Regulatory Affairs Committee

Thursday, January 14, 2016
8:00 AM
Sumner Hall (404 HOB)

MEETING PACKET

Steve Crisafulli
Speaker

Jose Diaz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Affairs Committee

Start Date and Time:	Thursday, January 14, 2016 08:00 am
End Date and Time:	Thursday, January 14, 2016 10:00 am
Location:	Sumner Hall (404 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 17 Family Trust Companies by Roberson, K.
CS/HB 79 Property Insurance Appraisers and Property Insurance Appraisal Umpires by Insurance & Banking Subcommittee, Artiles
CS/HB 145 Financial Transactions by Insurance & Banking Subcommittee, McGhee
HJR 193 Renewable Energy Source Devices & Components/Exemption from Certain Taxation & Assessment by Rodrigues, R., Berman
HB 195 Renewable Energy Source Devices by Rodrigues, R., Berman
CS/HB 347 Utility Projects by Finance & Tax Committee, Sprowls
CS/HB 413 Title Insurance by Insurance & Banking Subcommittee, Hager
CS/HB 577 Liability Insurance Coverage by Insurance & Banking Subcommittee, Lee
HB 695 Title Insurance by Boyd
HB 699 Reciprocal Insurers by Grant

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., Wednesday, January 13, 2016.

By request of the Chair, all Regulatory Affairs Committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, January 13, 2016.

NOTICE FINALIZED on 01/12/2016 4:08PM by Ellinor.Martha

The Florida House of Representatives

Regulatory Affairs Committee

Steve Crisafulli
Speaker

Jose Diaz
Chair

AGENDA

January 14, 2016
404 HOB
8:00 AM – 10:00 AM

I. Call to Order and Roll Call

II. HB 17 by *Rep. K. Roberson*
Family Trust Companies

III. CS/HB 79 by *Insurance & Banking Subcommittee; Rep. Artiles*
Property Insurance Appraisers and Property Insurance Appraisal Umpires

IV. CS/HB 145 by *Insurance & Banking Subcommittee; Rep. McGhee*
Financial Transactions

V. HJR 193 by *Reps. R. Rodrigues; Berman*
Renewable Energy Source Devices & Components/Exemption from Certain Taxation & Assessment

VI. HB 195 by *Reps. R. Rodrigues; Berman*
Renewable Energy Source Devices

VII. CS/HB 347 by Finance & Tax C*ommittee; Rep. Sprowls and others*
Utility Projects

VIII. CS/HB 413 by *Insurance & Banking Subcommittee; Rep. Hager*
Title Insurance

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

IX. CS/HB 577 by *Insurance & Banking Subcommittee; Rep. Lee*
Liability Insurance Coverage

X. HB 695 by *Rep. Boyd*
Title Insurance

XI. HB 699 by *Rep. Grant*
Reciprocal Insurers

XII. ADJOURNMENT

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 17 Family Trust Companies
SPONSOR(S): Roberson
TIED BILLS: **IDEN./SIM. BILLS:** SB 80

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Bauer	Luczynski
2) Regulatory Affairs Committee		Bauer JB	Hamon K.W.H.

SUMMARY ANALYSIS

In 2014, the Florida Legislature created the Florida Family Trust Company Act (ch. 662, F.S., "the Act"). Effective October 1, 2015, the Act allows families to form unlicensed, licensed, and foreign licensed private family trust companies (FTCs), subject to certain regulatory requirements. The Act will be enforced by the Office of Financial Regulation (OFR), which charters and regulates entities engaging in financial institution business in Florida, including public, commercial trust companies.

The bill modifies and clarifies a number of the Act's requirements of licensed FTCs, unlicensed FTCs, and foreign licensed FTCs. The bill:

- Provides that OFR must conduct an examination of a licensed FTC every 36 months instead of the current 18 months;
- Removes the requirement that OFR conduct examinations of unlicensed FTCs;
- Requires a judicial determination of a breach of fiduciary duty or trust before the OFR may enter a cease and desist order, and clarifies that a FTC has an opportunity for an administrative hearing before the OFR may revoke a FTC's license;
- Requires all FTCs in operation on October 1, 2016, to either apply for the appropriate FTC license or registration, or cease doing business in this state by December 30, 2016;
- Clarifies that OFR is responsible for the regulation, supervision, and examinations of licensed FTCs, and limits the OFR's role over unlicensed or foreign FTCs to ensuring that services provided by such companies are provided only to family members and to determining conformity with the Act;
- Requires the management of a licensed FTC to have at least three directors or managers and requires that at least one of those directors or managers be a Florida resident;
- Provides that a FTC registration application must state that trust operations will comply with statutory provisions relating to organizational documents, minimum capital requirements, and segregated books, records, and assets;
- Provides that the designated relatives in a licensed FTC may not have a common ancestor within three generations, instead of the current five generations;
- Requires that a registration application for a foreign licensed FTC must provide proof that the company is in compliance with the FTC laws and regulations of its principal jurisdiction;
- Requires amendments to certificates of formation or certificates of organization to be submitted to the OFR at least 30 days before it is filed or effective; and
- Allows FTCs to file annual renewal applications within 45 days of the end of each calendar year.

The bill does not appear to have a fiscal impact on state and local governments. The bill may have a positive fiscal impact on the private sector.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Trusts

A trust is generally defined as, "a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it."[1] A trust must have three interest holders - a settlor (also called a "grantor"), a trustee, and a beneficiary. The settlor is the party creating the trust. The beneficiary has an equitable interest in property subject to trust, enjoying the benefit of the administration of the trust by a trustee.[2] The trustee holds legal title to the property held in trust for the benefit of the beneficiary.[3] A bank with trust powers or a trust company may offer its services to the general public to serve as trustee of private trusts.

Background: Florida Family Trust Company Act

In 2014, the Florida Legislature created the Florida Family Trust Company Act (ch. 662, F.S., "the Act").[4] Effective October 1, 2015, the Act allows families to form unlicensed, licensed, and foreign licensed private family trust companies (FTCs) subject to certain regulatory requirements that will be enforced by the Office of Financial Regulation (OFR), which charters and regulates entities engaging in financial institution business in Florida, which include public, commercial trust companies, in accordance with the Florida Financial Institutions Codes (Codes).[5]

Families may prefer to form a private FTC (instead of using individual or institutional trustees) for a variety of reasons, such as tax and regulatory advantages, privacy, flexibility, and self-governance of the family's financial affairs. At least 14 other states currently have statutes governing the organization and operation of FTCs.

In general, an FTC is an entity which provides trust services similar to those provided by an individual or an institutional trustee. This includes serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family. A Florida FTC must be owned exclusively by family members and may not provide fiduciary services to the public.[6] The Act's three FTC types are:[7]

1. *(Unlicensed) Family trust company*
   A FTC is a corporation or limited liability company exclusively owned by one or more family members, organized or qualified to do business in Florida, and acts as a fiduciary for one or more family members. A FTC may not serve as a fiduciary for a non-family member, except that it may provide such fiduciary services for up to 35 individuals who are not family members, but who are current or former employees of the FTC or of trusts, companies, or other entities that are family members. These FTCs must register with the OFR before beginning operations in Florida.[8]

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[1] 55A Fla.Jur.2d Trusts s.1; *see also* s. 731.201(38), F.S.
[2] *Id.*
[3] 55A Fla.Jur.2d Trusts s.1.
[4] Ch. 2014-97, Laws of Fla.
[5] The Codes consist of ch. 655 (Financial Institutions), ch. 657 (Credit Unions), ch. 658 (Banks and Trust Companies), ch. 660 (Trust Business), ch. 663 (International Banking), ch. 665 (Associations), and ch. 667 (Savings Banks), F.S.
[6] s. 662.102, F.S.
[7] s. 662.111(12), (15), and (16), F.S.
[8] s. 662.122, F.S.

2. *Foreign licensed family trust company*
   A foreign licensed FTC has its principal place of business outside of Florida, and is licensed, operating, and supervised by a state other than Florida or by the District of Columbia, and is not owned by or a subsidiary of a business entity that is organized in or licensed by any foreign country as defined by the international banking chapter of the Codes.[9] Foreign licensed FTCs must register with the OFR before beginning operations in Florida.[10]

3. *Licensed family trust company*
   A licensed FTC operates under a current (not revoked or suspended) license issued by the OFR, pursuant to s. 662.121, F.S.

The Act contains regulatory requirements relating to:
- Initial and renewal licensure and registration,
- Acts authorizing the OFR to take action against a FTC's license or registration, including cease and desist authority,
- Qualifications for directors, officers, managers or managerial members of any FTC type,
- Organizational and management authority for FTCs,
- Capital requirements for FTCs with a principal place of business in Florida, and
- Investigation, examination, and enforcement authority by the OFR, including cease and desist authority.

Current Situation

According to proponents of the Act and the bill, a number of family offices in Florida have indicated that the Act is not workable in its current form, namely due to the Act's examination requirements that would be intrusive into private family arrangements, and may exceed what is minimally required to avoid triggering the application of certain federal securities laws.[11] Currently, the Act requires that the OFR conduct an examination of all FTC types at least once every 18 months.[12]

Deficiencies in the Act for unlicensed FTCs and foreign licensed FTCs

Section 662.141(1), F.S., requires the OFR to conduct mandatory examinations of each unlicensed FTC once every 18 months in order to determine that it is operating as an unlicensed FTC within the meaning of the Act. It is unclear how the OFR will conduct such examinations, but each review of an unlicensed FTC will necessarily require a review of private family trust instruments and financial arrangements. The majority of FTCs in existence in other jurisdictions choose to organize as unlicensed, unregulated FTCs, due to the desire to keep family arrangements private and to avoid being subjected to intrusive examinations. Examinations of unlicensed FTCs are inconsistent with the purpose of the Act, which provides that "unlike trust companies formed under chapter 658, there is no public interest to be served outside of ensuring that fiduciary activities performed by a family trust company are restricted to family members."[13] If unlicensed FTCs are subject to mandatory OFR examinations, then Florida's comparatively intrusive examination requirements may deter unlicensed FTCs located in other states, as well as family offices currently operating in Florida, from organizing as an unlicensed FTC in Florida.[14]

[9] *See* s. 663.01(3), F.S.
[10] s. 662.122, F.S.
[11] Real Property, Probate and Trust Law Section (RPPTL) of the Florida Bar, *White Paper on Proposed Changes to the Florida Family Trust Company Act* ("RPPTL White Paper"), pp. 2-3 (on file with the Insurance & Banking Subcommittee staff).
[12] s. 662.141(1), F.S.
[13] s. 662.102, F.S.
[14] RPPTL White Paper, pp. 3-4.

Deficiencies in the Act for licensed FTCs

According to the proponents, there is no public interest served by having the OFR regulate FTCs. Nevertheless, a small number of FTCs may desire OFR supervision for a number of reasons including family governance issues, federal income tax considerations and exemption from the federal Investment Advisers Act of 1940 (IAA), which is administered by the U.S. Securities and Exchange Commission (SEC).[15] With certain exceptions, the IAA requires that firms or sole practitioners compensated for advising others about securities investments must register with the SEC and conform to regulations designed to protect investors.[16] One such exception is a "family office."[17] However, the SEC has somewhat restrictively defined "family office," and for many families this definition would exclude certain in-laws, aunts and uncles, and cousins. Thus, a family office serving those individuals would typically fail the SEC's "family office" definition, subjecting it to burdensome SEC registration as an investment adviser.

SEC registration requirements and regulations may include: (1) filing a Form ADV with the SEC, which must be kept current with periodic updates; (2) annual filings with the SEC of an audited balance sheet; (3) undergoing an annual surprise examination by an independent public accountant to verify client assets; and (4) inspections and examinations by SEC staff.[18] While the IAA generally protects the disclosure of client identities, investments or affairs and the fact of examination or investigation by the SEC, it does make public information contained in registration applications, reports, and amendments thereto filed with the SEC, unless the SEC "finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors."[19]

The IAA was written with the intention that a licensed FTC would not be required to register as an "investment adviser" with the SEC. In addition to exempting family offices, the 1940 Act excludes "banks" from the definition of "investment adviser," and includes "trust company[ies]... doing a substantial portion of the business which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks....*and which is supervised and examined* by State or Federal authority having supervision over banks...and which is not operated for the purpose of evading the provisions of this subchapter"[20] (emphasis added). It was believed that OFR regulation of licensed FTCs under the Act would be sufficient to constitute "supervised and examined" within the meaning of this so-called "bank exemption" from SEC regulation under the IAA.

