insurer; the same mitigation credits, to the
691 extent the same types of credits are offered both by the
692 corporation and the authorized insurer; the same method for loss
693 payment, such as replacement cost or actual cash value, if the
694 same method is offered both by the corporation and the
695 authorized insurer in accordance with underwriting rules; and
696 any other form or coverage that is reasonably comparable as
697 determined by the board. If an application is submitted to the
698 corporation for wind-only coverage in the coastal account, the
699 premium for the corporation's wind-only policy plus the premium
700 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 ~~pursuant to s. 627.3512~~, 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 ~~assessment~~ must be paid in full within 15 ~~12~~ 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 acknowledgement signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGEMENT 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 acknowledgement 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 acknowledgement 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 ~~assessment~~ 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 ~~such assessment~~. 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-subparagraphs (b)3.a. and b. 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.

(w) Notwithstanding any other provision of law:

1. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the corporation created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the corporation shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the corporation under the laws of this state.

2. The ~~No such~~ proceeding does not ~~shall~~ relieve the corporation of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, policyholder surcharges ~~market equalization~~ or other surcharges under sub-subparagraph (b)3.i. ~~subparagraph (c)10.~~, or any other rights, revenues, or other assets of the corporation pledged pursuant to any financing documents.

3. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, policyholder surcharges ~~market equalization~~ or other surcharges, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of, or after, any such proceeding shall continue unaffected by such proceeding. As used in this subsection, the term "financing

documents" means any agreement or agreements, instrument or instruments, or other document or documents now existing or hereafter created evidencing any bonds or other indebtedness of the corporation or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the corporation are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation or financial product, as defined in the plan of operation of the corporation related to such bonds or indebtedness.

4. Any such pledge or sale of assessments, revenues, contract rights, or other rights or assets of the corporation shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, or contract rights or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the corporation or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, or contract rights or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or

other action.

5. As long as the corporation has any bonds outstanding, the corporation may not file a voluntary petition under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, and a public officer or any organization, entity, or other person may not authorize the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, during any such period.

6. If ordered by a court of competent jurisdiction, the corporation may assume policies or otherwise provide coverage for policyholders of an insurer placed in liquidation under chapter 631, under such forms, rates, terms, and conditions as the corporation deems appropriate, subject to approval by the office.

Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1101 Insurance
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

The proposed committee substitute (PCS) contains changes for various types of insurance. Issues addressed include: insurance agent and adjuster licensure, insurance required for salvage motor vehicle dealers, travel insurance, portable electronics insurance, the filing of reinsurance statements, disclosure for surplus lines insurance, dividends for crop insurance, changes to insurance policy terms, mediation program for property insurance claims, cancellation of auto insurance, and interest owed on personal injury protection (PIP) benefits. Specifically, the PCS:

- Expands the coverage of travel insurance to include event cancellation and damage to travel accommodations and lengthens the travel period that can be covered by a policy from 60 days to 90 days;
- Expands who can be licensed to sell travel insurance to allow full-time salaried employees of general lines agents and business entities that do travel planning to sell travel insurance;
- Exempts certain employees of licensed insurance agents or licensed insurance adjusters selling portable electronics insurance from having to be licensed as an insurance adjuster;
- Changes the required disclosures for commercial insurance sold in the surplus lines market;
- Clarifies current law relating to the filing of reinsurance summary statements by insurers with the Office of Insurance Regulation (OIR);
- Allows the Department of Financial Services (DFS) to give licensure examinations in Spanish and requires license applicants requesting an examination in Spanish to pay the costs related to the examination;
- Allows a "Notice of Change in Policy Terms" to be used to remove sinkhole coverage from a base property insurance policy;
- Limits who can request property insurance mediation via the property insurance mediation program run by DFS to policyholders, as first-party claimants, and insurers;
- Makes property insurance claims filed more than 36 months after the Governor declares a state of emergency due to a hurricane ineligible for the property insurance mediation program;
- Conforms the definition of "limited apportionment company" in the insurance code;
- Prohibits production credit associations or federal land bank associations from paying any type of patronage dividend, credit, or discount to a policyholder relating to crop insurance;
- Exempts a salvage motor vehicle dealer from having to carry garage liability or PIP insurance on vehicles that have been issued a certificate of destruction and that cannot be operated on the road;
- Allows cancellation of any private passenger motor vehicle insurance policy, regardless of whether or not the first two months of premiums need to be paid up front, within the first 60 days for non-payment of premium when the check or other method of payment presented is subsequently dishonored; and
- Conforms the interest on overdue PIP benefits to the rate of interest on judgments generally.

The PCS has no fiscal impact on local government. DFS estimates the PCS will cost the agency $50,000. The PCS may increase the license examination costs for applicants wanting an examination in Spanish, will take away dividends given to farmers for crop insurance, should allow insurance agents and insurers not able to provide patronage dividends for crop insurance to be more competitive with those that do, will save certain insurance costs for salvage motor vehicle dealers, and will create additional expenses for insurers wanting to write the expanded type of travel insurance allowed under the PCS.

The PCS is effective July 1, 2012, except as otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The PCS contains changes for various types of insurance. Issues addressed include: insurance agent and adjuster licensure, insurance required for salvage motor vehicle dealers, travel insurance, portable electronics insurance, the filing of reinsurance statements, disclosure for surplus lines insurance, dividends for crop insurance, changes to insurance policy terms, mediation program for property insurance claims, and interest owed on personal injury protection benefits.

Limited Lines 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.[1]

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 life or disability insurance;
- Credit insurance;
- Credit property insurance;
- Crop hail and multiple-peril crop insurance;
- In-transit and storage personal property insurance; and
- Communications equipment property insurance, communications equipment inland marine insurance, or communication equipment service warranty agreement sales.[2]

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, be fingerprinted[3] and be appointed by an insurance company. Licensure requirements to sell some limited lines insurance require an agent pass an examination in order to be licensed, others do not.

Travel Insurance Limited Licenses

License Coverage

Current law provides travel insurance covers:

- Accident death or dismemberment of a traveler;
- Trip cancellation, interruption, or delay;
- Loss of or damage to personal effects or travel documents;
- Baggage delay;
- Emergency medical travel or evacuation of a traveler; or
- Medical, surgical, and hospital expenses related to an illness or emergency of a traveler.

The PCS expands the coverage of travel insurance to include event cancellation and damage to travel accommodations.

---

[1] s. 626.112, F.S.

[2] s. 626.321, F.S.

[3] Licensees for a limited license as a communications equipment insurance agent do not have to be fingerprinted.

Policy Term
Under current law, a travel insurance policy can cover no more than 60 days of travel within the policy term, although the policy term may be longer than 60 days. The PCS lengthens the travel period that can be covered by a policy from 60 days to 90 days, with a corresponding extension of the allowable policy term.

Eligible Licensees
Generally, current law only allows employees of a common carrier, employees of a transportation ticket agency, timeshare developers, timeshare exchange companies, and sellers of travel regulated under chapter 559 (e.g., sellers of tour packages and tour-guide services) to sell travel insurance. The PCS expands who can be licensed to sell travel insurance to allow full-time salaried employees of general lines agents[4] and business entities that do travel planning to sell travel insurance.

The PCS specifies travel insurance license requirements for business entities that do travel planning to ensure each office location of the entity is covered by the license. These requirements are virtually the same as those required for business entities with offices that offer motor vehicles for rent or lease and are eligible to offer motor vehicle rental insurance under a limited license.

License Fees
The PCS makes a conforming change to the insurance agent licensing fee statute to require and specify travel insurance licensing fees for offices of a business entity that does travel planning. The change is consistent with the motor vehicle rental insurance licensing fees required for offices of business entities that rent motor vehicles and sell motor vehicle rental insurance. Biennial appointment fees for each office of a business entity doing travel planning is still required, but each office will no longer pay a one-time license application fee.

Adjusters for Portable Electronics Insurance Claims
Portable electronics insurance is not recognized in current law, but CS/HB 725 creates this type of insurance and creates a limited license for an agent to sell this type of insurance. According to CS/HB 725, portable electronics insurance covers the loss, theft, mechanical failure, malfunction or damage on portable electronics. Portable electronics is broadly defined by CS/HB 725 to encompass electronic equipment such as cellular phones, pagers, portable computers, GPS units, gaming systems, docking stations, digital cameras and video cameras.

Generally, persons who adjust insurance claims must be licensed as an insurance adjuster.[5] The PCS exempts certain employees of licensed insurance agents or licensed insurance adjusters from having to be licensed as an insurance adjuster. Specifically, employees who handle claim information or enter data into a preprogrammed automated claims adjudication system for portable electronic insurance do not have to be licensed as an adjuster. The PCS provides parameters for the licensing exemption for these employees.

