Insurance & Banking Subcommittee

Wednesday, January 15, 2014
8:00 AM
Sumner Hall (404 HOB)

MEETING PACKET

Will Weatherford
Speaker

Bryan Nelson
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Insurance & Banking Subcommittee

Start Date and Time:	Wednesday, January 15, 2014 08:00 am
End Date and Time:	Wednesday, January 15, 2014 10:00 am
Location:	Sumner Hall (404 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 143 Florida Insurance Guaranty Association by Raburn
HB 321 Title Insurance by Passidomo

Presentation regarding Citizens Property Insurance Corporation Sinkhole Repair Program.

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Tuesday, January 14, 2014.

By request of the Chair, all Insurance & Banking Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, January 14, 2014.

NOTICE FINALIZED on 01/08/2014 16:10 by McCloskey.Michele

The Florida House of Representatives

Regulatory Affairs Committee

Insurance & Banking Subcommittee

Will Weatherford
Speaker

Bryan Nelson
Chair

AGENDA

Wednesday, January 15, 2014
404 HOB
8:00 am – 10:00 am

I. Call to Order

II. Roll Call

III. Consideration of the following bill(s):
   a. HB 143 Florida Insurance Guaranty Association by Raburn
   b. HB 321 Title Insurance by Passidomo

IV. Presentation regarding Citizens Property Insurance Corporation Sinkhole Repair Program

V. Adjournment

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 143 Florida Insurance Guaranty Association
SPONSOR(S): Raburn
TIED BILLS: **IDEN./SIM. BILLS:** SB 346

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

SUMMARY ANALYSIS

The bill makes changes to the Florida Insurance Guaranty Association (FIGA), which is the guaranty association for property and casualty insurance. FIGA is composed of most insurers licensed to sell property and casualty insurance in the state. 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. If FIGA does not have sufficient funds to pay claims of an insolvent insurer, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds – regular and emergency assessments.

The bill changes the way FIGA collects regular and emergency assessments. For both assessments, the bill requires FIGA to collect the assessments directly from property and casualty policyholders. The bill repeals current law allowing FIGA to collect both assessments from insurers within 30 days of the assessment levy. The bill does not increase the amount of assessments FIGA can levy. FIGA regular assessments remain at 2% maximum per year per account (4% total) and emergency assessments remain at 2% maximum per year.

The bill also exempts regular assessments collected by FIGA from the insurance premium tax. These assessments are subject to the premium tax under current law, but current law exempts emergency assessments from this tax.

The bill has no fiscal impact on local government, but does impact state government and the private sector. The state will lose insurance premium tax revenue because the bill exempts FIGA regular assessments from the insurance premium tax. However, the amount of lost premium tax revenue is indeterminate at this time. Regarding the fiscal impact on the private sector, the drain on insurer surplus from having to prepay FIGA assessments up front and collect the assessments over a year from policyholders is avoided. In addition, a 2011 change to statutory accounting principles relating to how assessments are treated on an insurer's financial statement now negatively impacts some insurer's net worth. Because FIGA collects assessments directly from policyholders under the bill, the impact on insurer net worth associated with the assessments is eliminated. Furthermore, because FIGA collects regular and emergency assessments from policyholders directly under the bill, FIGA no longer has a source for a quick influx of cash to pay claims. Thus, to obtain cash quickly to pay claims of an insolvent insurer, FIGA could obtain a line of credit, a post-event bank loan or issue post-event short-term bonds. Any set up or borrowing costs associated with these financing mechanisms would be added to the assessment amount to be collected and could result in a larger assessment. In addition, FIGA cannot borrow as much using a line of credit, post-event bank loan, or post-event short-term bonds as it can raise with a 2% regular assessment due to limited capacity in the credit market.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Guaranty Associations - Background

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.[1] Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies.[2]

Florida operates five insurance guaranty funds to ensure policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[3] A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums[4] to policyholders. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

The bill makes changes to the Florida Insurance Guaranty Association which is the guaranty association for property and casualty insurance.

Florida Insurance Guaranty Association (FIGA)

Statutory provisions relating to FIGA, which was created in 1970, are contained in part II of chapter 631, F.S. FIGA operates under a board of directors and is a nonprofit corporation. FIGA is composed of all insurers licensed to sell property and casualty insurance in the state.

By law, FIGA is divided into two accounts:

- the auto liability and auto physical damage account; and
- the account for all other included insurance lines (the all-other account).[5]

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

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[1] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).

[2] Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

[3] The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of an insolvent Health Maintenance Organization (HMO) and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association protects policyholders of insolvent individual self-insured employers for workers' compensation claims. The Florida Insurance Guaranty Association is responsible for paying claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

[4] The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for six months or one year, and which is still owed on the unexpired portion of the policy.

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

liability insurance, among others. Claims for property insurance are paid out of the all-other account in FIGA.

For many claims, the maximum claim amount FIGA will cover is $300,000. However, for homeowners' claims, FIGA covers an additional $200,000 for damages to the structure or contents, for a total of $500,000. And, for condominium and homeowners' association claims FIGA covers the lesser of policy limits or $100,000 multiplied by the number of units in the association. All claims are subject to a $100 FIGA deductible, in addition to any other deductible in the insurance policy.

FIGA Funding

In order to pay claims and maintain the operations of an insolvent insurer, FIGA has several potential funding sources. FIGA's primary funding source is from the liquidation of assets of insolvent insurance companies domiciled in Florida.[6] FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida.

In addition, after insolvency occurs, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds to pay claims. Under s. 631.57(3)(a), F.S., FIGA is authorized to levy an assessment for either of its two accounts of up to two percent of an insurer's net written premium for the kind of insurance for which the assessment is levies. The maximum assessment amount for this assessment is two percent per year per FIGA account, for a maximum of four percent per year. This assessment is commonly referred to as the "regular" assessment, although it is not identified as such in the statute.

The second assessment FIGA can levy is an emergency assessment. This assessment is authorized under s. 631.57(3)(e), F.S., and can only be issued to pay claims of insurers rendered insolvent due to a hurricane. Like the regular assessment, the emergency assessment is capped at two percent of an insurer's net direct written premium in Florida for the calendar year preceding the assessment.

FIGA Assessment Procedure and Recoupment

The specific procedure used by FIGA to levy both types of assessments against member insurance companies and the procedure used by member insurance companies to recoup the assessment paid from their policyholders are found in s. 631.57(3), F.S. The procedure is generally the same for both regular and emergency assessments and is as follows:

1. FIGA's board determines an assessment is needed to pay claims, pay claim administration costs, or to pay bonds issued by FIGA.
2. The board certifies the need for an assessment levy to the Office of Insurance Regulation (OIR).
3. The OIR reviews the certification submitted by FIGA to support the assessment levy need and amount. If the certification is sufficient, the OIR issues an order to all insurance companies subject to the assessment instructing the companies to pay their share of the assessment to FIGA.
4. Regular assessments must be paid by the insurance company within 30 days of the levy. Emergency assessments can be paid either in one payment at the end of the month after the assessment is levied or in 12 monthly installments, at the option of FIGA.
5. For both types of assessments, once an insurance company pays the assessment to FIGA, it may begin to recoup the assessment from its policyholders at the policy issuance or renewal.[7] In other words, insurance companies pay their assessments to FIGA and wait as long as 12 months to recoup the assessments from their policyholders as policies renew or new policies are issued.[8] Because insurers pay the assessments upfront, FIGA is able to quickly obtain funds to pay claims

[6] The liquidation of insolvent Florida insurers is done by the Division of Rehabilitation and Liquidation in the Department of Financial Services. Typically, insurers are put into liquidation when the company is insolvent and the goal of liquidation is to dissolve the insurance company. *See* s. 631.061, F.A., for the grounds for liquidation.

[7] If a company's book of business is declining during the recoupment period, the assessment factor will be insufficient to recoup the total amount of assessment paid to FIGA. In those circumstances, the insurance company must continue to collect the assessment from policyholders beyond 12 months, until the assessment is recouped in full.

[8] Insurer recoupment from policyholders may occur over a period longer than 12 months if the insurer's book of business subject to the assessment decreases during the recoupment period. This makes the insurer's collection of the assessment over 12 months insufficient to recoup the full amount of the assessment paid to FIGA, so the insurer continues to recoup the assessment from policyholders until the assessment is recouped in full.

of insolvent insurers. Insurers make a rate filing with the OIR to recoup the FIGA assessments from policyholders.

FIGA has not levied an emergency assessment since 2006. FIGA last levied a regular assessment in November 2012 which was paid by insurers by December 31, 2012. This assessment amount was 0.9% of an insurer's net direct written premiums for 2011. The assessment was levied only on the all other account. It was paid upfront by insurers and passed through to policyholders who repaid the insurer for the assessment when their policy was issued or renewed after November 2012.

Changes Proposed by the Bill
The bill repeals current law allowing FIGA to levy regular and emergency assessments on insurers who later recoup the assessment from their policyholders and instead requires FIGA to collect regular and emergency assessments directly from property and casualty policyholders. To collect the assessments directly from policyholders, once FIGA determines the need for and amount of the regular or emergency assessment, it certifies the assessment to the OIR. The OIR then issues an order to insurers specifying the assessment collection start date and percentage to be collected by the insurer from their policyholders over 12 months at policy issuance or renewal. The assessment percentage is the same for all policyholders. Insurers then periodically transmit the assessment collected from their policyholders to FIGA. The collection start date cannot be less than 90 days after the FIGA board certifies the need for an assessment. FIGA regular assessments remain at 2% maximum per year per account (4% total) and emergency assessments remain at 2% maximum per year.

Insurance Premium Tax - Background

Every authorized domestic, foreign, and alien insurer engaged in the business of entering into contracts of insurance or annuity in Florida must file an insurance premium tax return. Tax is due on:

- Insurance premiums.
- Premiums for title insurance.
- Assessments, including membership fees, policy fees, and gross deposits received from subscribers to reciprocal or interinsurance agreements.
- Annuity premiums or considerations.
- Gross underwriting profit on wet marine and transportation insurance.

In Florida, property and casualty insurance companies pay an insurance premium tax of 1.75 percent on gross insurance premiums minus reinsurance and return insurance premiums.