The view of SEC regulation experts regarding whether state "supervision and examination" is sufficient to allow a FTC to qualify for the "bank exemption" has evolved since the enactment of the Act. Currently, the Act requires OFR to examine licensed FTCs once every 18 months, but only for compliance with very specific provisions of the Act.[21] Moreover, licensed FTCs may be able to satisfy examination requirements through the submission of audits conducted by certified public accounting firms. Experts in the field of SEC regulation now believe that in order to qualify for the "bank exemption," a licensed FTC must be regulated and examined in substantially the same manner as a public trust company, although not necessarily with the same frequency.[22] The regulation and examination of licensed FTCs under the current Act falls short of

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[15] 15 U.S.C. §§ 80b-1 through §80b-21.

[16] U.S. SECURITIES AND EXCHANGE COMMISSION, *The Laws That Govern the Securities Industry*, http://www.sec.gov/about/laws.shtml#invadvact1940 (last visited Sept. 1, 2015).

[17] 15 U.S.C. §80-2(a)(11)(G) and 17 C.F.R. §275.202(a)(11)(G)-1.

[18] 15 U.S.C. §§80b-3 and 80b-4; *see also* SECURITIES & EXCHANGE COMMISSION, *How to Register as an Investment Adviser*, at http://www.sec.gov/divisions/investment/iaregulation/regia.htm (last viewed Sept. 8, 2015).

[19] 15 U.S.C. §80b-10.

[20] *See* 15 U.S.C. §80b-2(a)(11)(A) (definition of "investment adviser") and 15 U.S.C. §80b-2(a)(2)(C) (definition of "bank").

[21] s. 662.141, F.S.

[22] Section 655.045(1), F.S., requires the OFR to examine each state financial institution at least every 18 months. While the OFR may accept an examination from an appropriate federal regulator or may conduct joint or concurrent examinations with federal regulators, the OFR must conduct its own independent examination at least once during each 36-month period beginning July 1, 2014.

this standard, which would make them unlikely to qualify for the "bank exemption" from investment advisor registration requirements.[23]

Effect of the Bill

In addition to addressing the deficiencies in the Act's examination requirements as discussed above, the bill clarifies a number of other provisions in the Act.

Examinations of FTCs

Section 1 of the bill amends s. 662.102, F.S. (which describes the purpose of the Act), to clarify that OFR will regulate, supervise and examine only those FTCs which choose to organize as licensed FTCs.

Section 3 of the bill creates s. 662.113, F.S., to clarify that the Codes do not apply to FTCs unless otherwise indicated in the Act, although it does not limit the OFR's ability to investigate any entity to ensure that it is not in violation with the Act or the Codes. The Act is intended to be a stand-alone framework for FTC governance.

Section 11 of the bill amends s. 662.141, F.S., to expand the scope of OFR examinations of *licensed FTCs* to make them sufficiently similar to examinations of public trust companies in order for to qualify for the "bank exemption" from SEC regulation under the 1940 Act. Although examinations of licensed FTCs will be more rigorous, the bill provides that they will occur only once every 36 months rather than once every 18 months. The bill also clarifies that *unlicensed FTCs and foreign licensed FTCs* are subject to OFR examinations to the extent necessary to determine whether they have engaged in certain prohibited activities or have advertised services to the general public, and makes some drafting changes to reorder subsections.

Licensure, Registration, and Regulation of FTCs

Section 5 of the bill amends s. 662.1215, F.S., to specify that the OFR's initial investigation of applicants seeking to become licensed FTCs includes a confirmation that the proposed FTC's management structure complies with s. 662.125, F.S., which contains requirements for directors and officers.

Section 6 of the bill amends s. 662.122, F.S., to add cross-references (regarding organizational documents and minimum capital requirements) for the registration process for unlicensed FTCs and foreign licensed FTCs. It also adds a requirement to this statute that every foreign licensed FTC provides proof it is in compliance with the FTC laws and regulations of its principal jurisdiction.

Section 7 of the bill amends s. 662.1225, F.S., to clarify that a foreign licensed FTC must be in compliance with the FTC laws and regulations of its principal jurisdiction as a condition to operating in this state. The bill also provides that companies operating as a FTC as of October 1, 2016, must apply for licensure or registration on or before December 30, 2016, or cease doing business in this state.

Section 9 of the bill amends s. 662.128, F.S., to allow FTCs to file their annual renewals within 45 days after the end of the calendar year, rather than the 30 days currently required in statute. The annual renewal application is anticipated to be a somewhat complex document requiring more than 30 days to prepare. The bill also clarifies that the license renewal application's verified statement be made by the FTC's authorized representative.

Section 12 of the bill amends s. 662.142, F.S., which sets forth the grounds for revocation of a licensed FTC's license by the OFR, including an act of commission or omission that is determined by a court of competent jurisdiction to be a breach of trust or fiduciary duty. If the OFR finds that an FTC has committed an act constituting a breach of trust or fiduciary duty, the OFR may enter an order immediately revoking the

[23] RPPTL White Paper, pp. 4-6.

FTC's license. The bill modifies s. 662.142, F.S., to account for the licensed FTC's administrative hearing rights under the Administrative Procedure Act (ch. 120, F.S.), and clarifies that the OFR may enter an order of revocation after a hearing has not been timely requested pursuant to ss. 120.569 and 120.57, F.S., or if a hearing is held and it has been determined that the licensed FTC has committed any violations enumerated in s. 662.142(1), F.S.

Section 13 of the bill amends s. 662.143, F.S., which authorizes the OFR to issue a cease and desist order upon a FTC in the event of certain violations of the Act, including an act of commission or omission that the OFR has reason to believe constitutes a breach of trust or a breach of fiduciary duty. The bill modifies s. 662.144, F.S., to require that an act of commission or omission be judicially determined to be a breach of trust or fiduciary duty prior to OFR issuing a cease and desist order.

Section 14 of the bill amends s. 662.144, F.S., to provide procedures for reinstating a FTC license or registration through the filing of a renewal application and payment of fees and fines.

Section 17 of the bill amends s. 662.151, F.S., to relocate existing language to s. 662.1225, F.S., (which is amended by Section 7 of the bill), regarding general FTC requirements. As noted above, Section 7 of the bill requires that companies operating as a FTC as of October 1, 2016, must apply for licensure or registration on or before December 30, 2016, or cease doing business in this state.

FTC Organization & Operation

Section 2 of the bill amends the definition of "officer" in s. 662.111, F.S., which includes non-director individuals who participate in the FTC's major policymaking functions. The definition contains a presumption that certain officers, such as the president, the chief financial officer, etc., are *executive* officers, unless excluded from major policymaking function by board resolution, bylaws, or operating agreement, as well as actual non-participation in those major policymaking functions by the individual. The bill amends this definition to eliminate reference to an "executive" officer.

Section 4 of the bill amends s. 662.120(2), F.S., which limits licensed FTCs to two "designated relatives," so long as the designated relatives do not have a common ancestor within five generations. The bill amends this provision to prohibit the two designated relatives from having a common ancestor within *three* generations.

Section 8 of the bill amends s. 662.123, F.S., which sets forth certain requirements for organizational documents for a FTC and requires a FTC to submit any proposed changes to its articles of incorporation, articles of organization, bylaws, or articles of organization of a limited liability company to OFR for review at least 30 days before an amendment is to become effective. The bill adds certificates of formation or certificates of organization to these organizational documents that requiring OFR's preapproval, but eliminates bylaws and articles of organization. According to the bill's proponents, amendments to a FTC's bylaws or articles of organization should not require approval from OFR, because the overwhelming majority of such instruments typically involve ministerial acts of day-to-day governance.[24]

Section 10 of the bill amends s. 662.132, F.S., which sets forth restrictions on the purchases of bonds or other security instruments by a FTC from an affiliate of the FTC. The bill deletes the reference with the term "affiliate" in order to avoid confusion with the defined term "family affiliate" in s. 662.111, F.S. The bill substitutes "parent or subsidiary company" in place of the term "affiliate." Additionally, the bill substitutes the more legally accurate term "broker-dealer" instead of "distributor" to describe permissible investment transactions for FTCs.

Sections 15 and 16 of the bill make technical, drafting changes to ss. 662.145 and 662.150, F.S., relating to grounds for removal and domestication of a foreign FTC.

[24] RPPTL White Paper, p. 7.

B. SECTION DIRECTORY:

Section 1. Amends s. 662.102, F.S., relating to the purpose of the Family Trust Company Act.

Section 2. Amends s. 662.111, F.S., relating to definitions.

Section 3. Creates s. 662.113, F.S., relating to applicability of other chapters of the financial institutions codes.

Section 4. Amends s. 662.120, F.S., relating to maximum number of designated relatives.

Section 5. Amends s. 662.1215, F.S., relating to investigation of license applicants.

Section 6. Amends s. 662.122, F.S., relating to registration of a family trust company or a foreign licensed family trust company.

Section 7. Amends s. 662.1225, F.S., relating to requirements for a family trust company, licensed family trust company, and foreign licensed family trust company.

Section 8. Amends s. 662.123, F.S., relating to organizational documents; use of term "family trust" in name.

Section 9. Amends s. 662.128, F.S., relating to annual renewal.

Section 10. Amends s. 662.132, F.S., relating to investments.

Section 11. Amends s. 662.141, F.S., relating to examination, investigations, and fees.

Section 12. Amends s. 662.142, F.S., relating to revocation of license.

Section 13. Amends s. 662.143, F.S., relating to cease and desist authority.

Section 14. Amends s. 662.144, F.S., relating to failure to submit required report; fines.

Section 15. Amends s. 662.145, F.S., relating to grounds for removal.

Section 16. Amends s. 662.150, F.S., relating to domestication of a foreign family trust company.

Section 17. Amends s. 662.151, F.S., relating to registration of a foreign licensed family trust company.

Section 18. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   According to the bill's proponents, the bill should not have a fiscal impact on state and local governments. The bill's elimination and simplification of OFR examination requirements on licensed and non-licensed FTCs, respectively, should be revenue neutral or revenue positive. The application fees for establishing FTCs, annual certification and other fees are anticipated to offset OFR's costs in regulating licensed FTCs.[25]

[25] RPPTL White Paper, p. 10.

The OFR anticipates that revenues in year one from the proposed late fee will be $0, since there will only be initial licensure and registration and no renewals in the first year in which the Act is implemented. In subsequent years, the OFR estimates that late fees and fines for delinquent annual fees will be approximately $1,500 - $3,000 annually.[26]

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the proponents, the bill should help attract high net worth families to choose Florida as a jurisdiction to establish family trust companies.[27]

As noted above, the OFR anticipates that expenditures in year one from the proposed late fee will be $0, since there will only be initial licensure and registration and no renewals in the first year in which the Act is implemented. In subsequent years, the OFR anticipates that late fees and fines for delinquent annual fees will be approximately $1,500 - $3,000 annually.[28]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide any new rulemaking authority. The bill reorganizes s. 662.141, F.S., to move the Financial Services Commission's existing rulemaking authority in subsection (3) to subsection (6).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[26] Office of Financial Regulation, Agency Analysis of 2016 House Bill 17, p. 6 (Sept. 8, 2015).
[27] RPPTL White Paper, pp. 9-10.
[28] Office of Financial Regulation, Agency Analysis of 2016 House Bill 17, p. 6 (Sept. 8, 2015).