Furthermore, the PCS provides consistency in the licensing of nonresident independent adjusters adjusting portable electronics insurance claims for adjusters residing in the United States and in Canada. Nonresident independent adjusters are recognized by s. 626.8584, F.S., and license qualifications for this type of adjuster are prescribed in s. 626.8734, F.S. Under current law, generally, a nonresident independent adjuster is not a resident of Florida, is a licensed independent adjuster in the adjuster's state of residence,[6] and is self-employed or employed by an independent adjusting firm or other independent adjuster. Thus, adjusters holding a license in a state other than Florida can obtain a nonresident adjuster license in Florida due to Florida's reciprocity with the licensing state (home state). In order to be able to adjust claims in the U.S., adjusters residing in Canada often become licensed in a state in the U.S. and use that license to obtain a license as a nonresident adjusters in

[4] A general lines insurance agent is an insurance agent authorized to transact one or more of the following kinds of insurance for commercial or noncommercial purposes: property insurance, casualty insurance, surety insurance, health insurance, or marine insurance.
[5] Part VI, Chapter 626, F.S. There are numerous licenses for adjusters, depending on the nature of the adjuster's employment and resident status.
[6] If the adjuster's state of residence does not license independent adjusters, then the adjuster must pass an adjuster examination in Florida in order to be licensed as a nonresident independent adjuster.

another state with a reciprocity agreement with their initial licensing state (or home state). The PCS requires this licensing arrangement for adjusters that reside in Canada and adjust portable electronics insurance. To that end, the PCS requires Canadian residents to be licensed in a state in the U.S. in order to be licensed as a nonresident independent adjuster in Florida.

Surplus Lines Insurance – Disclosures Required

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). There are three basic categories of surplus lines risks:

1. Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
2. Niche risks for which admitted carriers do not have a filed policy form or rate; and
3. Capacity risks which are risks where an insured needs higher coverage limits than those that are available in the admitted market.

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.[7] Rather, surplus lines insurers are "unauthorized" or "nonadmitted" insurers, but are eligible to transact surplus lines insurance under the surplus lines law as "eligible surplus insurers".[8]

For most types of insurance sold in the surplus lines market, before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.[9] Section 626.914, F.S. defines a diligent effort as seeking and being denied coverage from at least three authorized insurers in the admitted market unless the cost to replace the property insured is $1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.

Furthermore, for most types of insurance sold in the surplus lines market, the premium rate for policies written by a surplus lines insurer must be higher than the rate used by a majority of insurers in the admitted market for the same coverage on a similar risk.[10]

Commercial lines insurance (commercial insurance) is insurance designed for and bought by a business to cover losses sustained by the business.[11] Major types of commercial insurance are: boiler and machinery, business income, commercial auto, comprehensive general liability, directors and officers liability, medical malpractice liability, product liability, professional liability, and workers' compensation. Some commercial insurance, such as workers' compensation, is required to be purchased by businesses;[12] however, most commercial insurance is purchased by businesses on a voluntary basis. The commercial insurance a business purchases also depends, in part, on the business type and industry.

Current law exempts certain types of commercial lines insurance sold in the surplus lines market from the diligent effort and premium requirements outlined above.[13] However, surplus lines agents selling these types of commercial insurance must disclose specified information about the insurance to policyholders. The required disclosure identifies the policy as a surplus lines policy and notifies the

---

[7] s. 624.09(1), F.S., defines "authorized" insurer.

[8] s. 624.09(2), F.S. defines "unauthorized" insurer, s. 626.914(2), F.S., defines "eligible surplus lines insurer," and s. 626.918, F.S., provides eligibility for surplus lines insurers.

[9] s. 626.916(1)(a), F.S.

[10] s. 626.916(1)(b), F.S.

[11] http://www2.iii.org/glossary/ (defining commercial lines) (last viewed December 11, 2011).

[12] Generally, non-construction businesses employing four or more employees have to buy workers' compensation insurance. Construction businesses must buy workers' compensation insurance if the business has one or more employees.

[13] The types of commercial insurance exempt are: excess or umbrella; surety and fidelity; boiler and machinery and leakage and fire extinguishing equipment; errors and omissions; directors and officers, employment practices, fiduciary liability, and management liability; intellectual property and patent infringement liability; advertising injury and internet liability insurance; property risks rated under a highly protected risks rating plan; general liability; nonresidential property, except for collateral protection insurance; nonresidential multi-peril,; excess property; burglary and theft; and any other commercial lines categories as determined by the Office of Insurance Regulation. Rates for these types of insurance are also exempt from the rate approval process.

policyholder that superior coverage may be available in the admitted market at a lower premium. The disclosure also notifies the policyholder that the policy is not protected by the Florida Insurance Guaranty Association (FIGA) if the surplus lines insurer becomes insolvent.[14] The PCS changes the required disclosures for commercial insurance sold in the surplus lines market that is exempt from the diligent effort and premium requirements applicable to surplus lines insurance. The PCS requires the disclosure to state that coverage may be available in the admitted market, rather than superior coverage may be available at a lesser cost. The disclosure related to FIGA is still required.

Filing of Reinsurance Summary Statements

Reinsurance is insurance bought by insurers to insure their book of business. Reinsurers do not pay policyholder claims. Instead, they reimburse insurers for claims paid by the insurer. Reinsurance effectively increases an insurer's capital and therefore the insurer's capacity to sell more insurance. The reinsurance business is global, with some of the largest reinsurers based in Europe and Bermuda.[15]

Reinsurance is not regulated by the OIR because reinsurers are not licensed by OIR. However, with limited exceptions, reinsurers must be accredited by OIR for insurers to take credit for reinsurance purchased on the insurer's financial statements. Section 624.610, F.S., provides requirements for reinsurer accreditation. Reinsurance rates are also not regulated by OIR and are negotiated by the insurer and reinsurer.

Generally, all insurers formed in Florida buying reinsurance on their book of business must file with the OIR a summary of the reinsurance purchased. The summary is used by OIR, in part, to monitor the solvency of the insurer. The contents of the summary statement are set in s. 627.610(11)(a), F.S. There are, however, three exceptions to current law requiring insurers to file reinsurance summary statements. Insurers with surplus over $100 million, insurers with premiums less than $500,000 during a calendar year, and insurers with less than 1,000 policyholders at the end of a calendar year do not have to file reinsurance summary statements with OIR for the reinsurance the insurer purchases. Current law also specifies an exception to the exception. The exception to the exception requires insurers with less than 1,000 policyholders that have less than $500,000 in premium in a calendar year, but have $250,000 of the $500,000 of premium written in the last quarter of the calendar year, to file reinsurance statements.

The PCS rewords and clarifies the exception to the exception. It does not substantively change the exception to the exception or how the OIR applies the exception to the exception. Thus, insurers with less than 1,000 policyholders and less than $500,000 in premium in a calendar year, but with $250,000 of the $500,000 in premium written in the last quarter of the year, will still have to file reinsurance statements with the OIR.

DFS Licensure Examinations in Spanish

DFS licenses many different types of insurance related professionals, including insurance agents and adjusters. Although s. 626.261, F.S., sets forth certain license examination requirements, there is no provision in current law allowing or requiring DFS to give licensure examinations in any language other than English. And, according to DFS, the department does not currently give any license examination in a language other than English.

The PCS allows DFS to give licensure examinations in Spanish and requires license applicants requesting an examination in Spanish to pay the full costs related to the development, preparation, administration, grading and evaluation of the examination. The PCS requires DFS to consider the percentage of the population who speak Spanish when determining whether it is in the public interest for an examination to be given in Spanish.

---

[14] Statutory provisions relating to the Florida Insurance Guaranty Association (FIGA), which was created in 1970, are contained in part II of chapter 631, F.S. FIGA is a nonprofit corporation composed of all insurers licensed to sell property and casualty insurance in Florida. When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures policyholders that have paid premiums for insurance are not left without valid claims being paid. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

[15] http://www2.iii.org/glossary (last viewed December 20, 2011).