Numerous insurance premium tax credits are authorized by law allowing insurance companies to reduce their premium tax liability.[9] Credits and deductions against the insurance premium tax must be taken in the following order prescribed in s. 624.509(7), F.S.: Workers' Compensation Administrative Assessment credits, credits for taxes paid into firefighters' pension funds and police retirement funds, credits for corporate income taxes, credits for employees' salaries, and all other available credits and deductions. Insurance premium tax revenue is distributed to Municipal Firefighters' Pension Fund and the Municipal Police Officers' Retirement Fund, the Insurance Regulatory Trust Fund, and General Revenue.[10]

Regular assessments levied by FIGA for insolvencies occurring on or after July 1, 2010 are considered premium for premium tax purposes and thus subject to the premium tax.[11] Emergency assessments levied by FIGA, however, are specifically exempt from the premium tax in the statute.[12]

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[9] Credit for payments to the Municipal Firefighters' Pension Fund (s. 175.141, F.S.) and Municipal Police Officers' Retirement Fund (s. 185.12, F.S.); Corporate Income Tax Credit (s. 624.509(4),F.S.); Florida Employees' Salary Credit (s. 624.509(5),F.S.); New Markets Tax Credit (s. 288.9916, F.S.);Capital Investment Tax Credit (s. 220.191, F.S.); Community Contribution Tax Credit (s. 624.5105, F.S.); Child Care Tax Credit (s. 624.5107, F.S.); Credit for Contributions to Scholarship-Funding Organizations (s. 624.51055, F.S.); Credit for Workers' Compensation Assessments (440.51, F.S.); and Credit for Florida Life and Health Insurance Guaranty Association Assessments (s. 631.72, F.S.).
[10] s. 624.509(3), F.S.
[11] s. 631.57(3)(g), F.S.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 631.57, F.S., relating to powers and duties of FIGA.

Section 2: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Because the bill repeals current law subjecting FIGA regular assessments to the insurance premium tax, the state loses premium tax income under the bill. The specific amount of lost revenue is indeterminate until the Revenue Estimating Conference opines on the impact.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some insurers allege having to pay assessments upfront to FIGA could imperil the solvency of insurers that do not have sufficient funds on hand or the ability to borrow the funds to pay the FIGA assessments. However, current law, which is unchanged by the bill, exempts insurers from paying FIGA assessments if the payment would impair the solvency of the insurer.[13] Nevertheless, because the bill requires FIGA to collect regular and emergency assessments directly from policyholders, insurers would no longer pay the assessments upfront to FIGA, which eliminates the potential insurer solvency implications associated with the assessments.

In addition, a 2011 change to statutory accounting principles relating to how assessments are treated on an insurer's financial statement now negatively impacts some insurer's net worth.[14] The bill eliminates 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. FIGA's levy of assessments against insurers reduces an insurer's net worth under both statutory and GAAP accounting. Under both GAAP and statutory accounting, insurers incur a liability in the form of a direct

[12] s. 631.57(3)(e)3., F.S.
[13] s. 631.57(4), F.S.
[14] The changes to the statutory accounting principles that negatively impact insurer net worth paying assessments to FIGA were effective January 1, 2011.

charge to surplus (i.e., a loss in surplus) in the amount of the 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 assessment paid by the insurer to FIGA 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 FIGA.[15] The bill eliminates the impact on insurer net worth associated with the assessments because assessments levied directly against policyholders are not included in an insurer's financial statement.

Under the bill, FIGA no longer has a source for a quick influx of cash to pay claims (i.e., assessments paid by insurers within 30 days of levy) because it must collect assessments from policyholders as policies are issued or renewed over 12 months. However, FIGA could obtain cash quickly to pay claims of an insolvent insurer by using letters of credit, lines of credit, bank loans, or post-event short-term bonding. Any set up or borrowing costs associated with these financing mechanisms would be added to the assessment amount to be collected and could result in a larger assessment.

According to FIGA's financial advisor,[16] FIGA could potentially obtain a maximum of $200 million with lines of credit, a post-event bank loan or post-event bonding. However, the advisor notes these financing mechanisms are expensive, with fees ranging from $200,000 to $2 million to set up the financing mechanism and additional interest expenses of 2.25%-4% if funds are used. In contrast, the advisor notes 30 days after a 2% regular assessment levy, FIGA currently can collect up to $340 million with no upfront fees or interest. According to the advisor, the credit markets cannot provide the capacity a 2% regular assessment provides and the current FIGA assessment mechanism provides a capital structure which is the most efficient, tested, and proven.

The bill does not increase the amount of assessments FIGA can levy. FIGA regular assessments remain at 2% maximum per year per account (4% total) and emergency assessments remain at 2% maximum per year.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

[15] 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.

[16] Raymond James & Associates is FIGA's financial advisor and the liquidity options for FIGA set out by the advisor are contained in a memorandum from Raymond James & Associates to Sandy Robinson at FIGA dated December 11, 2013. The memo is on file with the Insurance & Banking Subcommittee.

B. RULE-MAKING AUTHORITY:

None provided.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The OIR believes the bill improperly requires OIR to levy assessments directly on policyholders.[17] The OIR notes it has no access to policyholder information, no mechanism to collect funds from policyholders, and no ability to apply assessments collected to individual policyholder accounts. The OIR suggests current law which requires the OIR to levy assessments directly on insurers should not be changed. The OIR has authority over insurers so this assessment collection mechanism is workable.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[17] 2014 Agency Legislative Bill Analysis from OIR for HB 143 dated 1/9/14, on file with the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to the Florida Insurance Guaranty Association; amending s. 631.57, F.S.; revising the duties of the association; authorizing the association to collect regular and emergency assessments directly from policyholders; clarifying that assessments are not considered premium for premium tax purposes; making technical and grammatical corrections; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(2) The association may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(b) Borrow funds necessary to effect the purposes of this part in accord with the plan of operation, including borrowing funds necessary to ensure that its cash flow needs are timely met to pay covered claims when regular and emergency assessments are levied on policyholders under subsection (3);

(c) Sue or be sued, provided that service of process is ~~shall be~~ made upon the person registered with the department as agent for the receipt of service of process; and

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this part. ~~Additionally,~~

The association may also enter into such contracts with a municipality, a county, or a legal entity created pursuant to s. 163.01(7)(g) ~~as are necessary~~ in order for the municipality, county, or legal entity to issue bonds under s. 631.695. In connection with the issuance of ~~any~~ such bonds and the entering into of ~~any~~ such ~~necessary~~ contracts, the association may agree to such terms and conditions as the association deems necessary and proper.

(3)(a) To the extent necessary to secure ~~the~~ funds for the respective accounts paying for ~~the payment of~~ covered claims, to pay the reasonable costs to administer such accounts ~~the same~~, and ~~to the extent necessary~~ to secure ~~the~~ funds for the account specified in s. 631.55(2)(b) or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy regular assessments directly upon policyholders, which shall be collected by insurers holding a certificate of authority. The office shall issue an order specifying the date that the board requires the insurers to begin collecting the assessment, which must be at least 90 days after the date that the board certifies the assessment. The order must specify a uniform percentage determined by the board, and verified by the office, of the direct written premium for all lines of business in the applicable accounts. The assessment

collected may not exceed 2 percent of the premium in any one year. The insurers shall collect such assessments without being affected by any credit, limitation, exemption, or deferment. Assessments collected by insurers from insureds under this paragraph shall be transferred regularly to the association as set forth in the order levying the assessment ~~in the proportion that each insurer's net direct written premiums in this state in the classes protected by the account bears to the total of said net direct written premiums received in this state by all such insurers for the preceding calendar year for the kinds of insurance included within such account. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan. Each insurer so assessed shall have at least 30 days' written notice as to the date the assessment is due and payable. Every assessment shall be made as a uniform percentage applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made. The assessments levied against any insurer shall not exceed in any one year more than 2 percent of that insurer's net direct written premiums in this state for the kinds of insurance included within such account during the calendar year next preceding the date of such assessments~~.

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

~~recoup such advances by applying a separate recoupment factor to the premium of policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group.~~

(b)1.~~(c)1.a.~~ In addition to regular assessments ~~otherwise~~ authorized under ~~in~~ paragraph (a), and to the extent necessary to secure ~~the~~ funds for the account specified in s. 631.55(2)(b) for the direct payment of covered claims of insurers rendered insolvent by the effects of a hurricane and to pay the reasonable costs to administer such claims, or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office~~, upon certification of the board of directors,~~ shall levy emergency assessments directly upon policyholders, which shall be collected by insurers holding a certificate of authority. The office shall issue an order specifying the date that the board requires the insurers to begin collecting the assessment, which must be at least 90 days after the date that the board certifies the assessment. The order must specify a uniform percentage determined by the board, and verified by the office, of the direct written premium for all lines of business in the applicable accounts. The assessment collected may not exceed 2 percent of the premium in any one year. The insurers shall collect such assessments without being affected by any credit, limitation, exemption, or deferment.

Assessments collected under this paragraph shall be transferred regularly to the association as set forth in the order levying the assessment ~~The emergency assessments payable under this paragraph by any insurer shall not exceed in any single year more than 2 percent of that insurer's direct written premiums, net of refunds, in this state during the preceding calendar year for the kinds of insurance within the account specified in s. 631.55(2)(b)~~.

2.~~b.~~ ~~Any~~ Emergency assessments ~~authorized under this paragraph~~ shall be levied by the office only ~~upon insurers referred to in sub-subparagraph a.,~~ upon certification as to the need for such assessments by the board of directors. If ~~In the event~~ the board ~~of directors~~ participates in the issuance of bonds in accordance with s. 631.695, emergency assessments shall be levied in each year that bonds issued under s. 631.695 and secured by such emergency assessments are outstanding~~,~~ in ~~such~~ amounts up to such 2-percent limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of issuance of, such bonds. The emergency assessments ~~provided for in this paragraph~~ are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the holders of such bonds, ~~in order to enable such municipality, county, or legal entity~~ to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which

such bonds have been issued, without the necessity for ~~of~~ any further action by the association, the office, or any other party. If ~~To the extent~~ bonds are issued under s. 631.695 and the association secures ~~determines to secure~~ such bonds by a pledge of revenues received from the emergency assessments, ~~such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and~~ the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for the payment of such bonds.