A bill to be entitled

An act relating to family trust companies; amending s. 662.102, F.S.; revising the purposes of the Family Trust Company Act; providing legislative findings; amending s. 662.111, F.S.; redefining the term "officer"; creating s. 662.113, F.S.; specifying the applicability of other chapters of the financial institutions codes to family trust companies; providing that the section does not limit the authority of the Office of Financial Regulation to investigate an entity to ensure that it does not violate of chapter 662, F.S., or applicable provisions of the financial institutions codes; amending s. 662.120, F.S.; revising the ancestry requirements for designated relatives of a licensed family trust company; amending s. 662.1215, F.S.; revising the requirements for investigations of license applicants by the Office of Financial Regulation; amending s. 662.122, F.S.; revising the requirements for registration of a family trust company and a foreign licensed family trust company; amending s. 662.1225, F.S.; requiring a foreign licensed family trust company to be in compliance with the family trust laws and regulations in its jurisdiction; specifying the date by which family trust companies must be registered or licensed or, if not registered or

licensed, cease doing business in this state; amending s. 662.123, F.S.; revising the types of amendments to organizational documents which must have prior approval by the office; amending s. 662.128, F.S.; extending the deadline for the filing of, and revising the requirements for, specified license and registration renewal applications; amending s. 662.132, F.S.; revising the authority of specified family trust companies while acting as fiduciaries to purchase certain bonds and securities; revising the prohibition against the purchase of certain bonds or securities by specified family trust companies; amending s. 662.141, F.S.; revising the purposes for which the office may examine or investigate a family trust company that is not licensed and a foreign licensed family trust company; deleting the requirement that the office examine a family trust company that is not licensed and a foreign licensed family trust company; providing that the office may rely upon specified documentation that identifies the qualifications of beneficiaries as permissible recipients of family trust company services; deleting a provision that authorizes the office to accept an audit by a certified public accountant in lieu of an examination by the office; authorizing the Financial Services Commission to adopt rules establishing

specified requirements for family trust companies; amending s. 662.142, F.S.; deleting a provision that authorizes the office to immediately revoke the license of a licensed family trust company under certain circumstances; revising the circumstances under which the office may enter an order revoking the license of a licensed family trust company; amending s. 662.143, F.S.; revising the acts that may result in the entry of a cease and desist order against specified family trust companies and affiliated parties; amending s. 662.144, F.S.; authorizing a family trust company to have its terminated registration or revoked license reinstated under certain circumstances; revising the timeframe for a family trust company to wind up its affairs under certain circumstances; requiring the deposit of certain fees and fines in the Financial Institutions' Regulatory Trust Fund; amending s. 662.145, F.S.; revising the office's authority to suspend a family trust company-affiliated party who is charged with a specified felony or to restrict or prohibit the participation of such party in certain financial institutions; s. 662.150, F.S.; making a technical change; amending s. 662.151, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Section 662.102, Florida Statutes, is amended to read:

662.102 Purposes; findings ~~Purpose~~.—The purposes ~~purpose~~ of the Family Trust Company Act are ~~is~~ to establish requirements for licensing family trust companies, to regulate ~~provide regulation of those~~ persons who provide fiduciary services to family members of no more than two families and their related interests as a family trust company, and to establish the degree of regulatory oversight required of the Office of Financial Regulation over such companies. The ~~Unlike trust companies formed under chapter 658, there is no~~ public interest ~~to be~~ served by this chapter is to ensure ~~outside of ensuring~~ that fiduciary activities performed by a family trust company are restricted to family members and their related interests and as otherwise provided ~~for~~ in this chapter. Therefore, the Legislature finds that:

(1) A family trust company is ~~companies are~~ not a financial institution ~~institutions~~ within the meaning of the financial institutions codes.~~, and~~ Licensure of such a company ~~these companies~~ pursuant to chapters 658 and 660 is ~~should~~ not ~~be~~ required as it would not promote the purposes of the codes specified ~~as set forth~~ in s. 655.001.

(2) A family trust company may elect to be a licensed

family trust company under this chapter if the company desires to be subject to the regulatory oversight of the office, as provided in this chapter, notwithstanding that the company restricts its services to family members.

(3) With respect to: ~~Consequently, the office~~

(a) A licensed ~~of Financial Regulation is not responsible for regulating~~ family trust company, the office is responsible for regulating, supervising, and examining the company as provided under this chapter.

(b) A family trust company that does not elect to be licensed and a foreign licensed family trust company, ~~companies to ensure their safety and soundness, and the responsibility of~~ the office's role ~~office~~ is limited to ensuring that fiduciary services provided by the company ~~such companies~~ are restricted to family members and authorized related interests and not to the general public. The office is not responsible for examining a family trust company or a foreign licensed family trust company regarding the safety or soundness of its operations.

Section 2. Subsection (19) of section 662.111, Florida Statutes, is amended to read:

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

(19) "Officer" of a family trust company means an individual, regardless of whether the individual has an official title or receives a salary or other compensation, who may participate in the major policymaking functions of a family trust company, other than as a director. The term does not

include an individual who may have an official title and exercise discretion in the performance of duties and functions, but who does not participate in determining the major policies of the family trust company and whose decisions are limited by policy standards established by other officers, regardless of whether the policy standards have been adopted by the board of directors. The chair of the board of directors, the president, the chief officer, the chief financial officer, the senior trust officer, and all executive vice presidents of a family trust company, and all managers if organized as a limited liability company, are presumed to be ~~executive~~ officers unless such officer is excluded~~,~~ by resolution of the board of directors or members or by the bylaws or operating agreement of the family trust company, other than in the capacity of a director, from participating in major policymaking functions of the family trust company, and such excluded officer does not actually participate therein.

Section 3. Section 662.113, Florida Statutes, is created to read:

662.113 Applicability of other chapters of the financial institutions codes.—If a family trust company, licensed family trust company, or foreign licensed family trust company limits its activities to the activities authorized under this chapter, the provisions of other chapters of the financial institutions codes do not apply to the trust company unless otherwise expressly provided in this chapter. This section does not limit

the office's authority to investigate an entity to ensure that it does not violate this chapter or applicable provisions of the financial institutions codes.

Section 4. Subsection (2) of section 662.120, Florida Statutes, is amended to read:

662.120 Maximum number of designated relatives.—

(2) A licensed family trust company may ~~not~~ have up to ~~more than~~ two designated relatives.~~, and~~ The designated relatives may not have a common ancestor within three ~~five~~ generations.

Section 5. Paragraph (e) is added to subsection (2) of section 662.1215, Florida Statutes, to read:

662.1215 Investigation of license applicants.—

(2) Upon filing an application for a license to operate as a licensed family trust company, the office shall conduct an investigation to confirm:

(e) That the management structure of the proposed company complies with s. 662.125.

Section 6. Paragraph (b) of subsection (1) and paragraphs (a) and (c) of subsection (2) of section 662.122, Florida Statutes, are amended to read:

662.122 Registration of a family trust company or a foreign licensed family trust company.—

(1) A family trust company that is not applying under s. 662.121 to become a licensed family trust company must register with the office before beginning operations in this state. The

registration application must:

(b) State that the family trust company is a family trust company as defined under this chapter and that its operations will comply with ss. 662.1225, 662.123(1), 662.124, 662.125, 662.127, 662.131, and 662.134.

(2) A foreign licensed family trust company must register with the office before beginning operations in this state.

(a) The registration application must state that its operations will comply with ss. 662.1225, 662.125, 662.127, 662.131, and 662.134 and that it is currently in compliance with the family trust company laws and regulations of its principal jurisdiction.

(c) The registration must include a certified copy of a certificate of good standing, or an equivalent document, authenticated by the official having custody of records in the jurisdiction where the foreign licensed family trust company is organized, along with satisfactory proof, as determined by the office, that the company is organized in a manner similar to a family trust company as defined under this chapter and is in compliance with the family trust company laws and regulations of its principal jurisdiction.

Section 7. Subsection (2) of section 662.1225, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

662.1225 Requirements for a family trust company, licensed family trust company, or foreign licensed family trust company.—

(2) In order to operate in this state, a foreign licensed family trust company must be in good standing in its principal jurisdiction, must be in compliance with the family trust company laws and regulations of its principal jurisdiction, and must maintain:

(a) An office physically located in this state where original or true copies of all records and accounts of the foreign licensed family trust company pertaining to its operations in this state may be accessed and made readily available for examination by the office in accordance with this chapter.

(b) A registered agent who has an office in this state at the street address of the registered agent.

(c) All applicable state and local business licenses, charters, and permits.

(d) A deposit account with a state-chartered or national financial institution that has a principal or branch office in this state.

(3) A company in operation as of October 1, 2016, which meets the definition of a family trust company, must, on or before December 30, 2016, apply for licensure as a licensed family trust company, register as a family trust company or foreign licensed family trust company, or cease doing business in this state.

Section 8. Subsection (2) of section 662.123, Florida Statutes, is amended to read:

662.123 Organizational documents; use of term "family trust" in name.—

(2) A proposed amendment to the articles of incorporation, articles of organization, certificate of formation, or certificate of organization~~, bylaws, or articles of organization~~ of a ~~limited liability company,~~ family trust company~~,~~ or licensed family trust company must be submitted to the office for review at least 30 days before it is filed or effective. An amendment is not considered filed or effective if the office issues a notice of disapproval with respect to the proposed amendment.

Section 9. Subsections (1) through (4) of section 662.128, Florida Statutes, are amended to read:

662.128 Annual renewal.—

(1) Within 45 ~~30~~ days after the end of each calendar year, a family trust company ~~companies~~, licensed family trust company ~~companies~~, or ~~and~~ foreign licensed family trust company ~~companies~~ shall file its ~~their~~ annual renewal application with the office.

(2) The license renewal application filed by a licensed family trust company must include a verified statement by an authorized representative of the trust company that:

(a) The licensed family trust company operated in full compliance with this chapter, chapter 896, or similar state or federal law, or any related rule or regulation. The application must include proof acceptable to the office that the company is

a family trust company as defined under this chapter.

(b) Describes any material changes to its operations, principal place of business, directors, officers, managers, members acting in a managerial capacity, and designated relatives since the end of the preceding calendar year.

(3) The registration renewal application filed by a family trust company must include:

(a) A verified statement by an authorized representative ~~officer~~ of the trust company that it is a family trust company as defined under this chapter and that its operations are in compliance with ss. 662.1225, 662.123(1), 662.124, 662.125, 662.127, 662.131, and 662.134, ~~,~~ chapter 896, ~~,~~ or similar state or federal law ~~,~~ or ~~any~~ related rule or regulation.

(b) ~~, and include~~ The name of the company's ~~its~~ designated relative or relatives, if applicable, and the street address for its principal place of business.

(4) The registration renewal application filed by a foreign licensed family trust company must include a verified statement by an authorized representative of the trust company that its operations are in compliance with ss. 662.1225, 662.125, 662.131, and 662.134 and in compliance with the family trust company laws and regulations of its principal jurisdiction. It must also provide:

(a) The current telephone number and street address of the physical location of its principal place of business in its principal jurisdiction.

(b) The current telephone number and street address of the physical location in this state of its principal place of operations where its books and records pertaining to its operations in this state are maintained.

(c) The current telephone number and address of the physical location of any other offices located in this state.

(d) The name and current street address in this state of its registered agent.

(e) Documentation satisfactory to the office that the foreign licensed family trust company is in compliance with the family trust company laws and regulations of its principal jurisdiction.

Section 10. Subsections (4) and (7) of section 662.132, Florida Statutes, are amended to read:

662.132 Investments.—

(4) Notwithstanding any other law, a family trust company or licensed family trust company may, while acting as a fiduciary, purchase directly from underwriters or broker-dealers ~~distributors~~ or in the secondary market:

(a) Bonds or other securities underwritten or brokered ~~distributed~~ by:

1. The family trust company or licensed family trust company;

2. A family affiliate; or

3. A syndicate, including the family trust company, licensed family trust company, or family affiliate.

(b) Securities of an investment company, including a mutual fund, closed-end fund, or unit investment trust, as defined under the federal Investment Company Act of 1940, for which the family trust company or licensed family trust company acts as an advisor, custodian, distributor, manager, registrar, shareholder servicing agent, sponsor, or transfer agent.

(7) Notwithstanding subsections (1)-(6), a family trust company or licensed family trust company may not, while acting as a fiduciary, purchase a bond or security issued by the company or its parent, or a subsidiary company ~~an affiliate~~ thereof or its parent, unless:

(a) The family trust company or licensed family trust company is expressly authorized to do so by:

1. The terms of the instrument creating the trust;

2. A court order;

3. The written consent of the settlor of the trust for which the family trust company or licensed family trust company is serving as trustee; or

4. The written consent of every adult qualified beneficiary of the trust who, at the time of such purchase, is entitled to receive income under the trust or who would be entitled to receive a distribution of principal if the trust were terminated; and

(b) The purchase of the security is at a fair price and complies with:

1. The prudent investor rule in s. 518.11~~,~~ or other

prudent investor or similar rule under other applicable law, unless ~~such~~ compliance is waived in accordance with s. 518.11 or other applicable law.