Other licensing agencies in Florida are allowed to give licensure examinations in languages other than English. In fact, this PCS is similar to s. 455.217(6), F.S., which allows boards within the Department of Business and Professional Regulation (DBPR) that regulate various professions to provide licensure examinations in an applicant's native language, if that language is not English or Spanish. The DBPR examination statute requires license exam applicants wanting an examination translated to a language other than English or Spanish to file a request for a translated examination with the licensing board at least six months before the exam is scheduled to be taken. The Department of Agriculture and Consumer Services (DACS) has an identical provision to the DBPR provision allowing DACS to give examinations in languages other than English and Spanish for land surveyors and mappers license applicants.[16]

Change of Policy Terms In Insurance Policies

In 2011, legislation[17] was enacted allowing insurance companies to change terms contained in a property and casualty policy at policy renewal without nonrenewing the entire policy. To effectuate a change in policy terms without nonrenewing a policy, the insurer must give the policyholder a 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. A policyholder is deemed to accept the policy term change if the renewal premium is paid. If the insurer does not provide a "Notice of Change in Policy Terms" to the policyholder, the terms of the insurance policy are not changed. The OIR still must approve the change in policy terms via a form filing.[18]

Section 627.706(4), F.S., enacted in 2009,[19] requires property insurance insurers to nonrenew property insurance policies to remove sinkhole coverage from the base property insurance policy when the insurer decides to only offer catastrophic ground cover collapse coverage in the base policy.[20] There is uncertainty as to whether property insurers can remove sinkhole coverage from the base policy at renewal using a "Notice of Change in Policy Terms" or whether the insurer must nonrenew the policy to remove sinkhole coverage and then issue a new policy without sinkhole coverage. To clarify this uncertainty, the PCS specifies a "Notice of Change in Policy Terms" can be used to change policy terms at policy renewal, notwithstanding any other provision of law. Accordingly, to remove sinkhole coverage from a base property insurance policy, insurers would not have to nonrenew the policy and issue a new policy without sinkhole coverage. Instead, insurers can provide the policyholder with a "Notice of Change in Policy Terms" at policy renewal removing sinkhole coverage from the base policy.

Mediation of Property Insurance Claims

A property mediation program for hurricane and non-hurricane related property insurance disputes is established under s. 627.7015, F.S. The mediation program is conducted by DFS. The program is not available if the appraisal process set forth in an insurance policy or litigation under the policy has begun. The mediation program is available for personal and commercial residential claims but not to other commercial claims, to private passenger motor vehicle insurance claims, to disputes relating to liability claims in property insurance policies, or to claims under policies issued by the National Flood Insurance Program. Specific mediation procedures and timeframes are set forth in Rule 69J-166.031, F.A.C., for personal residential policies and 69J-166.002, F.A.C., for commercial residential policies.

Four types of property insurance claims under current law are not eligible for the property insurance mediation program. Claims where the insurer suspects fraud are not eligible. Claims for losses that are not covered under the insurance policy are not eligible. Claims that the insurer denies due to a

---

[16] s. 472.0131(6), F.S.

[17] Ch. 2011-142, L.O.F.

[18] With limited exceptions, s. 627.410, F.S., requires every insurance policy, application, endorsement, or rider to be filed with and approved by the OIR prior to use by the insurance company.

[19] s. 1, Ch. 2009-178, L.O.F.

[20] Sinkhole coverage is more extensive coverage than catastrophic ground cover collapse coverage. Sinkhole coverage insures the property against sinkhole losses caused by sinkhole activity. Catastrophic ground cover collapse coverage insures against geological activity that causes abrupt ground cover collapse causing structural damage to the property that renders the structure being condemned. Section 627.706(1), F.S., requires all insurers to cover catastrophic ground cover collapse in a property insurance policy and to offer sinkhole coverage to the policyholder for an additional premium.

material misrepresentations of fact by the policyholder are not eligible. And, claims with less than $500 in controversy are not eligible. The PCS makes a fifth type of property insurance claim not eligible for the mediation program. Property insurance claims filed more than 36 months after the Governor declares a state of emergency due to a hurricane are not eligible for the mediation program.

The PCS limits who can request mediation to policyholders, as first-party claimants, and insurers and makes conforming changes. First-party claimants are those in a direct contractual relationship with their insurance company. Limiting mediation to policyholders and insurers prevents other persons, such as vendors and contractors, who are involved in a claim and are assigned benefits of the claim by the policyholder from requesting mediation of the claim.

Definition of Limited Apportionment Insurance Companies

The PCS provides a consistent definition of "limited apportionment company." Limited apportionment company is defined in two places in statute, s. 627.351(2)(b)3., F.S. relating to windstorm risk apportionment[21] and s. 627.351(6)(c)13., F.S., relating to the Coastal Account in Citizens Property Insurance Corporation (Citizens).[22] The definitions are the same except for the maximum amount of surplus the insurer must have in order to meet the definition. The definition in the windstorm risk apportionment statute requires $20 million or less in surplus, whereas, the definition in the Citizens' statute requires $25 million or less. The PCS changes the amount in the windstorm risk apportionment statute to $25 million or less to make it consistent with the amount in the Citizens' statute.

Patronage Dividends for Crop Insurance

Crop insurance is purchased by agricultural producers (i.e., farmers) for protection against either the loss of their crops due to natural disasters or the loss of revenue due to declines in the prices of agricultural commodities. In the United States, a subsidized multi-peril federal insurance program, administered by the Risk Management Agency, is available to most farmers. The program is authorized by the Federal Crop Insurance Act (title V of the Agricultural Adjustment Act of 1938, P.L. 75-430).

Multi-peril crop insurance covers the broad perils of drought, flood, insects, disease, etc., which may affect many insureds/farmers at the same time and present the insurer with excessive losses. To make this class of insurance, the perils are often bundled together in a single policy, called a multi-peril crop insurance (MPCI) policy. MPCI coverage is usually offered by a government insurer and premiums are usually partially subsidized by the government.

Section 626.753, F.S., allows insurance agents selling crop insurance to farmers to share commissions on the sale of this insurance with production credit associations[23] or federal land bank associations, the

---

[21] The Florida Windstorm Underwriting Association (FWUA) was formed under the authority of s. 627.351(2), F.S. The FWUA provided wind-only coverage for property in coastal areas that could not procure coverage in the admitted market. The FUWA is no longer active. Its policies were transferred to Citizens in 2002 when Citizens was created. (see s. 627.351(6)(v), F.S.)

[22] Citizens Property Insurance Corporation (Citizens or corporation) 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. 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) – Multi-peril Policies
   Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2. Commercial Lines Account (CLA) – Multi-peril Policies
   Consists of condominium association, apartment building, homeowner's association policies, and commercial non-residential multi-peril policies on property located outside the Coastal Account area; and
3. Coastal Account – Wind-only and Multi-peril Policies
   Consists of wind-only and multi-peril policies for personal residential, commercial residential, and commercial non-residential issued in limited eligible coastal areas.

[23] The Farm Credit System, a government-sponsored enterprise established in 1916, provides financing and financial services related to agriculture and includes a number of credit organizations. A Production Credit Association (PCA) delivers short and intermediate-term loans to farmers and ranchers, and to rural residents for housing. A PCA also makes loans to these borrowers for basic processing and marketing activities, and to farm-related businesses. A PCA obtains funds from a Farm Credit Bank to lend to its members and owns the loan assets. A Federal Land Bank Association (FLBA) was a lending agent for a Federal Land Bank and later the Farm Credit Bank. FLBAs made and serviced long-term mortgage loans to farmers and ranchers, and to rural residents for

entities loaning funds to the farmers who are purchasing crop insurance. The insurance agents cannot share commissions with the farmers purchasing crop insurance as this would be a rebating of commission which is prohibited by s. 626.9541(1)(h), F.S.

Production credit associations and federal land bank associations provide patronage dividends (i.e., loyalty dividends) to farmers borrowing money through the association. These associations are akin to cooperatives. Farmers obtaining loans through the associations become owners of the association through the purchase of stock in the association in proportion to their loan amount. Each year the association's board of directors determines if the association had sufficient earnings to pay a patronage dividend to the farmers borrowing funds through the association (i.e., the stockholders of the association) and will pay a dividend if there are sufficient earnings. Patronage dividends reduce the tax expense of the association because the association is given a tax deduction for the amount of net income the association distributes in patronage dividends.[24] However, the dividend is treated as income to the farmer receiving the dividend.[25]

In addition to agricultural loans, some associations offer farmers crop insurance. The PCS prohibits production credit associations or federal land bank associations from paying any type of patronage dividend, credit, or discount to a policyholder/farmer relating to crop insurance, making it an unlawful rebate. An insurance agent sharing commission with an association that knows the association is giving patronage dividends for crop insurance is deemed to be violating the law allowing commission sharing.

Salvage Motor Vehicle Dealers – Insurance Requirements

The Department of Highway Safety and Motor Vehicles (DHSMV) is responsible for the licensing and certification of motor vehicle dealers.[26] A salvage motor vehicle dealer is any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.[27] Among the requirements to receive a license, a motor vehicle dealer must provide to the DHSMV evidence that the applicant is insured under a garage liability insurance policy[28] or a general liability insurance policy coupled with a business automobile policy,[29] which shall include, at a minimum, $25,000 combined single-limit liability coverage including bodily injury and property damage protection and $10,000 personal injury protection. Franchise dealers must submit a garage liability insurance policy, and all other dealers must submit a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy.[30]

The PCS provides that salvage motor vehicle dealers are exempt from the requirements for garage liability insurance and personal injury protection on those vehicles issued a certificate of destruction if that vehicle cannot be legally operated on state roads, highways or streets.