~~c. Emergency assessments under this paragraph may be payable in a single payment or, at the option of the association, may be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due not later than the end of each succeeding month~~.

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

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

5.~~2.~~ If the board of directors participates in the issuance of bonds in accordance with s. 631.695, an emergency ~~annual~~ assessment under this paragraph must ~~shall~~ continue while

the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of such bonds.

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

(d)1. ~~(f)~~ The recoupment factor applied to policies in accordance with paragraph (a) or paragraph (b) ~~(c)~~ shall be selected by the board and verified by the office ~~insurer or insurer group so as to provide for the probable recoupment of both assessments levied pursuant to paragraph (a) and emergency assessments over a period of 12 months, unless the insurer or insurer group, at its option, elects to recoup the assessment over a longer period~~. The recoupment factor applies ~~shall apply~~ to all policies of the same kind or line as were considered by the office in determining the assessment liability ~~of the insurer or insurer group issued or renewed during a 12-month period~~. If the recoupment factor ~~insurer or insurer group~~ does not collect the full amount needed ~~of the assessment~~ during one 12-month period, the board ~~insurer or insurer group~~ may apply recalculated recoupment factors to policies issued or renewed during one or more succeeding 12-month periods under paragraphs

(a) and (b).

2. If, at the end of a 12-month period, the association ~~insurer or insurer group~~ has collected from the combined kinds or lines of policies subject to assessment more than the total amount of the assessment needed, ~~paid by the insurer or insurer group, the excess amount shall be disbursed as follows:~~

~~1. If the excess amount does not exceed 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be remitted to the association within 60 days after the end of the 12-month period in which the excess recoupment charges were collected.~~

~~2. If the excess amount exceeds 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be returned to the insurer's or insurer group's current policyholders by refunds or premium credits.~~ the association shall use any remitted excess recoupment amounts to reduce future assessments.

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

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

~~(g) Amounts recouped pursuant to this subsection for assessments levied under paragraph (a) due to insolvencies on or~~

~~after July 1, 2010, are considered premium solely for premium tax purposes and are not subject to fees or commissions. However, insurers shall treat the failure of an insured to pay a recoupment charge as a failure to pay the premium.~~

~~(h) At least 15 days before applying the recoupment factor to any policies, the insurer or insurer group shall file with the office a statement for informational purposes only setting forth the amount of the recoupment factor and an explanation of how the recoupment factor will be applied. Such statement shall include documentation of the assessment paid by the insurer or insurer group and the arithmetic calculations supporting the recoupment factor. The insurer or insurer group may use the recoupment factor at any time after the expiration of the 15-day period. The insurer or insurer group need submit only one informational statement for all lines of business using the same recoupment factor.~~

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

Section 2. This act shall take effect July 1, 2014.

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

INSURANCE & BANKING SUBCOMMITTEE

HB 143 by Rep. Raburn
Florida Insurance Guaranty Association

AMENDMENT SUMMARY
January 15, 2014

Amendment 1 by Rep. Raburn (Strike All): The amendment gives FIGA new options for collecting assessments. For regular assessments, the amendment retains current law which allows FIGA to collect assessments from insurers within 30 days of the assessment levy. However, the amendment adds a new option for the collection of regular assessments. This option allows FIGA to collect regular assessments directly from property and casualty policyholders.

The amendment also adds a new option for FIGA to use to collect emergency assessments. Under the amendment, FIGA can levy emergency assessments directly on property and casualty insurance policyholders, with the assessments being collected over a 12 month period as policies are issued or renewed. The amendment does not remove FIGA's ability under current law to collect emergency assessments upfront from insurers who then later recoup the assessments from their policyholders. Although FIGA still has this collection option under the amendment, the amendment specifies it can only be used if the FIGA board determines FIGA must immediately begin paying claims and does not have financing to pay the claims.

The amendment also exempts FIGA regular assessments from the insurance premium tax. This exemption was contained in the original bill.

Substitute Amendment to Strike All by Rep. Broxson (sa1): Like the strike all amendment, the substitute amendment gives FIGA the option to collect regular assessments from insurers or directly from property and casualty policyholders.

Like the strike all amendment, the substitute amendment allows FIGA to levy emergency assessments directly on property and casualty insurance policyholders. However, unlike the strike all amendment, the substitute amendment does not place any contingency on FIGA's ability to exercise its option to collect emergency assessments directly from policyholders.

The amendment also exempts FIGA regular assessments from the insurance premium tax. This exemption was contained in the original bill.

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Raburn offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (2) and (3) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(2) The association may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(b) Borrow funds necessary to effect the purposes of this part in accord with the plan of operation, including borrowing necessary to ensure that its cash flow needs are timely met to pay covered claims when regular and emergency assessments are levied on policyholders under subsection (3);

(c) Sue or be sued, provided that service of process is ~~shall be~~ made upon the person registered with the department as agent for the receipt of service of process; and

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this part. ~~Additionally,~~ The association may also enter into such contracts with a municipality, a county, or a legal entity created pursuant to s. 163.01(7)(g) ~~as are necessary~~ in order for the municipality, county, or legal entity to issue bonds under s. 631.695. In connection with the issuance of ~~any~~ such bonds and the entering into of ~~any~~ such ~~necessary~~ contracts, the association may agree to such terms and conditions as the association deems necessary and proper.

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

classes protected by the account bears to the total of the ~~said~~ net direct written premiums received in this state by all such insurers for the preceding calendar year for the kinds of insurance included within such account. Regular assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan. Each insurer so assessed has ~~shall have~~ at least 30 days' written notice as to the date the assessment is due and payable. ~~Every assessment shall be made as a uniform percentage applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made.~~ The regular assessments levied against an ~~any~~ insurer may ~~shall~~ not ~~exceed~~ in any one year exceed ~~more than~~ 2 percent of that insurer's net direct written premiums in this state for the kinds of insurance included within such account during the calendar year next preceding the date of such assessments. The Legislature finds and declares that regular assessments paid by an insurer or insurer group as a result of a levy by the office constitute advances of funds from the insurer to the association. An insurer may fully recoup regular assessments levied against prior year premiums by applying a separate recoupment factor to the premium of policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group.

(b) In lieu of collecting the regular assessment under paragraph (a) from insurers, the association may certify all or

part of the assessment to be collected by member insurers and collected from policyholders upon issuance or renewal of policies. If the association elects to direct insurers to collect the assessment directly from policyholders, the office shall issue an order specifying the date that the board requires the insurers to begin collecting the assessment, which must be at least 90 days after the date that the board certifies the assessment. The order must specify a uniform percentage determined by the board, and verified by the office, of the direct written premium for all lines of business in the applicable accounts. The assessment certified in any one calendar year may not exceed 2 percent of the premium. The insurers shall collect such assessments without being affected by any credit, limitation, exemption, or deferment. Assessments collected under this paragraph shall be transferred regularly to the association as set forth in the order levying the assessment.

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

~~(c) The Legislature finds and declares that all assessments paid by an insurer or insurer group as a result of a~~

~~levy by the office, including assessments levied pursuant to paragraph (a) and emergency assessments, constitute advances of funds from the insurer to the association. An insurer may fully recoup such advances by applying a separate recoupment factor to the premium of policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group.~~

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

(e)~~1.a.~~ In addition to regular assessments ~~otherwise~~ authorized under ~~in~~ paragraph (a), and to the extent necessary to secure ~~the~~ funds for the account specified in s. 631.55(2)(b) for the direct payment of covered claims of insurers rendered insolvent by the effects of a hurricane and to pay the reasonable costs to administer such claims, or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy emergency assessments to be collected by member insurers and collected from policyholders upon issuance or renewal of policies ~~upon insurers holding a certificate of authority~~. Pursuant to such levy, the office shall issue an order specifying the date the board requires the insurers to

begin collecting the assessment, which must be at least 90 days after the date the office levies the assessment. The order must specify a uniform percentage determined by the board, and verified by the office, of the direct written premium for all lines of business in the applicable accounts. The assessment certified in any one calendar year may not exceed 2 percent of the premium. The insurers shall collect such assessments without being affected by any credit, limitation, exemption, or deferment. Assessments collected by insurers under this paragraph shall be transferred regularly to the association as set forth in the order levying the assessment.

1. If, after consultation with its financial advisor, the board determines that it must immediately begin paying the covered claims of one or more insolvent insurers and financing is not reasonably available, it may certify the emergency assessment on insurers in the same manner as set forth in paragraph (a), except that an emergency assessment may be paid by the insurer in a single payment or, at the option of the association, in 12 monthly installments with the first installment being due and payable at the end of the month after the emergency assessment is levied and subsequent installments being due by the end of each succeeding month. ~~The emergency assessments payable under this paragraph by any insurer shall not exceed in any single year more than 2 percent of that insurer's direct written premiums, net of refunds, in this state during the preceding calendar year for the kinds of insurance~~

~~within the account specified in s. 631.55(2)(b).~~

2.~~b.~~ ~~Any~~ Emergency assessments ~~authorized under this paragraph~~ shall be levied by the office only ~~upon insurers referred to in sub-subparagraph a.,~~ upon certification as to the need for such assessments by the board of directors. If ~~In the event~~ the board ~~of directors~~ participates in the issuance of bonds in accordance with s. 631.695, emergency assessments shall be levied in each year that bonds issued under s. 631.695 and secured by such emergency assessments are outstanding~~,~~ in ~~such~~ amounts up to such 2 percent ~~2 percent~~ limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of issuance of, such bonds. The emergency assessments ~~provided for in this paragraph~~ are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the holders of such bonds, in order to enable such municipality, county, or legal entity to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without the necessity for ~~of~~ any further action by the association, the office, or any other party. If ~~To the extent~~ bonds are issued under s. 631.695 and the association secures ~~determines to secure~~ such bonds by a pledge of revenues received from the

emergency assessments, such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for the payment of such bonds.

~~c. Emergency assessments under this paragraph may be payable in a single payment or, at the option of the association, may be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due not later than the end of each succeeding month.~~

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

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

5.~~2.~~ If the board of directors participates in the issuance of bonds in accordance with s. 631.695, an emergency ~~annual~~ assessment under this paragraph must ~~shall~~ continue while the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of

which were used to refund bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of such bonds.