2. The terms of the instrument, judgment, decree, or order establishing the fiduciary relationship.

Section 11. Section 662.141, Florida Statutes, is amended to read:

662.141 Examination, investigations, and fees.—The office may conduct an examination or investigation of a ~~family trust company,~~ licensed family trust company~~, or foreign licensed family trust company~~ at any time it deems necessary to determine whether the ~~a family trust company,~~ licensed family trust company~~, foreign licensed family trust company,~~ or licensed family trust company-affiliated party thereof ~~person~~ has violated or is about to violate any provision of this chapter, ~~or rules adopted by the commission pursuant to this chapter, or~~ any applicable provision of the financial institution codes, or any rule ~~rules~~ adopted by the commission pursuant to this chapter or the ~~such~~ codes. The office may conduct an examination or investigation of a family trust company or foreign licensed family trust company at any time it deems necessary to determine whether the family trust company or foreign licensed family trust company has engaged in any act prohibited under s. 662.131 or s. 662.134 and, if a family trust company or a foreign licensed family trust company has engaged in such act, to determine whether any applicable provision of the financial

institution codes has been violated.

(1) The office may rely upon a certificate of trust, trust summary, or written statement from the trust company which identifies the qualified beneficiaries of any trust or estate for which a family trust company, licensed family trust company, or foreign licensed family trust company serves as a fiduciary and the qualifications of such beneficiaries as permissible recipients of company services.

(2) The office shall conduct an examination of a licensed family trust company~~, family trust company, or foreign licensed family trust company~~ at least once every 36 ~~18~~ months.

~~(2) In lieu of an examination by the office, the office may accept an audit of a family trust company, licensed family trust company, or foreign licensed family trust company by a certified public accountant licensed to practice in this state who is independent of the company, or other person or entity acceptable to the office. If the office accepts an audit pursuant to this subsection, the office shall conduct the next required examination.~~

~~(3)~~ The office shall examine the books and records of a ~~family trust company or~~ licensed family trust company as necessary to determine whether it is a ~~family trust company or~~ licensed family trust company as defined in this chapter~~,~~ and is operating in compliance with this chapter ~~ss. 662.1225, 662.125, 662.126, 662.131, and 662.134, as applicable~~. ~~The office may rely upon a certificate of trust, trust summary, or written~~

~~statement from the trust company identifying the qualified beneficiaries of any trust or estate for which the family trust company serves as a fiduciary and the qualification of the qualified beneficiaries as permissible recipients of company services. The commission may establish by rule the records to be maintained or requirements necessary to demonstrate conformity with this chapter as a family trust company or licensed family trust company.~~

(3)~~(4)~~ The office shall examine the books and records of a foreign licensed family trust company as necessary to determine if it is a foreign licensed trust company as defined in this chapter and is in compliance with ss. 662.1225, 662.125, 662.130(2), 662.131, and 662.134. In connection with an examination of the books and records of the company, the office may rely upon the most recent examination report or review or certification letters or similar documentation issued by the regulatory agency to which the foreign licensed family trust company is subject to supervision. ~~The commission may establish by rule the records to be maintained or requirements necessary to demonstrate conformity with this chapter as a foreign licensed family trust company.~~ The office's examination of the books and records of a foreign licensed family trust company is, to the extent practicable, limited to books and records of the operations in this state.

(4)~~(5)~~ For each examination of the books and records of a family trust company, licensed family trust company, or foreign

licensed family trust company as authorized under this chapter, the trust company shall pay a fee for the costs of the examination by the office. As used in this section, the term "costs" means the salary and travel expenses of field staff which are directly attributable to the examination of the trust company and the travel expenses of any supervisory and ~~or~~ support staff required as a result of examination findings. The mailing of payment for costs incurred must be postmarked within 30 days after the receipt of a notice stating that the ~~such~~ costs are due. The office may levy a late payment of up to $100 per day or part thereof that a payment is overdue~~,~~ unless waived for good cause. However, if the late payment of costs is intentional, the office may levy an administrative fine of up to $1,000 per day for each day the payment is overdue.

(5)~~(6)~~ All fees collected under this section must be deposited into the Financial Institutions' Regulatory Trust Fund pursuant to s. 655.049 for the purpose of administering this chapter.

(6) The commission may establish by rule the records to be maintained or requirements necessary to demonstrate conformity with this chapter as a family trust company, licensed family trust company, or foreign licensed family trust company.

Section 12. Section 662.142, Florida Statutes, is amended to read:

662.142 Revocation of license.—

(1) Any of the following acts constitute ~~or conduct~~

~~constitutes~~ grounds for the revocation by the office of the license of a licensed family trust company:

(a) The company is not a family trust company as defined in this chapter.~~;~~

(b) A violation of s. 662.1225, s. 662.123(1)(a), s. 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, s. 662.131, s. 662.134, or s. 662.144.~~;~~

(c) A violation of chapter 896, relating to financial transactions offenses, or a ~~any~~ similar state or federal law or ~~any~~ related rule or regulation.~~;~~

(d) A violation of any rule of the commission.~~;~~

(e) A violation of any order of the office.~~;~~

(f) A breach of any written agreement with the office.~~;~~

(g) A prohibited act or practice under s. 662.131.~~;~~

(h) A failure to provide information or documents to the office upon written request.~~; or~~

(i) An act of commission or omission which ~~that~~ is judicially determined by a court of competent jurisdiction to be a breach of trust or ~~of~~ fiduciary duty ~~pursuant to a court of competent jurisdiction~~.

(2) If the office finds ~~Upon a finding~~ that a licensed family trust company has committed any of the acts specified ~~set forth~~ in subsection (1) ~~paragraphs (1)(a)-(h)~~, the office may enter an order suspending the company's license and provide notice of its intention to revoke the license and of the opportunity for a hearing pursuant to ss. 120.569 and 120.57.

(3) If a hearing is not timely requested pursuant to ss. 120.569 and 120.57 or if a hearing is held and it has been determined that the licensed family trust company has committed any of the acts specified in subsection (1) ~~there has been a commission or omission under paragraph (1)(i)~~, the office may ~~immediately~~ enter an order revoking the company's license. A ~~The~~ licensed family trust company has ~~shall have~~ 90 days to wind up its affairs after license revocation. If after 90 days the company is still in operation, the office may seek an order from the circuit court for the annulment or dissolution of the company.

Section 13. Subsection (1) of section 662.143, Florida Statutes, is amended to read:

662.143 Cease and desist authority.—

(1) The office may issue and serve upon a family trust company, licensed family trust company, ~~or~~ foreign licensed family trust company, or ~~upon a~~ family trust company-affiliated party~~,~~ a complaint stating charges if the office has reason to believe that such company, family trust company-affiliated party, or individual named therein is engaging in or has engaged in any of the following acts ~~conduct that~~:

(a) ~~Indicates that~~ The company is not a family trust company or foreign licensed family trust company as defined in this chapter.~~;~~

(b) ~~Is~~ A violation of s. 662.1225, s. 662.123(1)(a), s. 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, or

s. 662.134.~~;~~

(c) ~~Is~~ A violation of any rule of the commission.~~;~~

(d) ~~Is~~ A violation of any order of the office.~~;~~

(e) ~~Is~~ A breach of any written agreement with the office.~~;~~

(f) ~~Is~~ A prohibited act or practice pursuant to s. 662.131.~~;~~

(g) ~~Is~~ A willful failure to provide information or documents to the office upon written request.~~;~~

(h) ~~Is~~ An act of commission or omission that is judicially determined by ~~or~~ a court of competent jurisdiction ~~practice that the office has reason~~ to be ~~believe is~~ a breach of trust or ~~of~~ fiduciary duty.~~; or~~

(i) ~~Is~~ A violation of chapter 896 or similar state or federal law or any related rule or regulation.

Section 14. Section 662.144, Florida Statutes, is amended to read:

662.144 Failure to submit required report; fines.—If a family trust company, licensed family trust company, or foreign licensed family trust company fails to submit within the prescribed period its annual renewal or any other report required by this chapter or any rule, the office may impose a fine of up to $100 for each day that the annual renewal or report is overdue. Failure to provide the annual renewal within 60 days after the end of the calendar year shall automatically result in termination of the registration of a family trust company or foreign licensed family trust company or revocation

of the license of a licensed family trust company. A family trust company may have its registration or license automatically reinstated by submitting to the office, on or before August 31 of the calendar year in which the renewal application is due, the company's annual renewal application and fee required under s. 662.128, a $500 late fee, and the amount of any fine imposed by the office under this section. A family ~~The~~ trust company that fails to renew or reinstate its registration or license must ~~shall thereafter have 90 days to~~ wind up its affairs on or before November 30 of the calendar year in which such failure occurs. Fees and fines collected under this section shall be deposited into the Financial Institutions' Regulatory Trust Fund pursuant to s. 655.049 for the purpose of administering this chapter.

Section 15. Paragraph (a) of subsection (6) of section 662.145, Florida Statutes, is amended to read:

662.145 Grounds for removal.—

(6) The chief executive officer, or the person holding the equivalent office, of a family trust company or licensed family trust company shall promptly notify the office if he or she has actual knowledge that a family trust company-affiliated party is charged with a felony in a state or federal court.

(a) If a family trust company-affiliated party is charged with a felony in a state or federal court, or is charged with an offense in a court ~~the courts~~ of a foreign country with which the United States maintains diplomatic relations which involves

a violation of law relating to fraud, currency transaction reporting, money laundering, theft, or moral turpitude and the charge is equivalent to a felony charge under state or federal law, the office may enter an emergency order suspending the family trust company-affiliated party or restricting or prohibiting participation by such ~~company-affiliated~~ party in the affairs of that particular family trust company or licensed family trust company or any state financial institution, subsidiary, or service corporation, upon service of the order upon the company and ~~the~~ family trust company-affiliated party ~~so~~ charged.

Section 16. Paragraph (b) of subsection (1) of section 662.150, Florida Statutes, is amended to read:

662.150 Domestication of a foreign family trust company.—

(1) A foreign family trust company lawfully organized and currently in good standing with the state regulatory agency in the jurisdiction where it is organized may become domesticated in this state by:

(b) Filing an application for a license to begin operations as a licensed family trust company in accordance with s. 662.121, which must first be approved by the office, or by filing the prescribed form with the office to register as a family trust company to begin operations in accordance with s. 662.122.

Section 17. Subsection (3) of section 662.151, Florida Statutes, is amended to read:

662.151 Registration of a foreign licensed family trust company to operate in this state.—A foreign licensed family trust company lawfully organized and currently in good standing with the state regulatory agency in the jurisdiction under the law of which it is organized may qualify to begin operations in this state by:

~~(3) A company in operation as of the effective date of this act that meets the definition of a family trust company shall have 90 days from the effective date of this act to apply for licensure as a licensed family trust company, register as a family trust company or foreign licensed family trust company, or cease doing business in this state.~~

Section 18. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 79 Property Insurance Appraisers and Property Insurance Appraisal Umpires
SPONSOR(S): Insurance & Banking Subcommittee; Artiles and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 336

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 3 N, As CS	Peterson	Luczynski
2) Government Operations Appropriations Subcommittee	10 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee		Peterson KP	Hamon K.W.H.

SUMMARY ANALYSIS

Insurance companies often include an appraisal clause in property insurance policies. The appraisal clause provides a procedure to resolve disputes between the policyholder and the insurer concerning the value of a covered loss.

The appraisal process *generally* works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and attempt to reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both appraisers. A decision agreed to by any two of the three will set the amount of the loss.
- The insurance company or the policyholder may challenge the umpire's impartiality and disqualify a proposed umpire based on criteria set forth in statute.

Current law does not regulate who may serve as a property insurance appraiser or property insurance appraisal umpire.

The bill establishes a licensing program for "property insurance appraisers," "property insurance appraisal umpires," and "property insurance appraisal firms" within the Department of Financial Services (DFS). The bill incorporates the program into part I of ch. 626, F.S., which sets forth the procedural provisions applicable to all insurance licensing programs administered by the DFS. The bill creates definitions; qualifications and requirements for licensure, including prerequisite education, fees, and background screening; continuing education; mandatory and discretionary grounds for refusal, suspension, or revocation of a license; and a code of conduct. Only retired judges and Florida-licensed engineers, contractors, architects, attorneys, and adjusters who meet specified experience requirements are eligible for licensure.