Cancellation of Motor Vehicle Insurance Policies

Prior to the effective date of a private passenger motor vehicle insurance policy or a binder for such a policy, the insurer or agent must collect from the insured an amount equal to 2 months' premium. This is not applicable if:

---

housing. FLBAs did not own the loan assets, but made loans on behalf of the Federal Land Bank/Farm Credit Bank with which they were affiliated. As of October 1, 2000, there are no longer any FLBAs in the Farm Credit System. (https://reports.fca.gov/FCSInstDescr.asp, last viewed January 20, 2011).

[24] See Internal Revenue Code, Part 4, Chapter 44, Section 1, available at http://www.irs.gov/irm/part4/irm_04-044-001-cont01.html (last viewed January 22, 2011).

[25] See Internal Revenue Publication 225 (2011) Farmer's Tax Guide, available at http://www.irs.gov/publications/p225/ch03.html (last viewed January 22, 2011).

[26] s. 320.27, F.S.

[27] s. 320.27(1)(c), F.S.

[28] Garage liability insurance is a form of business insurance generally covering liability for the premises, operations, products, and completed operations within a commercial garage.

[29] A business insurance policy generally covers a company's use of cars, trucks, and other vehicles in the course of carrying out its business.

[30] s. 320.27(3), F.S.

- The insured or member of the insured's family is renewing or replacing a policy or a binder for such policy written by the same insurer or a member of the same insurer group.
- The insurer issues private passenger motor vehicle coverage primarily to active duty or former military personnel or their dependents.
- All policy payments are paid through a payroll deduction plan or an automatic electronic funds transfer payment plan from the policyholder.[31]

For policies under which the first two months of premium do not have to be paid up front, the insurer may not cancel the new policy or binder during the first 60 days immediately following the effective date of the policy or binder except for nonpayment of premium.

The PCS allows cancellation of any private passenger motor vehicle insurance policy, regardless of whether or not the first two months of premiums need to be paid up front, within the first 60 days for non-payment of premium when the check or other method of payment presented is subsequently dishonored. The PCS also removes language that limits cancellation of policies within the first 60 days to nonpayment of premium.

Interest Rate for Overdue Payment of Personal Injury Protection Benefits

The PCS provides for interest on overdue PIP benefits at the rate for the quarter in which the payment became overdue, rather than the rate for the year in which the payment became overdue. This conforms to a change made last year to s. 55.03, F.S., concerning the rate of interest on judgments generally.

B. SECTION DIRECTORY:

Section 1: Amends s. 320.27, F.S., relating to motor vehicle dealers.

Section 2: Amends s. 624.501, F.S., relating to filing, license, appointment, and miscellaneous fees.

Section 3: Amends s. 624.610, F.S., relating to reinsurance.

Section 4: Amends s. 626.261, F.S., relating to conduct of examination.

Section 5: Amends s. 6226.321, F.S., relating to limited licenses.

Section 6: Amends s. 626.753, F.S., relating to sharing commissions; penalty.

Section 7: Creates s. 626.8685, F.S., relating to portable electronics insurance claims; exemption; licensure.

Section 8: Amends s. 626.916, F.S., relating to eligibility for export.

Section 9: Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.

Section 10: Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 11: Amends s. 627.43141, F.S., relating to notice of change in policy terms.

Section 12: Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

Section 13: Amends s. 627.7295, F.S., relating to motor vehicle insurance contracts and is effective upon becoming a law.

[31] s. 627.7295(7), F.S.

Section 14: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims and is effective upon becoming a law.

Section 15: Provides an effective date of July 1, 2012, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   DFS estimates their cost to implement the PCS is approximately $50,000.[32] The department estimates $45,000 of the $50,000 cost will be associated with translation of the agency's licensure exams from English to Spanish by a vendor. The remaining $5,000 cost is associated with updating the department's computer system to implement the new procedure for travel insurance provide by the PCS.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Impact of DFS Licensure Examinations in Spanish

The provision requiring DFS license examinations in Spanish could result in examination costs to license applicants wanting to take the exam in Spanish being higher than those for the English language exam. The PCS requires applicants wanting an exam in Spanish to bear the examination cost. Thus, if few applicants want a Spanish examination, the cost of the examination for the ones that do will be higher. It is impossible to know how many license applicants will request a Spanish examination, and thus impossible to determine how much a Spanish exam will cost so that the cost of a Spanish examination can be compared to the cost of an English examination.

However, DFS obtained data from Texas regarding the number of times the Texas exams for life insurance agents and limited lines agents were given in Spanish.[33] According to this data, from September 30, 2010 – August 31, 2011, Texas gave their life insurance agent exam 3,563 times, with the exam given in Spanish 101 of the 3,563 times. Comparably, Florida gave their life insurance examination 3,712 times annually. During the same September 2010 – August 2011 time period, the Texas limited license examination was given a total of 2,308 times, with the exam being given 29 of the 2,308 times in Spanish. Based on the Texas data and if the cost to translate the Florida license exam to Spanish was recouped by DFS in one fiscal year, DFS estimates a license applicant talking a Spanish examination in Florida would pay $341 per examination, $298 more than the $43 cost to take an examination in English.

[32] DFS Bill Analysis and Fiscal Impact Statement for HB 1101 dated 1/13/12.
[33] DFS Bill Analysis and Fiscal Impact Statement for HB 1101 dated 1/13/12.

Impact of Changes to Travel Insurance
Insurers wanting to offer the expanded coverage for travel insurance allowed by the bill will incur costs associated with changing their insurance contracts reflecting the expanded coverage and filing the new contracts with the OIR for approval before implementing the new coverage.

Impact of Patronage Dividends for Crop Insurance
Farmers who currently receive patronage dividends based on crop insurance will no longer receive those dividends. Insurance agents that sell crop insurance for insurers that do not provide patronage dividends should be more competitive with those agents that now sell crop insurance with patronage dividends. Insurers writing crop insurance that do not provide patronage dividends should be more competitive with insurers that currently write crop insurance with patronage dividends.

Impact of Salvage Motor Vehicle Dealers – Insurance Requirements
Salvage motor vehicle dealers will no longer have to purchase garage liability and personal protection insurance on certain vehicles.

D. FISCAL COMMENTS:

Changes made by the bill that require insurers to obtain OIR approval for revised insurance contracts will increase the workload of the OIR product review unit which reviews and approves insurance contracts, however, the OIR did not quantify the increased workload in the agency bill analysis.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This PCS does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None provided in the PCS and none repealed by the PCS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provision in the PCS exempting salvage motor vehicle dealers from having to carry certain types of insurance coverage is also contained in HB 1223.

The provisions in the PCS relating to portable electronics insurance are meaningless unless CS/HB 725, which creates this type of insurance, is enacted. Consideration should be given to incorporating the changes to portable electronics insurance into CS/HB 725 which creates this type of insurance and removing the provision from the PCS.

The provisions in the PCS relating to travel insurance do not incorporate the bill drafting changes to the travel insurance statute contained in CS/HB 725. For consistency, the changes in CS/HB 725 could be incorporated into the PCS.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to insurance; amending s. 320.27, F.S.; exempting salvage motor vehicle dealers from having to carry certain types of insurance coverage under certain circumstances; amending s. 624.501, F.S.; conforming a cross-reference; amending s. 624.610, F.S.; revising provisions specifying which insurers are not subject to certain filing requirements relating to reinsurance; amending s. 626.261, F.S.; authorizing the Department of Financial Services to provide examinations in Spanish; providing for costs among applicants who request examinations in Spanish; providing requirements with respect to whether an examination in Spanish should be allowed in a particular county; amending s. 626.321, F.S.; revising provisions relating to limited licenses for travel insurance; providing that a full-time salaried employee of a licensed general lines agent or a business entity that offers travel planning services may be issued such license under certain circumstances; amending s. 626.753, F.S.; specifying circumstances for unlawful rebate for crop hail or multiple-peril crop insurance; providing for a violation for sharing commissions; creating s. 626.8685, F.S.; exempting certain employees who conduct data entry from licensure as insurance adjusters under certain circumstances; defining the term "automated claims adjudication system" with

respect to application of such exemption; prohibiting residents of Canada from licensure as nonresident independent adjusters under certain circumstances; amending s. 626.916, F.S.; revising the disclosure statement signed by an insured placing coverage in the surplus lines market; amending s. 626.9541, F.S.; providing an additional practice meeting the definition of unfair methods of competition and unfair or deceptive acts or practices; amending s. 627.351, F.S.; increasing the amount of surplus as to policyholders that certain insurers who are members of a plan to equitably apportion or share windstorm coverage may have in order to petition the Department of Financial Services to qualify as a limited apportionment company; amending s. 627.43141, F.S.; clarifying provisions relating to changing policy terms in a renewal policy; amending s. 627.7015, F.S.; revising provisions relating to alternative procedures for the resolution of disputed property insurance claims; amending s. 627.7295, F.S.; clarifying provisions relating to cancellation for nonpayment of premiums for motor vehicle insurance; allowing the cancellation of such policies under certain circumstances; amending s. 627.736, F.S.; specifying the interest rate applicable to the accrual of interest on overdue payments of personal injury protection benefits; providing an effective date.