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

(f) The recoupment factor applied to policies in accordance with paragraph (a) or subparagraph (e)1. ~~paragraph (c)~~ shall be selected by the insurer or insurer group ~~so as~~ to provide for the probable recoupment of ~~both assessments levied pursuant to paragraph (a) and emergency~~ assessments over a period of 12 months, unless the insurer or insurer group, at its option, elects to recoup the assessment over a longer period. The recoupment factor applies ~~shall apply~~ to all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group issued or renewed during a 12-month period.

1. If the insurer or insurer group does not collect the full amount of the assessment during one 12-month period, the insurer or insurer group may apply recalculated recoupment factors to policies issued or renewed during one or more succeeding 12-month periods.

2. If, at the end of a 12-month period, the insurer or insurer group has collected from the combined kinds or lines of policies subject to assessment more than the total amount of the assessment paid by the insurer or insurer group, the excess amount shall be disbursed as follows:

a. ~~1.~~ If the excess amount does not exceed 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be remitted to the association within 60 days after the end of the 12-month period in which the excess recoupment charges were collected.

b. ~~2.~~ If the excess amount exceeds 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be returned to the insurer's or insurer group's current policyholders by refunds or premium credits. The association shall use any remitted excess recoupment amounts to reduce future assessments.

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

4. ~~(h)~~ At least 15 days before applying the recoupment factor to any policies, the insurer or insurer group shall file with the office a statement for informational purposes only setting forth the amount of the recoupment factor and an

explanation of how the recoupment factor will be applied. Such statement must ~~shall~~ include documentation of the assessment paid by the insurer or insurer group and the arithmetic calculations supporting the recoupment factor. The insurer or insurer group may use the recoupment factor at any time after the expiration of the 15-day period. The insurer or insurer group need submit only one informational statement for all lines of business using the same recoupment factor.

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

Section 2. This act shall take effect July 1, 2014.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Florida Insurance Guaranty Association; amending s. 631.57, F.S.; revising the duties of the association; authorizing the association to certify regular assessments to be collected by member insurers and collected from policyholders under certain circumstances; authorizing the association to levy emergency assessments to be collected by member insurers and collected from policyholders under certain circumstances; clarifying that assessments are not considered premium tax purposes; making technical and grammatical corrections; providing for applicability; providing an effective date.

Amendment No. sa1

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Broxson offered the following:

Substitute Amendment for Amendment (031061) by Representative Raburn (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (2) and (3) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(2) The association may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(b) Borrow funds necessary to effect the purposes of this part in accord with the plan of operation, including borrowing funds necessary to ensure that its cash flow needs are timely met to pay covered claims when regular and emergency assessments

are levied on policyholders under subsection (3);

(c) Sue or be sued, provided that service of process is ~~shall be~~ made upon the person registered with the department as agent for the receipt of service of process; and

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this part. The ~~Additionally, the~~ association may also enter into such contracts with a municipality, a county, or a legal entity created pursuant to s. 163.01(7)(g) ~~as are necessary~~ in order for the municipality, county, or legal entity to issue bonds under s. 631.695. In connection with the issuance of ~~any~~ such bonds and the entering into of ~~any~~ such ~~necessary~~ contracts, the association may agree to such terms and conditions as the association deems necessary and proper.

(3)(a) To the extent necessary to secure ~~the~~ funds for the respective accounts paying for ~~the payment of~~ covered claims, to pay the reasonable costs to administer such accounts ~~the same~~, and ~~to the extent necessary~~ to secure ~~the~~ funds for the account specified in s. 631.55(2)(b) or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy regular assessments in the proportion that

each insurer's net direct written premiums in this state in the classes protected by the account bears to the total of the ~~said~~ net direct written premiums received in this state by all such insurers for the preceding calendar year for the kinds of insurance included within such account. Regular assessments ~~Assessments~~ shall be remitted to and administered by the board of directors in the manner specified by the approved plan. Each insurer so assessed has ~~shall have~~ at least 30 days' written notice as to the date the assessment is due and payable. ~~Every assessment shall be made as a uniform percentage applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made.~~ The regular assessments levied against an ~~any~~ insurer may ~~shall~~ not ~~exceed~~ in any one year exceed ~~more than~~ 2 percent of that insurer's net direct written premiums in this state for the kinds of insurance included within such account during the calendar year next preceding the date of such assessments. The Legislature finds and declares that regular assessments paid by an insurer or insurer group as a result of a levy by the office constitute advances of funds from the insurer to the association. An insurer may fully recoup regular assessments levied against prior year premiums by applying a separate recoupment factor to the premium of policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group.

(b) In lieu of collecting the regular assessment under paragraph (a) from insurers, the association may collect all or part of the assessment directly from policyholders. If the association elects to collect the assessment directly from policyholders, the office shall, upon certification of the board of directors, issue an order specifying the date the board requires the insurers to begin collecting the assessment, which must be at least 90 days after the date the office levies the assessment. The order must specify a uniform percentage determined by the board, and verified by the office, of the direct written premium for all lines of business in the applicable accounts. The assessment certified in any one calendar year may not exceed 2 percent of the premium. The insurers shall collect such assessments for a uniform period of 12 months as specified in the order. The insurers shall collect such assessments without being affected by any credit, limitation, exemption, or deferment. Assessments collected under this paragraph shall be transferred regularly to the association as set forth in the order levying the assessment.

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

~~(c) The Legislature finds and declares that all assessments paid by an insurer or insurer group as a result of a levy by the office, including assessments levied pursuant to paragraph (a) and emergency assessments, constitute advances of funds from the insurer to the association. An insurer may fully recoup such advances by applying a separate recoupment factor to the premium of policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group.~~

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

(e)~~1.a.~~ In addition to regular assessments otherwise authorized in paragraphs ~~paragraph~~ (a) and (b) and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(b) for the direct payment of covered claims of insurers rendered insolvent by the effects of a hurricane and to pay the reasonable costs to administer such claims, or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy emergency assessments upon insurers holding a certificate of authority. The emergency assessments

payable under this paragraph by any insurer shall not exceed in any single year more than 2 percent of that insurer's direct written premiums, net of refunds, in this state during the preceding calendar year for the kinds of insurance within the account specified in s. 631.55(2)(b). The Legislature finds and declares that emergency assessments paid by an insurer or insurer group as a result of a levy by the office constitute advances of funds from the insurer to the association. An insurer may fully recoup emergency assessments levied against prior year premiums by applying a separate recoupment factor to the premium of policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group.

1. In lieu of collecting the emergency assessment under paragraph (e) from insurers, the association may collect all or part of the assessment directly from policyholders. If the association elects to collect the assessment directly from policyholders, the office shall issue an order specifying the date the board requires the insurers to begin collecting the assessment, which must be at least 90 days after the date the office levies the assessment. The order must specify a uniform percentage determined by the board, and verified by the office, of the direct written premium for all lines of business in the applicable accounts. The assessment certified in any one calendar year may not exceed 2 percent of the premium. The insurers shall collect such assessments without being affected

by any credit, limitation, exemption, or deferment. Assessments collected under this paragraph shall be transferred regularly to the association as set forth in the order levying the assessment.

2.~~b.~~ Emergency ~~Any emergency~~ assessments ~~authorized under this paragraph~~ shall be levied by the office only ~~upon insurers referred to in sub-subparagraph a.,~~ upon certification as to the need for such assessments by the board of directors. If ~~In~~ the event the board ~~of directors~~ participates in the issuance of bonds in accordance with s. 631.695, emergency assessments shall be levied in each year that bonds issued under s. 631.695 and secured by such emergency assessments are outstanding~~,~~ in ~~such~~ amounts up to such 2-percent limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of issuance of, such bonds. The emergency assessments ~~provided for in this paragraph~~ are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the holders of such bonds, ~~in order to enable such municipality, county, or legal entity~~ to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without ~~the necessity of any~~ further action by the association, the office, or any other

party. If ~~To the extent~~ bonds are issued under s. 631.695 and the association secures ~~determines to secure~~ such bonds by a pledge of revenues received from the emergency assessments, ~~such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and~~ the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for the payment of such bonds.

c. Emergency assessments levied upon insurers under this paragraph may be payable in a single payment or, at the option of the association, may be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due not later than the end of each succeeding month.

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

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

5.~~2.~~ If the board of directors participates in the issuance of bonds in accordance with s. 631.695, an emergency ~~annual~~ assessment under this paragraph must ~~shall~~ continue while

the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of such bonds.

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

(g) The provisions of this paragraph shall only apply if the board levies assessments on insurers, but shall not apply if the board levies assessments on policyholders.

1.~~(f)~~ The recoupment factor applied to policies in accordance with paragraph (a) or (e) ~~(e)~~ shall be selected by the insurer or insurer group so as to provide for the probable recoupment of both assessments levied pursuant to paragraph (a) and emergency assessments over a period of 12 months, unless the insurer or insurer group, at its option, elects to recoup the assessment over a longer period. The recoupment factor shall apply to all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group issued or renewed during a 12-month period.

2. If the insurer or insurer group does not collect the full amount of the assessment during one 12-month period, the insurer or insurer group may apply recalculated recoupment factors to policies issued or renewed during one or more succeeding 12-month periods.

3. If, at the end of a 12-month period, the insurer or insurer group has collected from the combined kinds or lines of policies subject to assessment more than the total amount of the assessment paid by the insurer or insurer group, the excess amount shall be disbursed as follows:

a.~~1.~~ If the excess amount does not exceed 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be remitted to the association within 60 days after the end of the 12-month period in which the excess recoupment charges were collected.

b.~~2.~~ If the excess amount exceeds 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be returned to the insurer's or insurer group's current policyholders by refunds or premium credits. The association shall use any remitted excess recoupment amounts to reduce future assessments.

~~(g) Amounts recouped pursuant to this subsection for assessments levied under paragraph (a) due to insolvencies on or after July 1, 2010, are considered premium solely for premium tax purposes and are not subject to fees or commissions.~~

4. Insurers ~~However, insurers~~ shall treat the failure of an

insured to pay a recoupment charge as a failure to pay the premium.

5.~~(h)~~ At least 15 days before applying the recoupment factor to any policies, the insurer or insurer group shall file with the office a statement for informational purposes only setting forth the amount of the recoupment factor and an explanation of how the recoupment factor will be applied. Such statement shall include documentation of the assessment paid by the insurer or insurer group and the arithmetic calculations supporting the recoupment factor. The insurer or insurer group may use the recoupment factor at any time after the expiration of the 15-day period. The insurer or insurer group need submit only one informational statement for all lines of business using the same recoupment factor.