The bill appropriates $74,851 in recurring funds, and $3,882 in nonrecurring funds from the Insurance Regulatory Trust Fund and $67,398 in recurring funds and $38,882 in nonrecurring funds from the Administrative Trust Fund to the DFS, and authorizes two full-time equivalent positions with associated salary rate of 83,106 to implement provisions of the bill. The bill is not anticipated to have a fiscal impact on local government. The bill will have a negative fiscal impact on the private sector to the extent that it imposes licensing fees and ongoing costs of licensure in order to practice as an appraiser or umpire which may also affect the cost to obtain those services. It may, however, improve appraisal results, which would have a positive impact on both insurers and policyholders.

The bill provides an effective date of October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Property Insurance Appraisers and Umpires
Insurance companies often include an appraisal clause in property insurance policies.[1] The appraisal clause provides a procedure to resolve disputes between the policyholder and the insurer concerning the value of a covered loss. The appraisal clause is used only to determine disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process *generally* works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and attempt to reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both appraisers. A decision agreed to by any two of the three will set the amount of the loss.
- The insurance company or the policyholder may challenge the umpire's impartiality and disqualify a proposed umpire based on criteria set forth in statute.[2]

Current law does not regulate who may serve as a property insurance appraiser or property insurance appraisal umpire.

The Sunrise Act
A proposal for new regulation of a profession must meet the requirements of s. 11.62, F.S., the Sunrise Act. In general, the act states that regulation should not occur unless it is:

- Necessary to protect the public health, safety, or welfare from significant and discernible harm or damage;
- Exercised only to the extent necessary to prevent the harm; and
- Limited so as not to unnecessarily restrict entry into the practice of the profession or adversely affect public access to the professional services.

In determining whether to regulate a profession or occupation, the act requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;

[1] *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So.3d 578 (Fla.3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America,* 540 So.2d 162 (Fla. 3d DCA 1989), contain examples of appraisal clauses.
[2] *See* s. 627.70151, F.S.

- Whether the practice of the profession or occupation requires specialized skill or training and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The act requires proponents of legislation proposing new regulation to provide the following information, upon request, to document the need for regulation:

- The number of individuals or businesses that would be subject to the regulation;
- The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding three years;
- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public;
- A copy of any federal legislation mandating regulation;
- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation; and
- The details of any previous efforts in this state to implement regulation of the profession or occupation.

The act requires the agency proposed to have jurisdiction over the regulation to provide the Legislature with the following information:

- The resources required to implement and enforce the regulation;
- The technical sufficiency of the proposal, including its consistency with the regulation of other professions; and
- Any alternatives that may result in less restrictive or more cost-effective regulation.

In determining whether to recommend regulation, the legislative committee reviewing the proposal is directed to assess whether the proposed regulation is:

- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;
- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and

- Technically sufficient and consistent with the regulation of other professions under existing law.

Proponents' Response to the Sunrise Act
The sponsor of the bill has submitted a response[3] in support of the need for regulation. It states that the unregulated profession poses a substantial harm to the public health, safety, or welfare. In pertinent part, the response provides:

> Currently, the state licenses adjusters in three categories, company adjuster, independent adjuster and public adjuster, if an individual is unable to pass these tests, or if they lose their license, they are able to become an insurance property appraisers [sic] and/or an insurance property umpire with no regulation. Further, convicted felons are able to become insurance property appraisers and/or insurance property umpires.
>
> The Courts have ruled that a decision of the insurance appraisal panel (any 2 of the 3 members of the panel) is binding on the parties unless fraud is involved, (appraisals are for the dollar amount of the insurance loss and the panels are not empowered to determine coverage).
>
> In the past, the public has been harmed when roofers, contractors and non-insurance people are involved and they don't properly appraise the amount of damages, for example, roofers have been known to appraise the roof of a home only without considering the interior of a home thus injuring the public in that they don't receive the proper insurance funds for the interior of their home and thus they fail to repair the interior making the damages worse and affecting the value of the home.

The sponsor notes that specific information regarding the current scope and nature of the public harm and the potential impact of regulation is not available. The sponsor estimates that 2,000 individuals will become licensed if the bill becomes law.

Licensing of Property Insurance Appraisers, Property Insurance Appraisal Umpires, and Property Insurance Appraisal Firms
Currently, no state licenses property insurance appraisers, property insurance appraisal umpires, or property insurance appraisal firms. Two private organizations[4] offer voluntary certification programs that appear to impose limited eligibility standards. Both programs, however, require compliance with a code of ethics to maintain certification, although neither program indicates how compliance is monitored. If the bill becomes law, currently certified members of one or both of the organizations[5] will represent less than five percent of the 2,000 individuals the sponsor estimates will seek licensure in Florida.

Effect of the Bill

The bill establishes a licensing program for "property insurance appraisers," (appraisers) "property insurance appraisal umpires," (umpires) and "property insurance appraisal firms" (appraisal firms) within the Department of Financial Services (DFS). The bill incorporates the program into part I of ch. 626, F.S., which sets forth the procedural provisions applicable to all insurance licensing programs administered by the DFS. As a result, the bill prohibits an individual from practicing or holding him or herself out as an appraiser or umpire and prohibits an individual or entity from acting or holding himself, herself, or itself out as a firm unless licensed and, in the case of an appraiser or umpire, currently appointed with the DFS.

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[3] On file with the House Insurance & Banking Subcommittee.
[4] Windstorm Insurance Network, Inc.; Insurance Appraisal and Umpire Association, Inc.
[5] *See* Windstorm Insurance Network, *Wind Credential Program*, http://windnetwork.com/wind-credential-programs/ (last visited Oct. 28, 2015); Insurance Appraisal and Umpire Association, Inc., *Certified Directory*, http://www.iaua.us/certified-directory.aspx (last visited Oct. 28, 2015).

- ***Definitions***

The bill provides definitions of terms, including "appraisal," "property insurance appraiser," "property insurance appraisal umpire," and "property insurance appraisal firm."

- ***Licensure Requirements – Appraiser and Umpire***

The bill establishes licensure requirements for an applicant. An applicant must:

- Be at least 18 years of age;
- Be a citizen or legal alien authorized to work in the U.S.;
- Be of good moral character;
- Submit a written application made under oath;
- Pay fees, to be deposited into the Insurance Regulatory Trust Fund;
- Undergo level two background screening; and
- Prior to submitting the application, have completed the DFS-approved courses in claims estimating and insurance law and ethics.

Only the following individuals are eligible for licensure:

- A retired county, circuit, or appellate judge;
- An engineer licensed pursuant to ch. 471, F.S., or a retired professional engineer as defined in s. 471.005, F.S.;
- A general contractor, building contractor, or residential contractor licensed pursuant to part I of ch. 489, F.S.;
- An architect licensed or registered to engage in the practice of architecture pursuant to part I of ch. 481, F.S.;
- A member of The Florida Bar; or
- An adjuster licensed pursuant to part VI of ch. 626, F.S., which license includes the property and casualty lines of insurance. An adjuster must have been licensed for at least 3 years as an adjuster before he or she may be licensed as an appraiser and must have been licensed for at least 5 years as an adjuster before he or she may be licensed as an umpire.

- ***Licensure Requirements – Property Insurance Appraisal Firm***

The bill establishes licensure requirements for an appraisal firm. An application must be signed and include:

- Contact information for each principal who directs, manages, or controls the firm; the firm; any branch offices; and its registered agent.[6]
- Fingerprints for each principal, unless already on file with the DFS.
- Other information deemed necessary to ascertain the trustworthiness and competence of the principals.

An appraiser or umpire who practices under his or her own name and does not employ others is exempt from the firm licensing requirement.

Failure to obtain a firm license, if required, may result in a fine of up to $10,000.

- ***Appointment – Appraiser and Umpire***

The bill requires an appraiser or umpire to be appointed with the DFS in order to practice in the state. The fee for appointment and biennial renewal of appointment is $60.

[6] Separate licensure is not required for branches.

- ***Continuing Education – Appraiser and Umpire***

The bill requires the same continuing education currently required of an adjuster: 19 hours of approved continuing education and five hours of ethics biennially.

- ***Code of Conduct – Appraiser and Umpire***

The bill establishes ethical standards related to confidentiality; fees and expenses; maintenance of records; advertising; integrity and impartiality; skill and experience; and gifts and solicitation.

- ***Grounds for Refusal, Suspension, or Revocation of a License – Appraiser, Umpire, and Firm***

The bill establishes conditions for mandatory and discretionary refusal, suspension, or revocation of a license.

- ***Investigation – Appraiser, Umpire, and Firm***

The bill authorizes the DFS to investigate any appraiser, umpire, or firm for suspected or reported violations of the insurance code.

B. SECTION DIRECTORY:

Section 1: amends s. 624.04, F.S., revising the definition of the term "person."
Section 2: amends s. 624.303, F.S., excepting certificates issued to appraisers and umpires from the requirement to bear the seal of the DFS.
Section 3: amends s. 624.311, F.S., providing a schedule for destruction of property insurance appraiser and umpire licensing files and records.
Section 4: amends s. 624.317, F.S., authorizing the DFS to investigate appraisers, umpires, and appraisal firms for violations of the insurance code.
Section 5: amends s. 624.501, F.S., authorizing specified licensing fees for appraisers and umpires.
Section 6: amends s. 624.523, F.S., requiring the deposit of fees into the Insurance Regulatory Trust Fund.
Section 7: amends s. 626.015, F.S., revising the definition of "appointment" and creating definitions of "property insurance appraisal umpire," "property insurance appraiser," and "property insurance appraisal firm."
Section 8: amends s. 626.016, F.S., expanding the scope of the Chief Financial Officer's powers and duties and the DFS's enforcement jurisdiction to include appraisers, umpires, and appraisal firms.
Section 9: amends s. 626.022, F.S., including appraiser, umpire, and appraisal firm licensing in the scope of part I of chapter 626, F.S., relating to licensing to procedures.
Section 10: amends s. 626.112, F.S., requiring licensure as an appraiser, umpire, or appraisal firm.
Section 11: amends s. 626.171, F.S., requiring applicants for licensure as an appraiser or umpire to submit fingerprints.
Section 12: amends s. 626.207, F.S., excluding applicants for licensure as appraisers, umpires, and appraisal firms from application of s. 112.011, F.S., relating to disqualification from license or public employment.
Section 13: amends s. 626.2815, F.S., requiring specified continuing education for licensure as an appraiser or umpire.
Section 14: amends s. 626.382, F.S., providing that an appraisal firm license continues in force until canceled, suspended, or revoked or otherwise terminated by law.
Section 15: amends s. 626.451, F.S., specifying procedures and responsibilities related to appointment of a property insurance appraiser or property insurance appraisal umpire.
Section 16: amends s. 626.461, F.S., providing that a property insurance appraiser or property insurance appraisal umpire appointment continues in effect, subject to renewal or earlier written notice of termination, until the person's license is revoked or otherwise terminated.
Section 17: amends s. 626.521, F.S., authorizing the DFS to obtain a credit and character report for certain appraiser and umpire applicants.
Section 18: amends s. 626.536, F.S., requiring appraisal firms to submit a copy of certain documents to the DFS within 30 days after disposition of certain administrative actions.