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

Section 1. Subsection (3) of section 320.27, Florida Statutes, is amended to read:

320.27 Motor vehicle dealers.—

(3) APPLICATION AND FEE.—The application for the license shall be in such form as may be prescribed by the department and shall be subject to such rules with respect thereto as may be so prescribed by it. Such application shall be verified by oath or affirmation and shall contain a full statement of the name and birth date of the person or persons applying therefor; the name of the firm or copartnership, with the names and places of residence of all members thereof, if such applicant is a firm or copartnership; the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the name of the state under whose laws the corporation is organized; the present and former place or places of residence of the applicant; and prior business in which the applicant has been engaged and the location thereof. Such application shall describe the exact location of the place of business and shall state whether the place of business is owned by the applicant and when acquired, or, if leased, a true copy of the lease shall be attached to the application. The applicant shall certify that the location provides an adequately equipped office and is not a residence; that the location affords sufficient unoccupied space upon and within which adequately to store all motor vehicles offered and displayed for sale; and that the location is a suitable place where the

applicant can in good faith carry on such business and keep and maintain books, records, and files necessary to conduct such business, which will be available at all reasonable hours to inspection by the department or any of its inspectors or other employees. The applicant shall certify that the business of a motor vehicle dealer is the principal business which shall be conducted at that location. Such application shall contain a statement that the applicant is either franchised by a manufacturer of motor vehicles, in which case the name of each motor vehicle that the applicant is franchised to sell shall be included, or an independent (nonfranchised) motor vehicle dealer. Such application shall contain such other relevant information as may be required by the department, including evidence that the applicant is insured under a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy, which shall include, at a minimum, $25,000 combined single-limit liability coverage including bodily injury and property damage protection and $10,000 personal injury protection. <u>However, a salvage motor vehicle dealer as defined in subparagraph (1)(c)5. is exempt from the requirements for garage liability insurance and personal injury protection insurance on those vehicles that have been issued a certificate of destruction and cannot be operated legally on state roads, highways, or streets.</u> Franchise dealers must submit a garage liability insurance policy, and all other dealers must submit a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy. Such policy shall be for the license period,

and evidence of a new or continued policy shall be delivered to the department at the beginning of each license period. Upon making initial application, the applicant shall pay to the department a fee of $300 in addition to any other fees now required by law; upon making a subsequent renewal application, the applicant shall pay to the department a fee of $75 in addition to any other fees now required by law. Upon making an application for a change of location, the person shall pay a fee of $50 in addition to any other fees now required by law. The department shall, in the case of every application for initial licensure, verify whether certain facts set forth in the application are true. Each applicant, general partner in the case of a partnership, or corporate officer and director in the case of a corporate applicant, must file a set of fingerprints with the department for the purpose of determining any prior criminal record or any outstanding warrants. The department shall submit the fingerprints to the Department of Law Enforcement for state processing and forwarding to the Federal Bureau of Investigation for federal processing. The actual cost of state and federal processing shall be borne by the applicant and is in addition to the fee for licensure. The department may issue a license to an applicant pending the results of the fingerprint investigation, which license is fully revocable if the department subsequently determines that any facts set forth in the application are not true or correctly represented.

Section 2. Paragraph (b) of subsection (9) of section 624.501, Florida Statutes, is amended to read:

624.501 Filing, license, appointment, and miscellaneous

fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

(9)

(b) For all limited appointments as agent, as provided ~~for~~ in s. 626.321(1)(c) and (d) ~~626.321(1)(d)~~, the agent's original appointment and biennial renewal or continuation thereof for each insurer is ~~shall be~~ equal to the number of offices, branch offices, or places of business covered by the license multiplied by the fees set forth in paragraph (a).

Section 3. Paragraph (c) of subsection (11) of section 624.610, Florida Statutes, is amended to read:

624.610 Reinsurance.—

(11)

(c) This subsection applies to cessions of directly written risk or loss. This subsection does not apply to contracts of facultative reinsurance or to any ceding insurer that has a ~~with~~ surplus as to policyholders which ~~that~~ exceeds $100 million as of the immediately preceding December 31. A ~~Additionally, any~~ ceding insurer otherwise subject to this section which had ~~with~~ less than $500,000 in direct premiums written in this state during the preceding calendar year and no more than $250,000 in direct premiums written in this state during the preceding calendar quarter, and ~~or~~ which had ~~with~~ less than 1,000 policyholders at the end of the preceding calendar year, is exempt from ~~the requirements of~~ this subsection. ~~However, any ceding insurer otherwise subject to~~

~~this section with more than $250,000 in direct premiums written in this state during the preceding calendar quarter is not exempt from the requirements of this subsection.~~

Section 4. Subsection (5) is added to section 626.261, Florida Statutes, to read:

626.261 Conduct of examination.—

(5) The department may provide licensure examinations in Spanish. Applicants requesting examination or reexamination in Spanish must bear the full cost of the department's development, preparation, administration, grading, and evaluation of the Spanish-language examination. When determining whether it is in the public interest to allow the examination to be translated into and administered in Spanish, the department shall consider the percentage of the population who speak Spanish.

Section 5. Paragraph (c) 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 individual, or a qualified individual or entity under paragraphs (c), (d), (e), and (i), a license as agent authorized to transact a limited class of business in any of the following categories:

(c) Travel insurance.—License covering only policies and certificates of travel insurance, which are subject to review by the office ~~under s. 624.605(1)(q)~~. Policies and certificates of travel insurance may provide coverage for risks incidental to travel, planned travel, or accommodations while traveling, including, but not limited to, accidental death and dismemberment of a traveler; trip or event cancellation,

interruption, or delay; loss of or damage to personal effects or travel documents; damages to travel accommodations; baggage delay; emergency medical travel or evacuation of a traveler; or medical, surgical, and hospital expenses related to an illness or emergency of a traveler. ~~Any~~ Such policy or certificate may be issued for terms longer than 90 ~~60~~ days, but ~~each policy or certificate~~, other than a policy or certificate providing coverage for air ambulatory services only, each policy or certificate must be limited to coverage for travel or use of accommodations of no longer than 90 ~~60~~ days. The license may be issued only:

1. To a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency and may authorize the sale of such ticket policies only in connection with the sale of transportation tickets, or to the full-time salaried employee of such an agent. ~~No~~ Such policy may not ~~shall~~ be for ~~a duration of~~ more than 48 hours or more than ~~for~~ the duration of a specified one-way trip or round trip.

2. To an entity or individual that is:

a. The developer of a timeshare plan that is the subject of an approved public offering statement under chapter 721;

b. An exchange company operating an exchange program approved under chapter 721;

c. A managing entity operating a timeshare plan approved under chapter 721;

d. A seller of travel as defined in chapter 559; or

e. A subsidiary or affiliate of any of the entities

described in sub-subparagraphs a.-d.

3. To a full-time salaried employee of a licensed general lines agent or to a business entity that offers travel planning services if insurance sales activities authorized by the license are in connection with, and incidental to, travel.

a. A license issued to a business entity that offers travel planning services must encompass each office, branch office, 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 shall notify the department within 30 days after the closing or terminating of 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 and parties with whom the licensee has entered into a contractual agreement to offer travel insurance.

A licensee shall require each individual ~~employee~~ who offers

policies or certificates under this subparagraph to receive initial training from a general lines agent or an insurer authorized under chapter 624 to transact insurance within this state. For an entity applying for a license as a travel insurance agent, the fingerprinting requirement of this section applies only to the president, secretary, and treasurer and to any other officer or person who directs or controls the travel insurance operations of the entity.

Section 6. Subsection (3) of section 626.753, Florida Statutes, is amended to read:

626.753 Sharing commissions; penalty.—

(3)(a) A general lines agent may share commissions derived from the sale of crop hail or multiple-peril crop insurance with a production credit association organized under 12 U.S.C.A. ss. 2071-2077 or a federal land bank association organized under U.S.C.A. ss. 2091-2098 if the association has specifically approved the insurance activity by its employees. The amount of commission to be shared shall be determined by the general lines agent and the company paying the commission.