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

Section 2. This act shall take effect July 1, 2014.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Florida Insurance Guaranty Association; amending s. 631.57, F.S.; revising the duties of the association; authorizing the association to certify regular assessments to be collected by member insurers and collected from policyholders under certain circumstances; authorizing the association to levy emergency assessments to be collected by member insurers and collected from policyholders under certain circumstances; clarifying that assessments are not considered premium tax purposes; making technical and grammatical corrections; providing for applicability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 321 Title Insurance
SPONSOR(S): Passidomo
TIED BILLS: **IDEN./SIM. BILLS:** SB 570

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

SUMMARY ANALYSIS

Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title. It is a policy issued by a title insurer that, after performing a search of title, represents the state of that title and insures the accuracy of its search against claims of title defects. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

The bill legislatively addresses a 2013 decision of the Florida Supreme Court (*Tiara Condominium Association v. Marsh & McClennan)* that limits the "economic loss rule" to product liability cases. The economic loss rule limits parties to a contract that suffer only economic damages to recovery under the contract, and precludes recovery under tort law. Prior to *Tiara Condominium*, the economic loss rule had been applicable to title insurance. Thus, although the case did not involve a dispute under a title insurance policy, the decision, in effect, allows insureds under title insurance policies that suffer only economic damages to seek recovery in contract and tort. The bill reinstates application of the economic loss rule to title insurance by providing that the policy terms constitute the insured's sole remedy for losses arising under the title insurance policy. Additionally, for other instruments (e.g., closing protection letters) issued by title insurers to prospective insureds under which the insurer assumes liability for agent misconduct, the bill provides that the issued instrument is the insured's sole remedy for any liability assumed under the instrument.

The bill also:

- Clarifies that title insurance agents and title insurance agencies must be both licensed [(by the Department of Financial Services (DFS)] and appointed (by each title insurer they represent).
- Specifies that the pre-application work experience by which a person may qualify to take the title insurance agent examination must have been earned for duties performed under the supervision of a licensed title insurance agent, title insurer, or attorney.
- Extends, after October 1, 2014, current limitations on names that may be adopted by title insurance agents to title insurance agents and title insurance agencies. Additionally, prohibits use of the words "title company" in a name unless followed by the word "agent" or "agency" in the same size and type as the words preceding them. Provides the limitations do not apply in certain circumstances.
- Removes the requirement that applications for licensure as a title agent or title insurance agency be submitted on "printed" DFS forms.
- Deletes an obsolete provision requiring title insurance agencies to post a surety bond with the DFS prior to obtaining a license.
- Removes references to "guarantees of title" and "binders." The former have not been authorized in Florida for many years, while the latter are not used by the title insurance industry.

The bill has no fiscal impact on state or local government. As the bill limits losses arising under title insurance policies to policy terms, it is likely that the cost of title insurance to consumers will remain fairly stable. It should also assist title insurers in maintaining reserves sufficient to pay the claims of all policyholders.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview of Title Insurance

Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.[1] Title insurance is a policy issued by a title insurer that, after performing a search of title, represents the state of that title and insures the accuracy of its search against claims of title defects. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.[2]

Regulation in Florida

Historically, a single regulatory entity, the Department of Insurance, promulgated title insurance rates and regulated title insurance agents. Under current law, two entities provide regulatory oversight of the title insurance industry in Florida: the Department of Financial Services (DFS), which regulates title insurance agents, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage[3] and premium rates charged by title insurers are specified by rule by the Financial Services Commission (FSC).[4] Title insurers may petition the OIR for an order authorizing a specific deviation from the adopted premium.[5]

In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.[6] Pursuant to s. 627.782, F.S., the FSC is mandated to adopt a rule specifying the premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30 percent. The FSC must review the premium not less than once every three years. Title insurers and title insurance agencies are required to submit to the OIR, on or before March 31 of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry.

Title Insurance Agencies

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[1] Section 624.608, F.S. Title insurance is also insurance of owners and secured parties of the existence, attachment, perfection and priority of security interests in personal property under the Uniform Commercial Code.

[2] See, e.g., the website of the American Land Title Association (ALTA), http://www.alta.org (Last accessed: January 6, 2014). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies.

[3] Section 627.777, F.S.

[4] Section 627.782, F.S.

[5] Section 627.783, F.S.

[6] Section 627.786, F.S.

Title insurance agencies must be licensed by the DFS and are separately appointed[7] by each title insurer they represent. Prior to obtaining a license, a title insurance agency is required to deposit with the DFS securities having a market value of at least $35,000 or post a surety bond in a like amount.

Before a title insurance agency can be appointed by a title insurer, the agency must obtain: (1) a fidelity bond of at least $50,000, acceptable to the title insurer; (2) errors and omissions insurance in an amount acceptable to the title insurer, but which must provide coverage of at least $250,000 per claim and an aggregate limit with a deductible no greater than $10,000; and (3) a surety bond of at least $35,000 made payable to the title insurer or title insurers appointing the title insurance agency.[8]

The bill deletes obsolete language requiring that securities be deposited with the DFS (or a surety bond be posted) before a title insurance agency may be licensed, as title insurance agencies are required to obtain a surety bond payable to a title insurer before they can be appointed by the insurer.

Title Insurance Agents

Title insurance agents must be licensed by the DFS and are separately appointed by each title insurer they represent.

The bill clarifies that title insurance may be sold only by a licensed *and* appointed title insurance agent. For title agents employed by a title insurance agency (rather than a title insurer), the bill clarifies that the agency must also be licensed *and* appointed.

To be licensed as a title insurance agent, a person must qualify for and pass a written examination given by the DFS. To be eligible to take the examination,[9] a person must have completed certain educational or work requirements before applying for licensure. Specifically, within 4 years before the date of the application, the person must have completed a 40-hour classroom course in title insurance or have had at least 12 months of experience in responsible title insurance duties while working in the title insurance industry as a substantially full-time employee.[10]

The bill specifies that the title insurance work experience by which an applicant may qualify to take the title insurance agent examination must have been earned for duties performed under the supervision of a licensed title insurance agent, title insurer, or attorney. It also removes language that required applications for licensure as a title insurance agent or title insurance agency to be submitted on "printed" forms.

Prohibitions on Names Adopted by Title Insurance Agents[11]

Under s. 626.8413, F.S., title insurance agents are prohibited[12] from adopting a name that contains the words "title insurance," "title guaranty," or "title guarantee" unless followed by the word "agent" or "agency" in the same size and type as the words preceding them.

Beginning October 2, 2014, the bill makes this section applicable to both title insurance agents and title insurance agencies to enable consumers to readily know whether they are working with a title insurer or an agent. Additionally, the words "title company" may not be used in a name unless followed by the word "agent" or "agency" in the same size and type as the words preceding them. The bill specifies that these limitations on name do not apply to a title insurer acting as an agent for another title insurer when

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[7] An appointment is the authority given by an insurer to a licensee to transact insurance on the insurer's behalf.

[8] Section 626.8419, F.S.

[9] The examination must test the applicant's ability, competence, and knowledge of title insurance and real property transactions and the duties and responsibilities of licensees. In addition to title insurance, topics to be covered on the test include abstracting, title searches, examination of title, closing procedures, and escrow handling. *See* s. 626.241, F.S.

[10] Section 626.8417, F.S.

[11] Section 626.841, F.S., defines the term title insurance agent to mean "a person appointed in writing by a title insurer to issue and countersign commitments or policies of title insurance in its behalf."

[12] After October 1, 1985.

both insurers hold active certificates of authority to transact title insurance business in Florida and are acting under the names designated on such certificates of authority.

Title Insurance and the Economic Loss Rule

Traditionally, contract law and tort law (including negligence and malpractice) are separate in their application: contract law enforces expectancy interests created by an agreement between the parties; tort law compensates people for personal injury or property damage caused by tortious conduct, without regard to contract.

The division between the two areas of law matters in the results attainable: contract law limits recovery to expectation damages (damages reasonably expected to flow from the contractual breach); tort law allows all damages proximately resulting from tortious conduct.

The economic loss rule was developed by courts to more accurately draw the distinction between contract and tort law. This common law rule provides that, where there is a contract between parties and a person harmed by wrongful conduct suffers only economic damages (that is, there is no personal injury involved), the lawsuit must proceed under contract law. Where the economic loss rule applies, the person harmed cannot sue in tort law.

The economic loss rule has long been recognized in Florida.[13] It is firmly established in products liability cases, where it is based on the notion that tort law imposes a duty on manufacturers to take reasonable care so that their products will not harm persons or property, but imposes no duty for manufacturers to ensure their products will meet the economic expectations of purchasers.[14] Prior to the Florida Supreme Court's (Supreme Court) decision last year in *Tiara Condominium Association v. Marsh & McClennan*,[15,16] the rule had been expanded beyond products liability and applied in various other areas, including title insurance.

Tiara Condominium concerned a dispute between an insured and its insurance broker regarding coverage under a windstorm insurance policy. In its decision, the Supreme Court reviewed the development of the economic loss rule in Florida. Determining that there had been an unprincipled expansion of the rule beyond products liability, the court returned the economic loss rule to its origins, holding the rule applicable only to products liability cases, and receding from prior case law.

The bill legislatively addresses *Tiara Condominium* with respect to title insurance by providing that a title insurer may not issue any contract of title insurance unless the terms of the contract constitute an insured's sole remedy for any claim of loss against a title insurer, title insurance agent, or an abstractor providing a title search for the contract arising out of the status of title to the estate or interest covered by the contract. It also limits liability in the same manner as to instruments (such as a closing protection letter) issued by a title insurer to a prospective insured, in a form and content approved by the OIR, under which the insurer assumes liability for the misconduct of any of its agents in connection with a real property transaction for which the title insurer is to issue a title insurance policy.