Section 19: amends s. 626.541, F.S., requiring an appraiser or umpire to provide certain information to the DFS when doing business under a different business name or when information in the licensure application changes.
Section 20: amends s. 626.601, F.S., authorizing the DFS to investigate improper conduct of any licensed appraiser, umpire, or appraisal firm.
Section 21: amends s. 626.602, F.S., authorizing the DFS to disapprove certain appraisal firm names.
Section 22: amends s. 626.611, F.S., requiring the DFS to refuse, suspend, or revoke an appraiser's or umpire's license under certain circumstances.
Section 23: amends s. 626.6115, F.S., requiring the DFS to refuse, suspend, or revoke an appraisal firm license under certain circumstances.
Section 24: amends s. 626.621, F.S., authorizing the DFS to refuse, suspend, or revoke an appraiser's or umpire's license under certain circumstances.
Section 25: amends s. 626.6215, F.S., authorizing the DFS to refuse, suspend, or revoke an appraisal firm's license under certain circumstances.
Section 26: amends s. 626.641, F.S., prohibiting an appraiser or umpire from owning, controlling, or being employed by other licensees during the period the appraiser or umpire's license is suspended or revoked.
Section 27: amends s. 626.6515, F.S., authorizing the DFS to suspend or revoke the license of an appraisal firm under the control of any person who participated in activities resulting in the suspension or revocation of the license of an associated firm.
Section 28: amends s. 626.681, F.S., authorizing an administrative fine in lieu of or in addition to suspension, revocation, or refusal of an appraisal firm license.
Section 29: amends s. 626.7845, F.S., prohibiting against unlicensed transaction of life insurance.
Section 30: amends s. 626.8305, F.S., prohibiting against the unlicensed transaction of health insurance.
Section 31: amends s. 626.8411, F.S., providing that certain provisions of part I do not apply to title insurance agents or title insurance agencies.
Section 32: amends s. 626.8443, F.S., prohibiting a title insurance agent from owning, controlling, or being employed by an appraiser, umpire, or appraisal firm during the period the agent's license is suspended or revoked.
Section 33: creates part XIV of chapter 626, F.S., relating to appraisers and umpires
Section 34: providing an appropriation.
Section 35: providing an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill authorizes the following fees applicable to appraisers and umpires:

- Appointment and biennial appointment: $60
- Application fee: $50
- License fee: $5
- Late filing of appointment: $20
- Fee to cover the cost of a credit report when requested by the DFS: actual cost
- Fee to cover the cost of a level two background screening: actual cost ($38.75)

The DFS estimates receiving approximately 750 applications the first year.[7] Based on the proposed fee structure, estimated revenues from licensure for FY 2016-2017 would be $86,250.

[7] Email correspondence from the DFS on 11/23/2015 on file with the Government Operations Appropriations Subcommittee.

2. Expenditures:

The bill appropriates $74,851 in recurring funds, and $3,882 in nonrecurring funds from the Insurance Regulatory Trust Fund and $67,398 in recurring funds and $38,882 in nonrecurring funds from the Administrative Trust Fund to the DFS, and authorizes two full-time equivalent positions with associated salary rate of 83,106 to implement provisions of the bill.

FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a negative fiscal impact on the private sector to the extent that it imposes licensing fees and ongoing costs of licensure in order to practice as an appraiser or umpire which may also affect the cost to obtain those services. It may, however, improve appraisal results which would have a positive impact on both insurers and policyholders.

C. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the DFS to adopt a rule, as needed, defining additional information that may be required in an appraisal firm application to determine compliance with the insurance code.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 4, 2015, the Insurance & Banking Subcommittee adopted a proposed committee substitute (PCS) and two amendments to the PCS and reported the bill favorably as a committee substitute. The amended PCS:

- Moved the licensing program to the Department of Financial Services (DFS).
- Incorporated the program into part I of chapter 626, F.S., which sets forth the procedural provisions applicable to all insurance-related licensing programs administered by DFS.

- Refined the definitions of "appraisal," "property insurance appraiser," and "property insurance appraisal umpire"; deleted the definition of "independent," but retained its component provisions as grounds for discipline; and created a definition of "property insurance appraisal firm."
- Removed the requirement for an examination.
- Removed the prerequisite 4-hour class in building-related topics and substituted prerequisite courses in claims estimating, and insurance law and ethics.
- Required applicants who qualify based on separate professional license to be currently licensed as such.
- Capped contingency fees charged by an appraiser to not more than 20% of any additional money paid on the claim as a result of the appraisal process.
- Created a one-time license requirement for property insurance appraisal firms.
- Revised the code of conduct for clarity of administration and removed portions that regulated the process of appraisal.
- Reduced the proposed fiscal from more than $650,000 and 4 FTEs to 2 FTEs and $185,013.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to property insurance appraisers and property insurance appraisal umpires; amending s. 624.04, F.S.; revising the definition of the term "person"; amending s. 624.303, F.S.; exempting certificates issued to property insurance appraisers and property insurance appraisal umpires from the requirement to bear a seal of the Department of Financial Services; amending s. 624.311, F.S.; providing a schedule for destruction of property insurance appraiser and property insurance appraisal umpire licensing files and records; amending s. 624.317, F.S.; authorizing the department to investigate property insurance appraisers, property insurance appraisal umpires, and property insurance appraisal firms for violations of the insurance code; amending s. 624.501, F.S.; authorizing specified licensing fees for property insurance appraisers and property insurance appraisal umpires; amending s. 624.523, F.S.; requiring fees associated with property insurance appraisers' and property insurance appraisal umpires' appointments to be deposited into the Insurance Regulatory Trust Fund; amending s. 626.015, F.S.; providing and revising definitions; amending s. 626.016, F.S.; revising the scope of the Chief Financial Officer's powers and duties and the

department's enforcement jurisdiction to include property insurance appraisers, property insurance appraisal umpires, and property insurance appraisal firms; amending s. 626.022, F.S.; including property insurance appraiser, property insurance appraisal umpire, and property insurance appraisal firm licensing in the scope of part I of chapter 626, F.S., relating to licensing procedures; amending s. 626.112, F.S.; requiring licensure as a property insurance appraiser, property insurance appraisal umpire, or property insurance appraisal firm; amending s. 626.171, F.S.; requiring applicants for licensure as a property insurance appraiser or property insurance appraisal umpire to submit fingerprints to the department; amending s. 626.207, F.S.; excluding applicants for licensure as property insurance appraisers, property insurance appraisal umpires, and property insurance appraisal firms from application of s. 112.011, F.S., relating to disqualification from license or public employment; amending s. 626.2815, F.S.; requiring specified continuing education for licensure as a property insurance appraiser or property insurance appraisal umpire; amending s. 626.382, F.S.; providing that a property insurance appraisal firm license continues in force until canceled, suspended, or revoked or otherwise

terminated by law; amending s. 626.451, F.S.; providing requirements relating to the appointment of a property insurance appraiser or property insurance appraisal umpire; amending s. 626.461, F.S.; providing that a property insurance appraiser or property insurance appraisal umpire appointment continues in effect, subject to renewal or earlier written notice of termination, until the person's license is revoked or otherwise terminated; amending s. 626.521, F.S.; authorizing the department to obtain a credit and character report for certain property insurance appraiser and property insurance appraisal umpire applicants; amending s. 626.536, F.S.; requiring property insurance appraisal firms to submit a copy of certain documents to the department within 30 days after disposition of certain administrative actions; amending s. 626.541, F.S.; requiring a property insurance appraiser or property insurance appraisal umpire to provide certain information to the department when doing business under a different business name or when information in the licensure application changes; amending s. 626.601, F.S.; authorizing the department to investigate improper conduct of any licensed property insurance appraiser, property insurance appraisal umpire, or property insurance appraisal firm; amending s. 626.602, F.S.;

authorizing the department to disapprove certain property insurance appraisal firm names; amending s. 626.611, F.S.; requiring the department to refuse, suspend, or revoke a property insurance appraiser's or property insurance appraisal umpire's license under certain circumstances; amending s. 626.6115, F.S.; requiring the department to refuse, suspend, or revoke a property insurance appraisal firm license under certain circumstances; amending s. 626.621, F.S.; authorizing the department to refuse, suspend, or revoke a property insurance appraiser's or property insurance appraisal umpire's license under certain circumstances; amending s. 626.6215, F.S.; authorizing the department to refuse, suspend, or revoke a property insurance appraisal firm's license under certain circumstances; amending s. 626.641, F.S.; prohibiting a property insurance appraiser or property insurance appraisal umpire from owning, controlling, or being employed by other licensees during the period the appraiser's or umpire's license is suspended or revoked; amending s. 626.6515, F.S.; authorizing the department to suspend or revoke the license of a property insurance appraisal firm under the control of any person who participated in activities resulting in the suspension or revocation of the license of an associated firm; amending s. 626.681, F.S.;

authorizing an administrative fine in lieu of or in addition to suspension, revocation, or refusal of a property insurance appraisal firm license; amending ss. 626.7845, 626.8305, and 626.8411, F.S.; conforming provisions to changes made by the act; amending s. 626.8443, F.S.; prohibiting a title insurance agent from owning, controlling, or being employed by a property insurance appraiser, property insurance appraisal umpire, or property insurance appraisal firm during the period the agent's license is suspended or revoked; creating part XIV of chapter 626, F.S., relating to property insurance appraisers and property insurance appraisal umpires; creating s. 626.9961, F.S.; providing a short title; creating s. 626.9962, F.S.; providing legislative purpose; creating s. 626.9963, F.S.; providing that the part supplements part I of chapter 626, F.S., the "Licensing Procedure Law; creating s. 626.9964, F.S.; providing definitions; creating s. 626.9965, F.S.; providing qualifications for license as a property insurance appraiser or property insurance appraisal umpire; creating s. 626.9966, F.S.; requiring the department to issue a license as a property insurance appraisal firm upon receipt of an application and qualification for the license; creating s. 626.9967, F.S.; authorizing the department to refuse, suspend, or

revoke a property insurance appraiser's, property insurance appraisal umpire's, or property insurance appraisal firm's license under certain circumstances; creating s. 626.9968, F.S.; providing ethical standards; providing an appropriation and authorizing positions; providing an effective date.

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

Section 1. Section 624.04, Florida Statutes, is amended to read:

624.04 "Person" defined.—"Person" includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal insurer or interinsurance exchange, partnership, syndicate, business trust, corporation, agent, general agent, broker, service representative, adjuster, property insurance appraiser, property insurance appraisal umpire, and every legal entity.

Section 2. Subsection (2) of section 624.303, Florida Statutes, is amended to read:

624.303 Seal; certified copies as evidence.—

(2) All certificates executed by the department or office, other than licenses of agents, property insurance appraisers, property insurance appraisal umpires, ~~or~~ adjusters, or similar licenses or permits, shall bear its respective seal.

Section 3. Paragraphs (b) and (c) of subsection (4) of

section 624.311, Florida Statutes, are amended to read:

624.311 Records; reproductions; destruction.—

(4) To facilitate the efficient use of floor space and filing equipment in its offices, the department, commission, and office may each destroy the following records and documents pursuant to chapter 257:

(b) Agent, adjuster, property insurance appraiser, property insurance appraisal umpire, and similar license files, including license files of the Division of State Fire Marshal, over 2 years old; except that the department or office shall preserve by reproduction or otherwise a copy of the original records upon the basis of which each such licensee qualified for her or his initial license, except a competency examination, and of any disciplinary proceeding affecting the licensee;

(c) All agent, adjuster, property insurance appraiser, property insurance appraisal umpire, and similar license files and records, including original license qualification records and records of disciplinary proceedings 5 years after a licensee has ceased to be qualified for a license;

Section 4. Subsection (1) of section 624.317, Florida Statutes, is amended to read:

624.317 Investigation of agents, adjusters, property insurance appraisers, property insurance appraisal umpires, property insurance appraisal firms, administrators, service companies, and others.—If it has reason to believe that any person has violated or is violating any provision of this code,

or upon the written complaint signed by any interested person indicating that any such violation may exist:

(1) The department shall conduct such investigation as it deems necessary of the accounts, records, documents, and transactions pertaining to or affecting the insurance affairs of any general agent, surplus lines agent, adjuster, property insurance appraiser, property insurance appraisal umpire, property insurance appraisal firm, managing general agent, insurance agent, insurance agency, customer representative, service representative, or other person subject to its jurisdiction, subject to the requirements of s. 626.601.

Section 5. Paragraph (c) of subsection (19) and subsection (28) of section 624.501, Florida Statutes, are amended, and subsection (29) is added to that section, to read:

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

(19) Miscellaneous services:

(c) For preparing lists of agents, adjusters, property insurance appraisers, property insurance appraisal umpires, and other insurance representatives, and for other miscellaneous services, such reasonable charge as may be fixed by the office or department.