(b) Any patronage dividend or other payment, discount, or credit provided to a member of a production credit association or federal land bank association, which dividend, payment, discount, or credit is directly or indirectly calculated on the basis of the premium charged to that member for crop hail or multiple-peril crop insurance, constitutes an unlawful rebate in violation of ss. 626.572 and 626.9541 (1) (h).

(c) Any agent who engages in commission sharing with a production credit association or federal land bank association,

with the knowledge that the association provides patronage dividends or other payments, discounts, or credits that constitute unlawful rebates as described in the subsection, is deemed to participating in the violation of this section.

Section 7. Section 626.8685, Florida Statutes, is created to read:

626.8685 Portable electronics insurance claims; exemption; licensure restriction.—

(1) This part does not apply to any individual who collects claims information from, or furnishes claims information to, insureds or claimants, and who conducts data entry, including entering data into an automated claims adjudication system, provided that the individual is an employee of a business entity licensed under this chapter, or its affiliate, and no more than 25 such persons are under the supervision of one licensed independent adjuster or licensed agent who is exempt from licensure pursuant to s. 626.862. For purposes of this subsection, the term "automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation, and final resolution of portable electronics insurance claims that:

(a) May be used only by a licensed independent adjuster, licensed agent, or supervised individual operating pursuant to this subsection;

(b) Must comply with all claims payment requirements of the insurance code; and

(c) Must be certified as compliant with this subsection by a licensed independent adjuster that is an officer of a licensed

business entity under this chapter.

(2) Notwithstanding any other provision of law, a resident of Canada may not be licensed as a nonresident independent adjuster for purposes of adjusting portable electronics insurance claims unless the person has successfully obtained an adjuster's license in another state.

Section 8. Paragraph (b) of subsection (3) of section 626.916, Florida Statutes, is amended to read:

626.916 Eligibility for export.—

(3)

(b) Paragraphs (1)(a)-(d) do not apply to classes of insurance which are subject to s. 627.062(3)(d)1. These classes may be exportable under the following conditions:

1. The insurance must be placed only by or through a surplus lines agent licensed in this state;

2. The insurer must be made eligible under s. 626.918; and

3. The insured must sign a disclosure that substantially provides the following: "You are agreeing to place coverage in the surplus lines market. ~~Superior~~ Coverage may be available in the admitted market ~~and at a lesser cost~~. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer." If the notice is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the

form.

Section 9. Paragraph (h) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(h) Unlawful rebates.—

1. Except as otherwise expressly provided by law, or in an applicable filing with the office, knowingly:

a. Permitting, or offering to make, or making, any contract or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon;

b. Paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance contract, any unlawful rebate of premiums payable on the contract, any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract;

c. Giving, selling, or purchasing, or offering to give, sell, or purchase, as inducement to such insurance contract or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the insurance contract.

2. Nothing in paragraph (g) or subparagraph 1. of this

paragraph shall be construed as including within the definition of discrimination or unlawful rebates:

a. In the case of any contract of life insurance or life annuity, paying bonuses to all policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance; provided that any such bonuses or abatement of premiums is fair and equitable to all policyholders and for the best interests of the company and its policyholders.

b. In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

c. Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

d. Issuance of life insurance policies or annuity contracts at rates less than the usual rates of premiums for such policies or contracts, as group insurance or employee insurance as defined in this code.

e. Issuing life or disability insurance policies on a salary savings, bank draft, preauthorized check, payroll deduction, or other similar plan at a reduced rate reasonably related to the savings made by the use of such plan.

3.a. No title insurer, or any member, employee, attorney,

agent, or agency thereof, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to title insurance, or after such insurance has been effected, any rebate or abatement of the premium or any other charge or fee, or provide any special favor or advantage, or any monetary consideration or inducement whatever.

b. Nothing in this subparagraph shall be construed as prohibiting the payment of fees to attorneys at law duly licensed to practice law in the courts of this state, for professional services, or as prohibiting the payment of earned portions of the premium to duly appointed agents or agencies who actually perform services for the title insurer. Nothing in this subparagraph shall be construed as prohibiting a rebate or abatement of an attorney's fee charged for professional services, or that portion of the premium that is not required to be retained by the insurer pursuant to s. 627.782(1), or any other agent charge or fee to the person responsible for paying the premium, charge, or fee.

c. No insured named in a policy, or any other person directly or indirectly connected with the transaction involving the issuance of such policy, including, but not limited to, any mortgage broker, real estate broker, builder, or attorney, any employee, agent, agency, or representative thereof, or any other person whatsoever, shall knowingly receive or accept, directly or indirectly, any rebate or abatement of any portion of the title insurance premium or of any other charge or fee or any monetary consideration or inducement whatsoever, except as set forth in sub-subparagraph b.; provided, in no event shall any

portion of the attorney's fee, any portion of the premium that is not required to be retained by the insurer pursuant to s. 627.782(1), any agent charge or fee, or any other monetary consideration or inducement be paid directly or indirectly for the referral of title insurance business.

4. Providing a patronage dividend or other payment, discount, or credit to a member of a production credit association organized under 12 U.S.C.A. ss. 2071-2077 or a federal land bank association organized under U.S.C.A. ss.2091-2098 constitutes an unlawful rebate if the dividend or other payment, discount, or credit is directly or indirectly calculated on the basis of the premium charged to that member for crop hail or multiple-peril crop insurance.

Section 10. Paragraph (b) of subsection (2) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

(b) The department shall require all insurers holding a certificate of authority to transact property insurance on a direct basis in this state, other than joint underwriting associations and other entities formed pursuant to this section, to provide windstorm coverage to applicants from areas determined to be eligible pursuant to paragraph (c) who in good faith are entitled to, but are unable to procure, such coverage through ordinary means; or it shall adopt a reasonable plan or plans for the equitable apportionment or sharing among such insurers of windstorm coverage, which may include formation of an association for this purpose. As used in this subsection, the

term "property insurance" means insurance on real or personal property, as defined in s. 624.604, including insurance for fire, industrial fire, allied lines, farmowners multiperil, homeowners' multiperil, commercial multiperil, and mobile homes, and including liability coverages on all such insurance, but excluding inland marine as defined in s. 624.607(3) and excluding vehicle insurance as defined in s. 624.605(1)(a) other than insurance on mobile homes used as permanent dwellings. The department shall adopt rules that provide a formula for the recovery and repayment of any deferred assessments.

1. For the purpose of this section, properties eligible for such windstorm coverage are defined as dwellings, buildings, and other structures, including mobile homes which are used as dwellings and which are tied down in compliance with mobile home tie-down requirements prescribed by the Department of Highway Safety and Motor Vehicles pursuant to s. 320.8325, and the contents of all such properties. An applicant or policyholder is eligible for coverage only if an offer of coverage cannot be obtained by or for the applicant or policyholder from an admitted insurer at approved rates.

2.a.(I) All insurers required to be members of such association shall participate in its writings, expenses, and losses. Surplus of the association shall be retained for the payment of claims and shall not be distributed to the member insurers. Such participation by member insurers shall be in the proportion that the net direct premiums of each member insurer written for property insurance in this state during the preceding calendar year bear to the aggregate net direct

premiums for property insurance of all member insurers, as reduced by any credits for voluntary writings, in this state during the preceding calendar year. For the purposes of this subsection, the term "net direct premiums" means direct written premiums for property insurance, reduced by premium for liability coverage and for the following if included in allied lines: rain and hail on growing crops; livestock; association direct premiums booked; National Flood Insurance Program direct premiums; and similar deductions specifically authorized by the plan of operation and approved by the department. A member's participation shall begin on the first day of the calendar year following the year in which it is issued a certificate of authority to transact property insurance in the state and shall terminate 1 year after the end of the calendar year during which it no longer holds a certificate of authority to transact property insurance in the state. The commissioner, after review of annual statements, other reports, and any other statistics that the commissioner deems necessary, shall certify to the association the aggregate direct premiums written for property insurance in this state by all member insurers.

(II) Effective July 1, 2002, the association shall operate subject to the supervision and approval of a board of governors who are the same individuals that have been appointed by the Treasurer to serve on the board of governors of the Citizens Property Insurance Corporation.

(III) The plan of operation shall provide a formula whereby a company voluntarily providing windstorm coverage in affected areas will be relieved wholly or partially from

apportionment of a regular assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

(IV) A company which is a member of a group of companies under common management may elect to have its credits applied on a group basis, and any company or group may elect to have its credits applied to any other company or group.