Title insurance is unique from other lines of insurance in that insured's pay a one-time premium for a policy that continues to provide coverage and never expires. Title insurance forms, which are filed and approved by the OIR prior to usage, specify insurer responsibilities in the event title defects are not identified in the policy. As the bill limits losses arising under title insurance policies to policy terms, it is likely that the cost of title insurance to consumers will remain fairly stable. It should also assist title insurers in maintaining reserves sufficient to pay the claims of all policyholders, as the insurer's

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[13] *See*, Florida *Power and Light Co. v. Westinghouse Elec. Corp*, 510 So.2d 899 (Fla. 1987).

[14] *See Monsanto Agricultural Products v. Edenfeld*, 426 So.2d 574 (Fla. 1st DCA 1982).

[15] 110 So.3d 399 (Fla. 2013).

[16] For an overview of the economic loss rule and discussion of Tiara *Condominium, see* Munyon *et al., Tort and Contract Actions: Strange Bedfellows No More in the Wake if Tiara Condominium*, The Florida Bar Journal, December 2013, at pages 41-43.

maximum exposure on each policy will be limited by the terms of the policy for which premium was paid.

Miscellaneous
The bill also removes references to "guarantees of title" and "binders." The former have not been authorized in Florida for many years, while the latter are not used by the title insurance industry.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.8412, F.S., relating to required licenses and appointments.
Section 2. Amends s. 626.8413, F.S., relating to limitations on title insurance agent names.
Section 3. Amends s. 626.8417, F.S., relating to title insurance agent licensure.
Section 4. Amends s. 626.8418, F.S., relating to application for title insurance agency license.
Section 5. Amends s. 626.8419, F.S., relating to the appointment of title insurance agencies.
Section 6. Amends s. 626.8437, F.S., relating to the denial, suspension, revocation, or refusal to renew the license or appointment of a title insurance agent or title insurance agency by the DFS.
Section 7. Amends s. 627.778, F.S., relating to limits of risk under title insurance policies.
Section 8. Amends s. 627.7845, F.S., relating to the determination of insurability.

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:

Limiting liability under a title insurance policy to policy terms approved by the OIR will likely help keep the cost of title insurance to consumers fairly stable. It will also assist insurers in maintaining reserves sufficient to pay claims of all policyholders as the maximum exposure on each policy will be limited to that for which premium was paid.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to title insurance; amending s. 626.8412, F.S.; specifying that title insurance may be sold only by licensed and appointed agents and agencies; amending s. 626.8413, F.S.; providing additional limitations on the name that a title agent or agency may adopt; providing for applicability; amending s. 626.8417, F.S.; conforming provisions to changes made by the act; amending s. 626.8418, F.S.; revising the application requirements for a title insurance agency license; requiring proof that the agency name is properly registered and active with the Division of Corporations; deleting certain bonding requirements and procedures; amending s. 626.8419, F.S.; revising requirements relating to the appointment of a title insurance agency; amending s. 626.8437, F.S.; revising terms relating to grounds for actions against a licensee or appointee; amending s. 627.778, F.S.; prohibiting a title insurer from issuing a commitment of title insurance under certain conditions; providing that the terms of a contract of title insurance are an insured's sole remedy for certain claims of loss; amending s. 627.7845, F.S.; revising terms relating to determination of insurability and preservation of evidence of title search and examination; amending s. 627.786, F.S.; providing a recourse for violation of certain actions related to the transaction of insurance; providing an

effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 626.8412, Florida Statutes, is amended to read:

626.8412 License and appointments required.—

(1) Except as otherwise provided in this part:

(a) Title insurance may be sold only by a licensed and appointed title insurance agent employed by a licensed and appointed title insurance agency or employed by a title insurer.

Section 2. Section 626.8413, Florida Statutes, is amended to read:

626.8413 Title insurance agents; certain names prohibited.—After October 1, 1985, a title insurance agent as defined in s. 626.841 may ~~shall~~ not adopt a name that ~~which~~ contains the words "title insurance," "title guaranty," or "title guarantee," unless such words are followed by the word "agent" or "agency" in the same size and type as the words preceding them. This section does not apply to a title insurer acting as an agent for another title insurer. After October 1, 2014, a title insurance agent or title insurance agency as defined in s. 626.841 may not adopt a name that contains the words "title insurance," "title company," "title guaranty," or "title guarantee," unless such words are followed by the word "agent" or "agency" in the same size and type as the words preceding them. This section does not apply to a title insurer acting as an agent for another title insurer when both insurers

hold active certificates of authority to transact title insurance business in this state and are acting under the names designated on such certificates of authority.

Section 3. Section 626.8417, Florida Statutes, is amended to read:

626.8417 Title insurance agent licensure; exemptions.—

(1) A person may not act as a title insurance agent as defined in s. 626.841 until a valid title insurance agent's license has been issued to that person by the department.

(2) An application for license as a title insurance agent shall be filed with the department on ~~printed~~ forms furnished by the department.

(3) The department may ~~shall~~ not grant or issue a license as a title insurance agent to any individual found by it to be untrustworthy or incompetent, who does not meet the qualifications for examination specified in s. 626.8414, or who does not meet the following qualifications:

(a) Within the 4 years immediately preceding the date of the application for license, the applicant must have completed a 40-hour classroom course in title insurance, 3 hours of which shall be on the subject matter of ethics, as approved by the department, or must have had at least 12 months of experience in responsible title insurance duties, under the supervision of a licensed title insurance agent, title insurer, or attorney, while working in the title insurance business as a substantially full-time, bona fide employee of a title insurance agency, title insurance agent, title insurer, or attorney who conducts real estate closing transactions and issues title insurance policies

but who is exempt from licensure pursuant to subsection (4) ~~paragraph (4)(a)~~. If an applicant's qualifications are based upon the periods of employment at responsible title insurance duties, the applicant must submit, with the application for license on a form prescribed by the department, the affidavit of the applicant and of the employer setting forth the period of such employment, that the employment was substantially full time, and giving a brief abstract of the nature of the duties performed by the applicant.

(b) The applicant must have passed any examination for licensure required under s. 626.221.

(4) ~~(a)~~ Title insurers or attorneys duly admitted to practice law in this state and in good standing with The Florida Bar are exempt from the provisions of this chapter with regard to title insurance licensing and appointment requirements.

(5) ~~(b)~~ An insurer may designate a corporate officer of the insurer to occasionally issue and countersign binders, commitments, and policies of title insurance ~~policies, or guarantees of title~~. The ~~A~~ designated officer is exempt from ~~the provisions of~~ this chapter with regard to title insurance licensing and appointment requirements while the officer is acting within the scope of the designation.

(6) ~~(c)~~ If an attorney owns ~~or attorneys own~~ a corporation or other legal entity that ~~which~~ is doing business as a title insurance agency other than an entity engaged in the active practice of law, the agency must be licensed and appointed as a title insurance agent.

Section 4. Section 626.8418, Florida Statutes, is amended

to read:

626.8418 Application for title insurance agency license.—Before ~~Prior to~~ doing business in this state as a title insurance agency, ~~a title insurance agency must meet all of the following requirements:~~

~~(1)~~ the applicant must file with the department an application for a license as a title insurance agency, on ~~printed~~ forms furnished by the department, which ~~that~~ includes all of the following:

(1)~~(a)~~ The name of each majority owner, partner, officer, and director of the title insurance agency.

(2)~~(b)~~ The residence address of each person required to be listed under subsection (1) ~~paragraph (a)~~.

(3)~~(c)~~ The name of the title insurance agency and its principal business address.

(4)~~(d)~~ The location of each title insurance agency office and the name under which each title insurance agency office conducts or will conduct business.

(5)~~(e)~~ The name of each title insurance agent to be in full-time charge of a title insurance ~~an~~ agency office and specification of that ~~which~~ office.

(6)~~(f)~~ Such additional information as the department requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain that such persons meet the requirements of this code.

~~(2) The applicant must have deposited with the department securities of the type eligible for deposit under s. 625.52 and having at all times a market value of not less than $35,000. In~~

~~place of such deposit, the title insurance agency may post a surety bond of like amount payable to the department for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with the appointing insurer. If a properly documented claim is timely filed with the department by a damaged title insurer, the department may remit an appropriate amount of the deposit or the proceeds that are received from the surety in payment of the claim. The required deposit or bond must be made by the title insurance agency, and a title insurer may not provide the deposit or bond directly or indirectly on behalf of the title insurance agency. The deposit or bond must secure the performance by the title insurance agency of its duties and responsibilities under the issuing agency contracts with each title insurer for which it is appointed. The agency may exchange or substitute other securities of like quality and value for securities on deposit, may receive the interest and other income accruing on such securities, and may inspect the deposit at all reasonable times. Such deposit or bond must remain unimpaired as long as the title insurance agency continues in business in this state and until 1 year after termination of all title insurance agency appointments held by the title insurance agency. The title insurance agency is entitled to the return of the deposit or bond together with accrued interest after such year has passed, if no claim has been made against the deposit or bond. If a surety bond is unavailable generally, the department may adopt rules for alternative methods to comply with this subsection. With respect to such alternative methods for compliance, the~~

~~department must be guided by the past business performance and good reputation and character of the proposed title insurance agency. A surety bond is deemed to be unavailable generally if the prevailing annual premium exceeds 25 percent of the principal amount of the bond.~~

Section 5. Paragraphs (a), (b), and (c) of subsection (1) of section 626.8419, Florida Statutes, are amended to read:

626.8419 Appointment of title insurance agency.—

(1) The title insurer engaging or employing the title insurance agency must file with the department, on forms furnished by the department, an application certifying that the proposed title insurance agency meets all of the following requirements:

(a) The title insurance agency has ~~must have~~ obtained a fidelity bond in an amount of at least~~, not less than~~ $50,000, acceptable to the insurer appointing the agency. If a fidelity bond is unavailable generally, the department shall ~~must~~ adopt rules for alternative methods to comply with this paragraph.

(b) The title insurance agency must have obtained errors and omissions insurance in an amount acceptable to the insurer appointing the agency. The amount of the coverage must be at least ~~may not be less than~~ $250,000 per claim and an aggregate limit with a deductible no greater than $10,000. If errors and omissions insurance is unavailable generally, the department shall ~~must~~ adopt rules for alternative methods that comply ~~to comply~~ with this paragraph.