(28) Late filing of appointment renewals for agents,

adjusters, property insurance appraisers, property insurance appraisal umpires, and other insurance representatives, each appointment $20.00

(29) Property insurance appraisers and property insurance appraisal umpires:

(a) Property insurance appraiser's and property insurance appraisal umpire's appointment and biennial renewal or continuation thereof, each appointment.....$60.00

(b) Fee to cover the actual cost of a credit report when such report must be secured by department.

Section 6. Paragraph (e) of subsection (1) of section 624.523, Florida Statutes, is amended to read:

624.523 Insurance Regulatory Trust Fund.—

(1) There is created in the State Treasury a trust fund designated "Insurance Regulatory Trust Fund" to which shall be credited all payments received on account of the following items:

(e) All payments received on account of items provided for under respective provisions of s. 624.501, as follows:

1. Subsection (1) (certificate of authority of insurer).

2. Subsection (2) (charter documents of insurer).

3. Subsection (3) (annual license tax of insurer).

4. Subsection (4) (annual statement of insurer).

5. Subsection (5) (application fee for insurance representatives).

6. The "appointment fee" portion of any appointment

provided for under paragraphs (6)(a) and (b) (insurance representatives, property, marine, casualty and surety insurance, and agents).

7. Paragraph (6)(c) (nonresident agents).

8. Paragraph (6)(d) (service representatives).

9. The "appointment fee" portion of any appointment provided for under paragraph (7)(a) (life insurance agents, original appointment, and renewal or continuation of appointment).

10. Paragraph (7)(b) (nonresident agent license).

11. The "appointment fee" portion of any appointment provided for under paragraph (8)(a) (health insurance agents, agent's appointment, and renewal or continuation fee).

12. Paragraph (8)(b) (nonresident agent appointment).

13. The "appointment fee" portion of any appointment provided for under subsections (9) and (10) (limited licenses and fraternal benefit society agents).

14. Subsection (11) (surplus lines agent).

15. Subsection (12) (adjusters' appointment).

16. Subsection (13) (examination fee).

17. Subsection (14) (temporary license and appointment as agent or adjuster).

18. Subsection (15) (reissuance, reinstatement, etc.).

19. Subsection (16) (additional license continuation fees).

20. Subsection (17) (filing application for permit to form

insurer).

21. Subsection (18) (license fee of rating organization).

22. Subsection (19) (miscellaneous services).

23. Subsection (20) (insurance agencies).

24. Subsection (29) (property insurance appraisers' and property insurance appraisal umpires' appointment).

Section 7. Subsections (15), (16), (17), (18), and (19) of section 626.015, Florida Statutes, are renumbered as subsections (18), (19), (20), (21), and (22), respectively, subsection (3) of that section is amended, and new subsections (15), (16), and (17) are added to that section, to read:

626.015 Definitions.—As used in this part:

(3) "Appointment" means the authority given by an insurer or employer to a licensee to transact insurance, ~~or~~ adjust claims, or conduct property insurance appraisals on behalf of an insurer or employer.

(15) "Property insurance appraisal firm" means a property insurance appraisal firm as defined in s. 626.9964.

(16) "Property insurance appraisal umpire" means a property insurance appraisal umpire as defined in s. 626.9964.

(17) "Property insurance appraiser" means property insurance appraiser as defined in s. 626.9964.

Section 8. Subsection (1) of section 626.016, Florida Statutes, is amended to read:

626.016 Powers and duties of department, commission, and office.—

(1) The powers and duties of the Chief Financial Officer and the department specified in this part apply only with respect to insurance agents, insurance agencies, managing general agents, ~~insurance~~ adjusters, property insurance appraisers, property insurance appraisal umpires, property insurance appraisal firms, reinsurance intermediaries, viatical settlement brokers, customer representatives, service representatives, and agencies.

Section 9. Subsection (1) of section 626.022, Florida Statutes, is amended to read:

626.022 Scope of part.—

(1) This part applies as to insurance agents, service representatives, adjusters, property insurance appraisers, property insurance appraisal umpires, property insurance appraisal firms, and insurance agencies; as to any and all kinds of insurance; and as to stock insurers, mutual insurers, reciprocal insurers, and all other types of insurers, except that:

(a) It does not apply as to reinsurance, except that ss. 626.011-626.022, ss. 626.112-626.181, ss. 626.191-626.211, ss. 626.291-626.301, s. 626.331, ss. 626.342-626.521, ss. 626.541-626.591, and ss. 626.601-626.711 shall apply as to reinsurance intermediaries as defined in s. 626.7492.

(b) The applicability of this chapter as to fraternal benefit societies shall be as provided in chapter 632.

(c) It does not apply to a bail bond agent, as defined in

s. 648.25, except as provided in chapter 648 or chapter 903.

(d) This part does not apply to a certified public accountant licensed under chapter 473 who is acting within the scope of the practice of public accounting, as defined in s. 473.302, provided that the activities of the certified public accountant are limited to advising a client of the necessity of obtaining insurance, the amount of insurance needed, or the line of coverage needed, and provided that the certified public accountant does not directly or indirectly receive or share in any commission or referral fee.

Section 10. Subsections (6), (7), and (8) of section 626.112, Florida Statutes, are renumbered as subsections (7), (8), and (9), respectively, present subsection (9) is renumbered as subsection (11), subsection (1) is amended, and a new subsection (6) and subsection (10) are added to that section, to read:

626.112 License and appointment required; agents, customer representatives, adjusters, property insurance appraisers, property insurance appraisal umpires, property insurance appraisal firms, insurance agencies, service representatives, managing general agents.—

(1)(a) No person may be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by the department and appointed by an appropriate appointing entity or person.

(b) Except as provided in subsection (7) ~~(6)~~ or in applicable department rules, and in addition to other conduct described in this chapter with respect to particular types of agents, a license as an insurance agent, service representative, customer representative, or limited customer representative is required in order to engage in the solicitation of insurance. For purposes of this requirement, as applicable to any of the license types described in this section, the solicitation of insurance is the attempt to persuade any person to purchase an insurance product by:

1. Describing the benefits or terms of insurance coverage, including premiums or rates of return;

2. Distributing an invitation to contract to prospective purchasers;

3. Making general or specific recommendations as to insurance products;

4. Completing orders or applications for insurance products;

5. Comparing insurance products, advising as to insurance matters, or interpreting policies or coverages; or

6. Offering or attempting to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911.

However, an employee leasing company licensed pursuant to chapter 468 which is seeking to enter into a contract with an

employer that identifies products and services offered to employees may deliver proposals for the purchase of employee leasing services to prospective clients of the employee leasing company setting forth the terms and conditions of doing business; classify employees as permitted by s. 468.529; collect information from prospective clients and other sources as necessary to perform due diligence on the prospective client and to prepare a proposal for services; provide and receive enrollment forms, plans, and other documents; and discuss or explain in general terms the conditions, limitations, options, or exclusions of insurance benefit plans available to the client or employees of the employee leasing company were the client to contract with the employee leasing company. Any advertising materials or other documents describing specific insurance coverages must identify and be from a licensed insurer or its licensed agent or a licensed and appointed agent employed by the employee leasing company. The employee leasing company may not advise or inform the prospective business client or individual employees of specific coverage provisions, exclusions, or limitations of particular plans. As to clients for which the employee leasing company is providing services pursuant to s. 468.525(4), the employee leasing company may engage in activities permitted by ss. 626.7315, 626.7845, and 626.8305, subject to the restrictions specified in those sections. If a prospective client requests more specific information concerning the insurance provided by the employee leasing company, the

employee leasing company must refer the prospective business client to the insurer or its licensed agent or to a licensed and appointed agent employed by the employee leasing company.

(6) No person shall be, act as, or represent or hold himself or herself out to be a property insurance appraiser or property insurance appraisal umpire unless he or she holds a currently effective license and appointment as a property insurance appraiser or property insurance appraisal umpire.

(10) An individual, firm, partnership, corporation, association, or other entity shall not act in its own name or under a trade name, directly or indirectly, as a property insurance appraisal firm unless it complies with s. 626.9966 with respect to possessing a property insurance appraisal firm license for each place of business at which it engages in an activity that may be performed only by a licensed property insurance appraiser or property insurance appraisal umpire.

Section 11. Subsections (1) and (4) of section 626.171, Florida Statutes, are amended to read:

626.171 Application for license as an agent, customer representative, adjuster, property insurance appraiser, property insurance appraisal umpire, service representative, managing general agent, or reinsurance intermediary.—

(1) The department may not issue a license as agent, customer representative, adjuster, property insurance appraiser, property insurance appraisal umpire, service representative, managing general agent, or reinsurance intermediary to any

person except upon written application filed with the department, meeting the qualifications for the license applied for as determined by the department, and payment in advance of all applicable fees. The application must be made under the oath of the applicant and be signed by the applicant. An applicant may permit a third party to complete, submit, and sign an application on the applicant's behalf, but is responsible for ensuring that the information on the application is true and correct and is accountable for any misstatements or misrepresentations. The department shall accept the uniform application for nonresident agent licensing. The department may adopt revised versions of the uniform application by rule.

(4) An applicant for a license as an agent, customer representative, adjuster, property insurance appraiser, property insurance appraisal umpire, service representative, managing general agent, or reinsurance intermediary must submit a set of the individual applicant's fingerprints, or, if the applicant is not an individual, a set of the fingerprints of the sole proprietor, majority owner, partners, officers, and directors, to the department and must pay the fingerprint processing fee set forth in s. 624.501. Fingerprints shall be used to investigate the applicant's qualifications pursuant to s. 626.201. The fingerprints shall be taken by a law enforcement agency, designated examination center, or other department-approved entity. The department shall require all designated examination centers to have fingerprinting equipment and to take

fingerprints from any applicant or prospective applicant who pays the applicable fee. The department may not approve an application for licensure as an agent, customer service representative, adjuster, property insurance appraiser, property insurance appraisal umpire, service representative, managing general agent, or reinsurance intermediary if fingerprints have not been submitted.

Section 12. Subsection (9) of section 626.207, Florida Statutes, is amended to read:

626.207 Disqualification of applicants and licensees; penalties against licensees; rulemaking authority.—

(9) Section 112.011 does not apply to any applicants for licensure under the Florida Insurance Code, including, but not limited to, agents, agencies, adjusters, adjusting firms, property insurance appraisers, property insurance appraisal umpires, property insurance appraisal firms, customer representatives, or managing general agents.

Section 13. Subsections (1) and (2) of section 626.2815, Florida Statutes, are amended to read:

626.2815 Continuing education requirements.—

(1) The purpose of this section is to establish requirements and standards for continuing education courses for individuals licensed to solicit, sell, or adjust insurance or to serve as a property insurance appraiser or property insurance appraisal umpire in the state.

(2) Except as otherwise provided in this section, this

section applies to individuals licensed to transact ~~engage in the sale of~~ insurance or adjust ~~adjustment of~~ insurance claims in this state for all lines of insurance for which an examination is required for licensing and to individuals licensed to serve as a property insurance appraiser or property insurance appraisal umpire ~~each insurer, employer, or appointing entity, including, but not limited to, those created or existing pursuant to s. 627.351~~. This section does not apply to an individual who holds a license for the sale of any line of insurance for which an examination is not required by the laws of this state or who holds a limited license as a crop or hail and multiple-peril crop insurance agent. Licensees who are unable to comply with the continuing education requirements due to active duty in the military may submit a written request for a waiver to the department.

Section 14. Section 626.382, Florida Statutes, is amended to read:

626.382 Continuation, expiration of license; insurance agencies; property insurance appraisal firms.—The license of an insurance agency or property insurance appraisal firm shall continue in force until canceled, suspended, or revoked or until it is otherwise terminated or expires by operation of law.

Section 15. Subsections (1), (3), (5), and (6) of section 626.451, Florida Statutes, are amended to read:

626.451 Appointment of agent or other representative.—

(1) Each appointing entity or person designated by the

department to administer the appointment process appointing an agent, adjuster, property insurance appraiser, property insurance appraisal umpire, service representative, customer representative, or managing general agent in this state shall file the appointment with the department or office and, at the same time, pay the applicable appointment fee and taxes. Every appointment shall be subject to the prior issuance of the appropriate agent's, adjuster's, property insurance appraiser's, property insurance appraisal umpire's, service representative's, customer representative's, or managing general agent's license.