(V) There shall be no credits or relief from apportionment to a company for emergency assessments collected from its policyholders under sub-sub-subparagraph d.(III).

(VI) The plan of operation may also provide for the award of credits, for a period not to exceed 3 years, from a regular assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II) as an incentive for taking policies out of the Residential Property and Casualty Joint Underwriting Association. In order to qualify for the exemption under this sub-sub-subparagraph, the take-out plan must provide that at least 40 percent of the policies removed from the Residential Property and Casualty Joint Underwriting Association cover risks located in Miami-Dade, Broward, and Palm Beach Counties or at least 30 percent of the policies so removed cover risks located in Miami-Dade, Broward, and Palm Beach Counties and an additional 50 percent of the policies so removed cover risks located in other coastal counties, and must also provide that no more than 15 percent of the policies so removed may exclude windstorm coverage. With the approval of the department, the association may waive these geographic criteria for a take-out plan that removes at least the lesser of 100,000 Residential Property and Casualty Joint Underwriting Association policies or

15 percent of the total number of Residential Property and Casualty Joint Underwriting Association policies, provided the governing board of the Residential Property and Casualty Joint Underwriting Association certifies that the take-out plan will materially reduce the Residential Property and Casualty Joint Underwriting Association's 100-year probable maximum loss from hurricanes. With the approval of the department, 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 Residential Property and Casualty Joint Underwriting Association, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association.

b. Assessments to pay deficits in the association under this subparagraph shall be included as an appropriate factor in the making of rates as provided in s. 627.3512.

c. The Legislature finds that the potential for unlimited deficit assessments under this subparagraph may induce insurers to attempt to reduce their writings in the voluntary market, and that such actions would worsen the availability problems that the association was created to remedy. It is the intent of the Legislature that insurers remain fully responsible for paying regular assessments and collecting emergency assessments for any deficits of the association; however, it is also the intent of the Legislature to provide a means by which assessment liabilities may be amortized over a period of years.

d.(I) When the deficit incurred in a particular calendar

year is 10 percent or less of the aggregate statewide direct written premium for property insurance for the prior calendar year for all member insurers, the association shall levy an assessment on member insurers in an amount equal to the deficit.

(II) When the deficit incurred in a particular calendar year exceeds 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year for all member insurers, the association shall levy an assessment on member insurers in an amount equal to the greater of 10 percent of the deficit or 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year for member insurers. Any remaining deficit shall be recovered through emergency assessments under sub-sub-subparagraph (III).

(III) Upon a determination by the board of directors that a deficit exceeds the amount that will be recovered through regular assessments on member insurers, pursuant to sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the board shall levy, after verification by the department, emergency assessments to be collected by member insurers and by underwriting associations created pursuant to this section which write property insurance, upon issuance or renewal of property insurance policies other than National Flood Insurance policies in the year or years following levy of the regular assessments. The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for property insurance for all member insurers and underwriting associations, excluding National Flood Insurance

policy premiums, as annually determined by the board and verified by the department. The department shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, each member insurer and each underwriting association created pursuant to this section shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. The emergency assessments so collected shall be transferred directly to the association on a periodic basis as determined by the association. The aggregate amount of emergency assessments levied under this sub-sub-subparagraph in any calendar year may not exceed the greater of 10 percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the aggregate statewide direct written premium for property insurance written by member insurers and underwriting associations for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit. The board may pledge the proceeds of the emergency assessments under this sub-sub-subparagraph as the source of revenue for bonds, to retire any other debt incurred as a result of the deficit or events giving rise to the deficit, or in any other way that the board determines will efficiently recover the deficit. The emergency assessments under this sub-sub-subparagraph shall continue as long as any bonds issued or other indebtedness incurred with

respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the document governing such bonds or other indebtedness. Emergency assessments collected under this sub-sub-subparagraph are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium.

(IV) Each member insurer's share of the total regular assessments under sub-sub-subparagraph (I) or sub-sub-subparagraph (II) shall be in the proportion that the insurer's net direct premium for property insurance in this state, for the year preceding the assessment bears to the aggregate statewide net direct premium for property insurance of all member insurers, as reduced by any credits for voluntary writings for that year.

(V) If regular deficit assessments are made under sub-sub-subparagraph (I) or sub-sub-subparagraph (II), or by the Residential Property and Casualty Joint Underwriting Association under sub-subparagraph (6)(b)3.a. or sub-subparagraph (6)(b)3.b., the association shall levy upon the association's policyholders, as part of its next rate filing, or by a separate rate filing solely for this purpose, a market equalization surcharge in a percentage equal to the total amount of such regular assessments divided by the aggregate statewide direct written premium for property insurance for member insurers for the prior calendar year. Market equalization surcharges under

this sub-sub-subparagraph are not considered premium and are not subject to commissions, fees, or premium taxes; however, failure to pay a market equalization surcharge shall be treated as failure to pay premium.

e. The governing body of any unit of local government, any residents of which are insured under the plan, may issue bonds as defined in s. 125.013 or s. 166.101 to fund an assistance program, in conjunction with the association, for the purpose of defraying deficits of the association. 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 association, 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 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 the protection and preservation of the economic stability of insurers operating in this state, and declaring it an essential public purpose to permit certain municipalities or counties to issue bonds as will provide relief to claimants and policyholders of the association and insurers responsible for apportionment of plan losses. Any such unit of local government may enter into such contracts with the association and with any

other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this sub-subparagraph shall be payable from and secured by moneys received by the association from assessments under this subparagraph, 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. If any of the bonds remain unsold 60 days after issuance, the department shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the department determines that the purchase would endanger or impair the solvency of the insurer. The authority granted by this sub-subparagraph is additional to any bonding authority granted by subparagraph 6.

3. The plan shall also provide that any member with a surplus as to policyholders of $25 ~~$20~~ million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the department, within the first 90 days of each calendar year, to qualify as a limited apportionment company. The apportionment of such a member company in any calendar year for which it is qualified shall not exceed its gross participation, which shall not be affected by

the formula for voluntary writings. In no event shall a limited apportionment company be required to participate in any apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds $50 million after payment of available plan funds in any calendar year. However, a limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-sub-subparagraph 2.d.(III). The plan shall provide that, if the department determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the department may direct that all or part of such assessment be deferred. However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-sub-subparagraph 2.d.(III).

4. The plan shall provide for the deferment, in whole or in part, of a regular assessment of a member insurer under sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but not for an emergency assessment collected from policyholders under sub-sub-subparagraph 2.d.(III), if, in the opinion of the commissioner, payment of such regular assessment would endanger or impair the solvency of the member insurer. In the event a regular assessment against a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

5.a. The plan of operation may include deductibles and

rules for classification of risks and rate modifications consistent with the objective of providing and maintaining funds sufficient to pay catastrophe losses.

b. It is the intent of the Legislature that the rates for coverage provided by the association be actuarially sound and not competitive with approved rates charged in the admitted voluntary market such that the association functions as a residual market mechanism to provide insurance only when the insurance cannot be procured in the voluntary market. The plan of operation shall provide a mechanism to assure that, beginning no later than January 1, 1999, the rates charged by the association for each line of business are reflective of approved rates in the voluntary market for hurricane coverage for each line of business in the various areas eligible for association coverage.

c. The association shall provide for windstorm coverage on residential properties in limits up to $10 million for commercial lines residential risks and up to $1 million for personal lines residential risks. If coverage with the association is sought for a residential risk valued in excess of these limits, coverage shall be available to the risk up to the replacement cost or actual cash value of the property, at the option of the insured, if coverage for the risk cannot be located in the authorized market. The association must accept a commercial lines residential risk with limits above $10 million or a personal lines residential risk with limits above $1 million if coverage is not available in the authorized market. The association may write coverage above the limits specified in

this subparagraph with or without facultative or other reinsurance coverage, as the association determines appropriate.

d. The plan of operation must provide objective criteria and procedures, approved by the department, to be uniformly applied for 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 shall be considered:

(I) Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

(II) 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 association pursuant to such criteria and procedures must be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

e. If the risk accepts an offer of coverage through the market assistance program or through a mechanism established by the association, either before the policy is issued by the association or during the first 30 days of coverage by the association, and the producing agent who submitted the application to the association is not currently appointed by the insurer, the insurer shall:

(I) 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 association; 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 greater of the insurer's or the association'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-subparagraph (I). Subject to the provisions of s. 627.3517, the policies issued by the association must provide that if the association obtains an offer from an authorized insurer to cover the risk at its approved rates under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the department, a basic policy including wind coverage, the risk is no longer eligible for coverage through the association. Upon termination of eligibility, the association shall provide written notice to the policyholder and agent of record stating that the association policy must be canceled as of 60 days after the date of the notice because of the offer of coverage from an authorized insurer. Other provisions of the insurance code relating to cancellation and notice of cancellation do not apply to actions under this sub-subparagraph.

f. When the association enters into a contractual agreement for a take-out plan, the producing agent of record of

the association policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(I) Pay to the producing agent of record of the association 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 association; or

(II) Offer to allow the producing agent of record of the association policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the association'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-subparagraph (I).