(c) ~~Notwithstanding s. 626.8418(2),~~ The agency must have obtained a surety bond in an amount not less than $35,000 made

payable to the title insurer or title insurers appointing the agency. The surety bond must be for the benefit of any appointing title insurer damaged by a violation by the title insurance agency of its contract with the appointing title insurer. If the surety bond is payable to multiple title insurers, the surety bond must provide that each title insurer is to be notified in the event a claim is made upon the surety bond or the bond is terminated.

Section 6. Subsections (3) and (4) of section 626.8437, Florida Statutes, are amended to read:

626.8437 Grounds for denial, suspension, revocation, or refusal to renew license or appointment.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency, and it shall suspend or revoke the eligibility to hold a license or appointment of such person, if it finds that as to the applicant, licensee, appointee, or any principal thereof, any one or more of the following grounds exist:

(3) Willful misrepresentation of any title insurance policy~~, guarantee of title, binder,~~ or commitment, or willful deception with regard to any such policy~~, guarantee, binder,~~ or commitment, done either in person or by any form of dissemination of information or advertising.

(4) Demonstrated lack of fitness or trustworthiness to represent a title insurer in the issuance of its commitments or ~~,binders,~~ policies of title insurance~~, or guarantees of title~~.

Section 7. Paragraph (a) of subsection (1) of section 627.778, Florida Statutes, is amended, and subsection (3) is

added to that section, to read:

627.778 Limit of risk.—

(1)(a) A title insurer may not issue any contract of title insurance, either as a primary insurer or as a coinsurer or reinsurer, upon an estate, lien, or interest in property located in this state unless:

1. The contract shows on its face the dollar amount of the risk assumed; and

2. The dollar amount of the risk assumed does not exceed one-half of its surplus as to policyholders, unless the excess is simultaneously reinsured in one or more approved insurers.

(3) The terms of a contract of title insurance constitute an insured's sole remedy for any claim of loss against a title insurer, an agent issuing the title insurance contract, or an abstractor providing a title search for the contract, arising out of the status of title to the estate or interest covered by the contract.

Section 8. Subsections (1) and (2) of section 627.7845, Florida Statutes, are amended to read:

627.7845 Determination of insurability required; preservation of evidence of title search and examination.—

(1) A title insurer may not issue a title insurance commitment, endorsement, or title insurance policy until the title insurer has caused to be made a determination of insurability based upon the evaluation of a reasonable title search or a search of the records of a Uniform Commercial Code filing office, as applicable, has examined such other information as may be necessary, and has caused to be made a

determination of insurability of title or the existence, attachments, perfection, and priority of a Uniform Commercial Code security interest, including endorsement coverages, in accordance with sound underwriting practices.

(2) The title insurer shall cause the evidence of the determination of insurability and the reasonable title search or search of the records of a Uniform Commercial Code filing office to be preserved and retained in its files or in the files of its title insurance agent or agency for a period of not less than 7 years after the title insurance commitment or~~,~~ title insurance policy~~, or guarantee of title~~ was issued. The title insurer or agent or agency must produce the evidence required to be maintained by this subsection at its offices upon the demand of the office. Instead of retaining the original evidence, the title insurer or the title insurance agent or agency may, in the regular course of business, establish a system under which all or part of the evidence is recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original.

Section 9. Subsection (3) of section 627.786, Florida Statutes, is amended to read:

627.786 Transaction of title insurance and any other kind of insurance prohibited.—

(3) Subsection (1) does not preclude a title insurer from providing instruments to any prospective insured, in the form and content approved by the office, under which the title insurer assumes liability for loss due to the fraud of,

dishonesty of, misappropriation of funds by, or failure to comply with written closing instructions by, its contract agents, agencies, or approved attorneys in connection with a real property transaction for which the title insurer is to issue a title insurance policy. An issued instrument is the insured's sole remedy for any liability assumed pursuant to this section.

Section 10. This act shall take effect July 1, 2014.

INSURANCE & BANKING SUBCOMMITTEE

HB 321 by Rep. Passidomo
Title Insurance

AMENDMENT SUMMARY
January 15, 2014

Amendment 1 **(strike-all amendment)** by Rep. Passidomo. Clarifies that only contract remedies are available for the breach of a duty which arises solely from the terms of a contract of title insurance or specified other instruments issued by a title insurer. Makes technical changes.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 321 (2014)

Amendment No.

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Passidomo offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (1) of section 626.8412, Florida Statutes, is amended to read:

626.8412 License and appointments required.—

(1) Except as otherwise provided in this part:

(a) Title insurance may be sold only by a licensed and appointed title insurance agent employed by a licensed and appointed title insurance agency or employed by a title insurer.

Section 2. Section 626.8413, Florida Statutes, is amended to read:

626.8413 Title insurance agents; certain names prohibited.—After October 1, 2014 ~~1985~~, a title insurance agent

or title insurance agency may ~~as defined in s. 626.841 shall~~ not adopt a name that ~~which~~ contains the words "title insurance," "title company," "title guaranty," or "title guarantee~~,~~" unless such words are followed by the word "agent" or "agency" in the same size and type as the words preceding it ~~them~~. This section does not apply to a title insurer acting as an agent for another title insurer if both insurers hold active certificates of authority to transact title insurance business in this state and if both insurers are acting under the names designated on such certificates.

Section 3. Section 626.8417, Florida Statutes, is amended to read:

626.8417 Title insurance agent licensure; exemptions.—

(1) A person may not act as a title insurance agent ~~as defined in s. 626.841~~ until a valid title insurance agent's license has been issued to that person by the department.

(2) An application for license as a title insurance agent shall be filed with the department on ~~printed~~ forms furnished by the department.

(3) The department may ~~shall~~ not grant or issue a license as a title insurance agent to an ~~any~~ individual who is found by the department ~~it~~ to be untrustworthy or incompetent, who does not meet the qualifications for examination specified in s. 626.8414, or who does not meet the following qualifications:

(a) Within the 4 years immediately preceding the date of the application for license, the applicant must have completed a

40-hour classroom course in title insurance, 3 hours of which are ~~shall be~~ on the subject matter of ethics, as approved by the department, or must have had at least 12 months of experience in responsible title insurance duties, under the supervision of a licensed title insurance agent, title insurer, or attorney while working in the title insurance business as a substantially full-time, bona fide employee of a title insurance agency, title insurance agent, title insurer, or attorney who conducts real estate closing transactions and issues title insurance policies but who is exempt from licensure under subsection (4) ~~pursuant to paragraph (4)(a)~~. If an applicant's qualifications are based upon the periods of employment at responsible title insurance duties, the applicant must submit, with the license application ~~for license on a form prescribed by the department~~, an ~~the~~ affidavit of the applicant and of the employer affirming ~~setting forth~~ the period of such employment, that the employment was substantially full time, and giving a brief abstract of the nature of the duties performed by the applicant.

(b) The applicant must have passed any examination for licensure required under s. 626.221.

(4) ~~(a)~~ Title insurers or attorneys duly admitted to practice law in this state and in good standing with The Florida Bar are exempt from the provisions of this chapter relating ~~with regard~~ to title insurance licensing and appointment requirements.

(5) ~~(b)~~ An insurer may designate a corporate officer of the

insurer to occasionally issue and countersign binders, commitments, and policies of title insurance ~~policies, or guarantees of title~~. The ~~A~~ designated officer is exempt from the provisions of this chapter relating ~~with regard~~ to title insurance licensing and appointment requirements while the officer is acting within the scope of the designation.

(6)~~(c)~~ If an attorney owns ~~or attorneys own~~ a corporation or other legal entity that ~~which~~ is doing business as a title insurance agency, other than an entity engaged in the active practice of law, the agency must be licensed and appointed as a title insurance agent.

Section 4. Section 626.8418, Florida Statutes, is amended to read:

626.8418 Application for title insurance agency license.—Before ~~Prior to~~ doing business in this state as a title insurance agency, ~~a title insurance agency must meet all of the following requirements:~~

~~(1)~~ The applicant must file with the department an application for a license as a title insurance agency, on ~~printed~~ forms furnished by the department, which ~~that~~ includes all of the following:

(1)~~(a)~~ The name of each majority owner, partner, officer, and director of the title insurance agency.

(2)~~(b)~~ The residence address of each person required to be listed under subsection (1) ~~paragraph (a)~~.

(3)~~(c)~~ The name of the title insurance agency and its

principal business address.

(4) ~~(d)~~ The location of each title insurance agency office and the name under which each agency office conducts or will conduct business.

(5) ~~(e)~~ The name of each title insurance agent to be in full-time charge of a title insurance ~~an~~ agency office and specification of which office.

(6) ~~(f)~~ Such additional information as the department requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain that such persons meet the requirements of this code.

~~(2) The applicant must have deposited with the department securities of the type eligible for deposit under s. 625.52 and having at all times a market value of not less than $35,000. In place of such deposit, the title insurance agency may post a surety bond of like amount payable to the department for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with the appointing insurer. If a properly documented claim is timely filed with the department by a damaged title insurer, the department may remit an appropriate amount of the deposit or the proceeds that are received from the surety in payment of the claim. The required deposit or bond must be made by the title insurance agency, and a title insurer may not provide the deposit or bond directly or indirectly on behalf of the title insurance agency. The deposit or bond must secure the performance by the title insurance~~

~~agency of its duties and responsibilities under the issuing agency contracts with each title insurer for which it is appointed. The agency may exchange or substitute other securities of like quality and value for securities on deposit, may receive the interest and other income accruing on such securities, and may inspect the deposit at all reasonable times. Such deposit or bond must remain unimpaired as long as the title insurance agency continues in business in this state and until 1 year after termination of all title insurance agency appointments held by the title insurance agency. The title insurance agency is entitled to the return of the deposit or bond together with accrued interest after such year has passed, if no claim has been made against the deposit or bond. If a surety bond is unavailable generally, the department may adopt rules for alternative methods to comply with this subsection. With respect to such alternative methods for compliance, the department must be guided by the past business performance and good reputation and character of the proposed title insurance agency. A surety bond is deemed to be unavailable generally if the prevailing annual premium exceeds 25 percent of the principal amount of the bond.~~

Section 5. Paragraphs (a), (b), and (c) of subsection (1) of section 626.8419, Florida Statutes, are amended to read:

626.8419 Appointment of title insurance agency.—

(1) The title insurer engaging or employing the title insurance agency must file with the department, on forms

furnished by the department, an application certifying that the proposed title insurance agency meets all of the following requirements:

(a) The title insurance agency has ~~must have~~ obtained a fidelity bond in an amount of at least~~, not less than~~ $50,000, acceptable to the insurer appointing the agency. If a fidelity bond is unavailable generally, the department shall ~~must~~ adopt rules for alternative methods to comply with this paragraph.