6.a. The plan of operation may authorize the formation of a private nonprofit corporation, a private nonprofit unincorporated association, a partnership, a trust, a limited liability company, or a nonprofit mutual company which may be empowered, among other things, to borrow money by issuing bonds or by incurring other indebtedness and to accumulate reserves or funds to be used for the payment of insured catastrophe losses. The plan may authorize all actions necessary to facilitate the issuance of bonds, including the pledging of assessments or other revenues.

b. Any entity created under this subsection, or any entity formed for the purposes of this subsection, may sue and be sued,

may borrow money; issue bonds, notes, or debt instruments; pledge or sell assessments, market equalization surcharges and other surcharges, rights, premiums, contractual rights, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, and other assets as security for such bonds, notes, or debt instruments; enter into any contracts or agreements necessary or proper to accomplish such borrowings; and take other actions necessary to carry out the purposes of this subsection. The association may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (6)(q)2., in the absence of a hurricane or other weather-related event, upon a determination by the association subject to approval by the department that such action would enable it to efficiently meet the financial obligations of the association and that such financings are reasonably necessary to effectuate the requirements of this subsection. Any such entity may accumulate reserves and retain surpluses as of the end of any association year to provide for the payment of losses incurred by the association during that year or any future year. The association shall incorporate and continue the plan of operation and articles of agreement in effect on the effective date of chapter 76-96, Laws of Florida, to the extent that it is not inconsistent with chapter 76-96, and as subsequently modified consistent with chapter 76-96. The board of directors and officers currently serving shall continue to serve until their successors are duly qualified as provided under the plan. The assets and obligations of the plan in effect immediately prior

to the effective date of chapter 76-96 shall be construed to be the assets and obligations of the successor plan created herein.

c. 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 issued or incurred by the association or any other entity created under this subsection.

7. On such coverage, an agent's remuneration shall be that amount of money payable to the agent by the terms of his or her contract with the company with which the business is placed. However, no commission will be paid on that portion of the premium which is in excess of the standard premium of that company.

8. Subject to approval by the department, the association may establish different eligibility requirements and operational procedures for any line or type of coverage for any specified eligible area or portion of an eligible area if the board determines that such changes to the eligibility requirements and operational procedures 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 would continue to have access to coverage from the association. When coverage is sought in connection with a real property transfer, such requirements and procedures shall not provide for 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.

9. Notwithstanding any other provision of law:

a. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the association created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the association shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the association under the laws of this state or any other applicable laws.

b. No such proceeding shall relieve the association of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, market equalization or other surcharges, projected recoveries from the Florida Hurricane Catastrophe Fund, reinsurance recoverables, or any other rights, revenues, or other assets of the association pledged.

c. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, emergency assessments, market equalization or renewal surcharges, projected recoveries from the Florida Hurricane Catastrophe Fund, reinsurance recoverables, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement

of and during the pendency of or after any such proceeding shall continue unaffected by such proceeding.

d. As used in this subsection, the term "financing documents" means any agreement, instrument, or other document now existing or hereafter created evidencing any bonds or other indebtedness of the association or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the association are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation of the association related to such bonds or indebtedness.

e. Any such pledge or sale of assessments, revenues, contract rights or other rights or assets of the association shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, contract, or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the association or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, contract, or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person

or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

f. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer or its agents or employees, agents or employees of the association, members of the board of directors of the association, or the department or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to actions for breach of any contract or agreement pertaining to insurance, or any willful tort.

Section 11. Subsection (2) of section 627.43141, Florida Statutes, is amended to read:

627.43141 Notice of change in policy terms.—

(2) Notwithstanding any other provision of law, 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 must be enclosed along with the written notice of renewal premium required under ~~by~~ ss. 627.4133 and 627.728. Such notice shall be entitled "Notice of Change in Policy Terms."

Section 12. Subsections (1), (2), (7), and (9) of section 627.7015, Florida Statutes, are amended to read:

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

(1) ~~PURPOSE AND SCOPE.—~~This section sets forth a nonadversarial alternative dispute resolution procedure for a mediated claim resolution conference prompted by the need for

effective, fair, and timely handling of property insurance claims. There is a particular need for an informal, nonthreatening forum for helping parties who elect this procedure to resolve their claims disputes because most homeowner's and commercial residential insurance policies obligate policyholders ~~insureds~~ to participate in a potentially expensive and time-consuming adversarial appraisal process before ~~prior to~~ litigation. The procedure set forth in this section is designed to bring the parties together for a mediated claims settlement conference without any of the trappings or drawbacks of an adversarial process. Before resorting to these procedures, policyholders ~~insureds~~ and insurers are encouraged to resolve claims as quickly and fairly as possible. This section is available with respect to claims under personal lines and commercial residential policies before ~~for all claimants and insurers prior to~~ commencing the appraisal process, or before commencing litigation. Mediation may be requested only by the policyholder, as a first-party claimant, or the insurer. If requested by the policyholder ~~insured~~, participation by legal counsel is ~~shall be~~ permitted. Mediation under this section is also available to litigants referred to the department by a county court or circuit court. This section does not apply to commercial coverages, to private passenger motor vehicle insurance coverages, or to disputes relating to liability coverages in policies of property insurance.

(2) At the time a first-party claim within the scope of this section is filed by the policyholder, the insurer shall notify the policyholder ~~all first-party claimants~~ of its ~~their~~

right to participate in the mediation program under this section. The department shall prepare a consumer information pamphlet for distribution to persons participating in mediation ~~under this section~~.

(7) If the insurer fails to comply with subsection (2) by failing to notify a policyholder ~~first-party claimant~~ of its right to participate in the mediation program under this section or if the insurer requests the mediation, and the mediation results are rejected by either party, the policyholder is ~~insured shall~~ not ~~be~~ required to submit to or participate in any contractual loss appraisal process of the property loss damage as a precondition to legal action for breach of contract against the insurer for its failure to pay the policyholder's claims covered by the policy.

(9) For purposes of this section, the term "claim" refers to any dispute between an insurer and a policyholder ~~an insured~~ relating to a material issue of fact other than a dispute:

(a) With respect to which the insurer has a reasonable basis to suspect fraud;

(b) Where, based on agreed-upon facts as to the cause of loss, there is no coverage under the policy;

(c) With respect to which the insurer has a reasonable basis to believe that the policyholder ~~claimant~~ has intentionally made a material misrepresentation of fact which is relevant to the claim, and the entire request for payment of a loss has been denied on the basis of the material misrepresentation; ~~or~~

(d) With respect to which the amount in controversy is

less than $500, unless the parties agree to mediate a dispute involving a lesser amount; or~~.~~

(e) Where the notice of loss is reported to the insurer more than 36 months after the declaration of a state of emergency by the Governor in response to a hurricane that makes landfall in this state.

Section 13. Efective upon becoming a law, subsection (4) of section 627.7295, Florida Statutes, is amended to read:

627.7295 Motor vehicle insurance contracts.—

(4) ~~If subsection (7) does not apply,~~ The insurer may cancel the policy in accordance with this code except that, notwithstanding s. 627.728, an insurer may not cancel a new policy or binder during the first 60 days immediately following the effective date of the policy or binder ~~except~~ for nonpayment of premium unless the reason for the cancellation is the issuance of a check for the premium that is dishonored for any reason or any other type of premium payment that was subsequently determined to be rejected or invalid.

Section 14. Effective upon becoming a law, paragraph (d) of subsection (4) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(4) BENEFITS; WHEN DUE.—Benefits due from an insurer under ss. 627.730-627.7405 shall be primary, except that benefits received under any workers' compensation law shall be credited against the benefits provided by subsection (1) and shall be due and payable as loss accrues, upon receipt of reasonable proof of

such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.7405. When the Agency for Health Care Administration provides, pays, or becomes liable for medical assistance under the Medicaid program related to injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle, benefits under ss. 627.730-627.7405 shall be subject to the provisions of the Medicaid program.

(d) All overdue payments shall bear simple interest at the rate established under s. 55.03 or the rate established in the insurance contract, whichever is greater, for the quarter ~~year~~ in which the payment became overdue, calculated from the date the insurer was furnished with written notice of the amount of covered loss. Interest shall be due at the time payment of the overdue claim is made.

Section 15. Except as otherwise provided in this act, this act shall take effect July 1, 2012.