(b) The title insurance agency must have obtained errors and omissions insurance in an amount acceptable to the insurer appointing the agency. The amount of the coverage must be at least ~~may not be less than~~ $250,000 per claim and an aggregate limit with a deductible no greater than $10,000. If errors and omissions insurance is unavailable generally, the department shall ~~must~~ adopt rules for alternative methods that ~~to~~ comply with this paragraph.

(c) ~~Notwithstanding s. 626.8418(2),~~ The ~~the~~ title insurance agency must have obtained a surety bond in an amount of at least ~~not less than~~ $35,000 made payable to the title insurer or title insurers appointing the agency. The surety bond must be for the benefit of any appointing title insurer damaged by a violation by the title insurance agency of its contract with the appointing title insurer. If the surety bond is payable to multiple title insurers, the surety bond must provide that each title insurer is to be notified if ~~in the event~~ a claim is made upon the surety bond or the bond is terminated.

Section 6. Subsections (3) and (4) of section 626.8437, Florida Statutes, are amended to read:

626.8437 Grounds for denial, suspension, revocation, or refusal to renew license or appointment.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency, and it shall suspend or revoke the eligibility to hold a license or appointment of such person, if it finds that as to the applicant, licensee, appointee, or any principal thereof, any one or more of the following grounds exist:

(3) Willful misrepresentation of any title insurance policy~~, guarantee of title, binder,~~ or commitment, or willful deception with regard to ~~any~~ such policy~~, guarantee, binder,~~ or commitment, done ~~either~~ in person or by any form of dissemination of information or advertising.

(4) Demonstrated lack of fitness or trustworthiness to represent a title insurer in the issuance of its commitments or~~,~~ ~~binders,~~ policies of title insurance~~, or guarantees of title~~.

Section 7. Subsection (3) is added to section 627.778, Florida Statutes, to read:

627.778 Limit of risk.—

(3) Only contract remedies are available for the breach of a duty which arises solely from the terms of a contract of title insurance or an instrument issued pursuant to section 627.786(3), Florida Statutes.

Section 8. Subsection (2) of section 627.7845, Florida

Statutes, is amended to read:

627.7845 Determination of insurability required; preservation of evidence of title search and examination.—

(2) The title insurer shall cause the evidence of the determination of insurability and the reasonable title search or search of the records of a Uniform Commercial Code filing office to be preserved and retained in its files or in the files of its title insurance agent or agency for at least ~~a period of not less than~~ 7 years after the title insurance commitment or~~,~~ title insurance policy~~, or guarantee of title~~ was issued. The title insurer or its agent or agency must produce the evidence required to be maintained under ~~by~~ this subsection at its offices upon the demand of the office. Instead of retaining the original evidence, the title insurer or its ~~the title insurance~~ agent or agency may, in the regular course of business, establish a system under which all or part of the evidence is recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process that ~~which~~ accurately reproduces or forms a durable medium for reproducing the original.

Section 9. This act shall take effect July 1, 2014.

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

Amendment No.

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to title insurance; amending s. 626.8412, F.S.; specifying that only a licensed and appointed agent or agency is authorized to sell title insurance; amending s. 626.8413, F.S.; providing additional limitations on the name that a title insurance agent or agency may adopt; providing applicability; amending s. 626.8417, F.S.; conforming provisions to changes made by the act; amending s. 626.8418, F.S.; revising the application requirements for a title insurance agency license; deleting certain bonding requirements and procedures; amending s. 626.8419, F.S.; conforming provisions to changes made by the act; amending s. 626.8437, F.S.; revising terms relating to grounds for actions against a licensee or appointee; amending s. 627.778, F.S.; limiting the remedies available for the breach of duty arising from a title insurance contract; amending s. 627.7845, F.S.; revising terms relating to determination of insurability and preservation of evidence of title search and examination; providing effective dates.

Citizens Property
Insurance Corporation

Citizens Property Insurance Corporation

Jay Adams, Vice President of Claims

Citizens Sinkhole Stabilization Managed Repair Program

January 15, 2014

CITIZENS
PROPERTY INSURANCE CORPORATION

Intent for the Sinkhole Managed Repair Program

Sinkhole Managed Repair Program Highlights

- Voluntary Program for Policyholders to select a Vendor from the Managed Repair Program
- Vendors will be credentialed with background checks conducted
- Program will include stabilization Vendors licensed for all types of sinkhole repairs
- Policyholder may select Vendors outside of the Program and will not lose any rights with respect to the method of repair they elect

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Program Benefits

- Provide safety and security for our policyholders by stabilizing home
- Provide credentialed vendors who in turn provide 5 year warranties
- Improve local real estate markets with documented home repairs
- Improve local tax base by restoring homes to market value

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Policyholder Benefits

- Improved Policyholder satisfaction
- Immediate access to a network of experienced and credentialed stabilization service Vendors
- Voluntary selection by the Policyholder utilizing the Managed Repair Program or a Vendor of their choice
- Decreases the inherent risk when engaging Vendors of an unknown quality from outside the network
- 5 year written warranty transferable to all new title holders backed by Citizens

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Policyholder Benefits

- Performance and Payment bond requirements prior to any stabilization services beginning
- Engineering firm validation of completion of Statement of Work
- Mitigates the further erosion to property values and the property tax base by ensuring the appropriate repair of sinkhole damaged homes
- The Policyholder is entitled to all rights under the insurance policy to the nature and extent of the repairs

Vendor Selection and Credentialing

Vendor Selection

- Awarded Vendors in an "Active" status will be placed on a randomized list and provided to the Policyholder for selection
- If the Policyholder requests Citizens to assign the Vendor, a round robin assignment process will be utilized
- Policyholder may select a Vendor of their choice not engaged in the Managed Repair Program
- Itemized price list is utilized to standardize the pricing according to normal and customary sinkhole repairs
- All respondents that meet the following will be eligible to participate:
  - Minimum five years in business
  - Minimum insurance requirements
  - Documented experience in residential and commercial sinkhole stabilization projects
  - Payment and performance bonding capacity for each project assigned
  - Minimum five year labor and material warranty against structural damage

Vendor Credentialing

Entity Level Credentialing

- Vendor Florida Registrations ("Sunbiz")
- Vendor Form W-9, Request for Taxpayer Identification Number and Certification
- Certificate(s) of Insurance
- Entity Statement of Experience for Residential Stabilization Projects
- Entity Statement of Experience for Commercial Stabilization Projects
- Statement of Bonding Capacity
- Five Year Warranty

Designee Level Credentialing

- Certified Contractor License for all Vendor principals
- Criminal Background Investigation Report
- Criminal History (Federal, State & County)
- Sexual Offender Registries
- Government & Terrorist Watch Lists
- Identity Verification Reports
- Personal Reference Reports
- Designee Statement of Experience for Stabilization Projects
- Ethics & Confidentiality Acknowledgement Form
- Vendor Conflict of Interest Disclosure Form
- Personnel Photo
- Drug-Free Workplace Certification

Only applies to Citizens Sinkhole Managed Repair Program Vendors

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Warranty and Bonding

Five-Year Warranty

- Vendor must provide a minimum 5-year written warranty against structural damage resulting in the failure of the Vendor's stabilization services at no additional cost to either the Policyholder or Citizens and be underwritten by the Vendor
- Terms & Conditions
  - Policyholder is the named Beneficiary
  - Warranty period begins when the Engineering Firm and the Policyholder sign off that the SOW is complete
  - Covers defects in workmanship and defects in materials
  - Transferable to all new title holders for the life of the warranty
  - Changes in ownership of the Vendor must include language that honors the warranty under the new ownership
- Should the Vendor not be able to honor the warranty, Citizens will assume the responsibility for insuring that the terms and conditions of the warranty are met

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Certificates of Bonding

- Vendor must meet bonding requirements prior to work commencing
  - Citizens must be named as Obligee
  - Performance Bond must at a minimum be equal to the agreed Cost Estimate by project
  - Payment Bond must at a minimum be equal to an amount sufficient to pay all suppliers and subcontractors

Performance and Insurance Requirements

Performance Requirements

Performance Requirements	Service Level Agreements (SLAs)
MRP Vendor Contact w/Policyholder After Assignment	Within one (1) Business Day of the Project Assignment Date
MRP Vendor Questions Regarding SOW or Pricing	Prior to Submission of agreement to provide services as specified by the SOW or Cost Estimate
Agreed SOW and Cost Estimate to Citizens	Within two (2) Business Days of the Project Assignment Date
Policyholder Executed Agreement to Citizens	Within two (2) Business Days of the Policyholder Executed Agreement
Certificates of Bonding	Within five (5) Business Days of Policyholder Executed Agreement
Delivery of Warranty Documents at Project Closeout	Within three (3) Business Days of Receipt of Engineering Firm Final Report
Project Status Updates	Within one (1) Business Day of the Change in Status
Agreed Revised SOW and Cost Estimate to Citizens (if required)	Within two (2) Business Days of Receipt of Amended SOW
Revised Certificates of Bonding (if required)	Within five (5) Business Days of revised Cost Estimate agreement date

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Additional Performance Measures

- Project Cycle Times will be measured from assignment of loss to delivery of project close out documents to the Policyholder.
- Complaints by Policyholders, Citizens staff and/or Engineering Firms regarding job performance, timeliness and professional demeanor will be tracked.
- Breach of Service Levels if Vendor fails to fully and satisfactorily provide or perform any service during the term of the Agreement, such failure should constitute a material breach of the Agreement.

Insurance Requirements

Sinkhole MRP Vendor			
Coverage	Per Occurrence	Aggregate	Additional Notes
Workers Compensation	$1,000,000	$1,000,000	
Employers Liability	$1,000,000	$1,000,000	
Commercial General Liability	$1,000,000	$2,000,000	Citizens named as additional insured
Auto Liability	$1,000,000		Citizens named as additional insured
Umbrella/Excess Liability		$4,000,000	
Professional Liability (E&O)	$2,000,000	$2,000,000	

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Questions