(3) By authorizing the effectuation of the appointment of an agent, adjuster, property insurance appraiser, property insurance appraisal umpire, service representative, customer representative, or managing general agent the appointing entity is thereby certifying to the department that it is willing to be bound by the acts of the agent, adjuster, property insurance appraiser, property insurance appraisal umpire, service representative, customer representative, or managing general agent, within the scope of the licensee's employment or appointment.

(5) Any law enforcement agency or state attorney's office that is aware that an agent, adjuster, property insurance appraiser, property insurance appraisal umpire, service representative, customer representative, or managing general agent has pleaded guilty or nolo contendere to or has been found guilty of a felony shall notify the department or office of such

fact.

(6) Upon the filing of an information or indictment against an agent, adjuster, property insurance appraiser, property insurance appraisal umpire, service representative, customer representative, or managing general agent, the state attorney shall immediately furnish the department or office a certified copy of the information or indictment.

Section 16. Section 626.461, Florida Statutes, is amended to read:

626.461 Continuation of appointment of agent or other representative.—Subject to renewal or continuation by the appointing entity, the appointment of the agent, adjuster, property insurance appraiser, property insurance appraisal umpire, service representative, customer representative, or managing general agent shall continue in effect until the person's license is revoked or otherwise terminated, unless written notice of earlier termination of the appointment is filed with the department or person designated by the department to administer the appointment process by either the appointing entity or the appointee.

Section 17. Subsection (3) of section 626.521, Florida Statutes, is amended to read:

626.521 Character, credit reports.—

(3) As to an applicant for an adjuster's, property insurance appraiser's, property insurance appraisal umpire's, or reinsurance intermediary's license who is to be self-employed,

the department may secure, at the cost of the applicant, a full detailed credit and character report made by an established and reputable independent reporting service relative to the applicant.

Section 18. Section 626.536, Florida Statutes, is amended to read:

626.536 Reporting of administrative actions.— Within 30 days after the final disposition of an administrative action taken against a licensee, ~~or~~ insurance agency, or property insurance appraisal firm by a governmental agency or other regulatory agency in this or any other state or jurisdiction relating to the business of insurance, the sale of securities, or activity involving fraud, dishonesty, trustworthiness, or breach of a fiduciary duty, the licensee, ~~or~~ insurance agency, or property insurance appraisal firm must submit a copy of the order, consent to order, or other relevant legal documents to the department. The department may adopt rules to administer this section.

Section 19. Subsections (1) and (3) of section 626.541, Florida Statutes, are amended to read:

626.541 Firm, corporate, and business names; officers; associates; notice of changes.—

(1) Any licensed agent, ~~or~~ adjuster, property insurance appraiser, or property insurance appraisal umpire doing business under a firm or corporate name or under any business name other than his or her own individual name shall, within 30 days after

initially transacting ~~the initial transaction of~~ insurance or engaging in insurance activities under such business name, file with the department, on forms adopted and furnished by the department, a written statement of the firm, corporate, or business name being so used, the address of any office or offices or places of business making use of such name, and the name and social security number of each officer and director of the corporation and of each individual associated in such firm or corporation as to the insurance transactions thereof or in the use of such business name.

(3) Any licensed insurance agency or property insurance appraisal firm shall, within 30 days after a change, notify the department of any change in the information contained in the application filed pursuant to s. 626.172 or s. 626.9966.

Section 20. Subsection (1) of section 626.601, Florida Statutes, is amended to read:

626.601 Improper conduct; inquiry; fingerprinting.—

(1) The department or office may, upon its own motion or upon a written complaint signed by any interested person and filed with the department or office, inquire into any alleged improper conduct of any licensed, approved, or certified licensee, insurance agency, agent, adjuster, property insurance appraiser, property insurance appraisal umpire, property insurance appraisal firm, service representative, managing general agent, customer representative, title insurance agent, title insurance agency, mediator, neutral evaluator, navigator,

continuing education course provider, instructor, school official, or monitor group under this code. The department or office may thereafter initiate an investigation of any such individual or entity if it has reasonable cause to believe that the individual or entity has violated any provision of the insurance code. During the course of its investigation, the department or office shall contact the individual or entity being investigated unless it determines that contacting such individual or entity could jeopardize the successful completion of the investigation or cause injury to the public.

Section 21. Section 626.602, Florida Statutes, is amended to read:

626.602 Insurance agency or property insurance appraisal firm names; disapproval.—The department may disapprove the use of any true or fictitious name, other than the bona fide natural name of an individual, by any insurance agency or property insurance appraisal firm on any of the following grounds:

(1) The name interferes with or is too similar to a name already filed and in use by another agency, property insurance appraisal firm, or insurer.

(2) The use of the name may mislead the public in any respect.

(3) The name states or implies that the agency or firm is an insurer, motor club, hospital service plan, state or federal agency, charitable organization, or entity that primarily provides advice and counsel rather than sells or solicits

insurance or provides property insurance appraisal services, or is entitled to engage in insurance activities not permitted under licenses held or applied for. This provision does not prohibit the use of the word "state" or "states" in the name of the agency. The use of the word "state" or "states" in the name of an agency does not in and of itself imply that the agency is a state agency.

Section 22. Subsection (1) of section 626.611, Florida Statutes, is amended to read:

626.611 Grounds for compulsory refusal, suspension, or revocation of agent's, title agency's, adjuster's, property insurance appraiser's, property insurance appraisal umpire's, customer representative's, service representative's, or managing general agent's license or appointment.—

(1) The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, property insurance appraiser, property insurance appraisal umpire, customer representative, service representative, or managing general agent, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist:

(a) Lack of one or more of the qualifications for the license or appointment as specified in this code.

(b) Material misstatement, misrepresentation, or fraud in

obtaining the license or appointment or in attempting to obtain the license or appointment.

(c) Failure to pass to the satisfaction of the department any examination required under this code.

(d) If the license or appointment is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this code.

(e) Willful misrepresentation of any insurance policy or annuity contract or willful deception with regard to any such policy or contract, done either in person or by any form of dissemination of information or advertising.

(f) If, as an adjuster, or agent licensed and appointed to adjust claims under this code, he or she has materially misrepresented to an insured or other interested party the terms and coverage of an insurance contract with intent and for the purpose of effecting settlement of claim for loss or damage or benefit under such contract on less favorable terms than those provided in and contemplated by the contract.

(g) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance.

(h) Demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

(i) Fraudulent or dishonest practices in the conduct of business under the license or appointment.

(j) Misappropriation, conversion, or unlawful withholding

of moneys belonging to insurers or insureds or beneficiaries or to others and received in conduct of business under the license or appointment.

(k) Unlawfully rebating, attempting to unlawfully rebate, or unlawfully dividing or offering to divide his or her commission with another.

(l) Having obtained or attempted to obtain, or having used or using, a license or appointment as agent or customer representative for the purpose of soliciting or handling "controlled business" as defined in s. 626.730 with respect to general lines agents, s. 626.784 with respect to life agents, and s. 626.830 with respect to health agents.

(m) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this code.

(n) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(o) Fraudulent or dishonest practice in submitting or aiding or abetting any person in the submission of an application for workers' compensation coverage under chapter 440 containing false or misleading information as to employee

payroll or classification for the purpose of avoiding or reducing the amount of premium due for such coverage.

(p) Sale of an unregistered security that was required to be registered, pursuant to chapter 517.

(q) In transactions related to viatical settlement contracts as defined in s. 626.9911:

1. Commission of a fraudulent or dishonest act.

2. No longer meeting the requirements for initial licensure.

3. Having received a fee, commission, or other valuable consideration for his or her services with respect to viatical settlements that involved unlicensed viatical settlement providers or persons who offered or attempted to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911 and who were not licensed life agents.

4. Dealing in bad faith with viators.

Section 23. Section 626.6115, Florida Statutes, is amended to read:

626.6115 Grounds for compulsory refusal, suspension, or revocation of insurance agency <u>or property insurance appraisal firm</u> license.—The department shall deny, suspend, revoke, or refuse to continue the license of any insurance agency <u>or property insurance appraisal firm</u> if it finds, as to any insurance agency <u>or property insurance appraisal firm</u> or as to any majority owner, partner, manager, director, officer, or other person who manages or controls such agency <u>or firm</u>, that

any of the following applicable grounds exist:

(1) Lack by the agency or firm of one or more of the qualifications for the license as specified in this code.

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or in attempting to obtain the license.

(3) Denial, suspension, or revocation of a license to practice or conduct any regulated profession, business, or vocation relating to the business of insurance by this state, any other state, any nation, any possession or district of the United States, any court, or any lawful agency thereof. However, the existence of grounds for administrative action against a licensed agency or firm does not constitute grounds for action against any other licensed agency or firm, including an agency or firm that owns, is under common ownership with, or is owned by, in whole or in part, the agency or firm for which grounds for administrative action exist.

Section 24. Section 626.621, Florida Statutes, is amended to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, property insurance appraiser's, property insurance appraisal umpire's, customer representative's, service representative's, or managing general agent's license or appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, property insurance appraiser,

property insurance appraisal umpire, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(1) Any cause for which issuance of the license or appointment could have been refused had it then existed and been known to the department.

(2) Violation of any provision of this code or of any other law applicable to the business of insurance in the course of dealing under the license or appointment.

(3) Violation of any lawful order or rule of the department, commission, or office.

(4) Failure or refusal, upon demand, to pay over to any insurer he or she represents or has represented any money coming into his or her hands belonging to the insurer.

(5) Violation of the provision against twisting, as defined in s. 626.9541(1)(l).

(6) In the conduct of business under the license or appointment, engaging in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter, or having otherwise shown himself or herself to be a source of injury or loss to the public.

(7) Willful overinsurance of any property or health insurance risk.

(8) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(9) If a life agent, violation of the code of ethics.

(10) Cheating on an examination required for licensure or violating test center or examination procedures published orally, in writing, or electronically at the test site by authorized representatives of the examination program administrator. Communication of test center and examination procedures must be clearly established and documented.

(11) Failure to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof, or under the law of any other country without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case.

(12) Knowingly aiding, assisting, procuring, advising, or abetting any person in the violation of or to violate a provision of the insurance code or any order or rule of the

department, commission, or office.

(13) Has been the subject of or has had a license, permit, appointment, registration, or other authority to conduct business subject to any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, final agency action, or administrative order by any court of competent jurisdiction, administrative law proceeding, state agency, federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association involving a violation of any federal or state securities or commodities law or any rule or regulation adopted thereunder, or a violation of any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association.

(14) Failure to comply with any civil, criminal, or administrative action taken by the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. ss. 651 et seq., to determine paternity or to establish, modify, enforce, or collect support.

(15) Directly or indirectly accepting any compensation, inducement, or reward from an inspector for the referral of the owner of the inspected property to the inspector or inspection company. This prohibition applies to an inspection intended for submission to an insurer in order to obtain property insurance coverage or establish the applicable property insurance premium.

Section 25. Section 626.6215, Florida Statutes, is amended

to read:

626.6215 Grounds for discretionary refusal, suspension, or revocation of insurance agency or property insurance appraisal firm license.—The department may, in its discretion, deny, suspend, revoke, or refuse to continue the license of any insurance agency or property insurance appraisal firm if it finds, as to any insurance agency or property insurance appraisal firm or as to any majority owner, partner, manager, director, officer, or other person who manages or controls such insurance agency or property insurance appraisal firm, that any one or more of the following applicable grounds exist:

(1) Any cause for which issuance of the license could have been refused had it then existed and been known to the department.

(2) If the license is used, or to be used, to circumvent any of the requirements or prohibitions of this code.

(3) Having been found guilty of, or having pleaded guilty or nolo contendere to, a felony in this state or any other state relating to the business of insurance, ~~or~~ an insurance agency, or a property insurance appraisal firm, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(4) Knowingly employing any individual in a managerial capacity or in a capacity dealing with the public who is under an order of revocation or suspension issued by the department.

(5) Committing any of the following acts with such

frequency as to have made the operation of the agency or firm hazardous to the insurance-buying public or other persons:

(a) Misappropriation, conversion, or unlawful withholding of moneys belonging to insurers or insureds or beneficiaries or to others and received in the conduct of business under the license.

(b) Unlawfully rebating, attempting to unlawfully rebate, or unlawfully dividing or offering to divide commissions with another.

(c) Misrepresentation of any insurance policy or annuity contract, or deception with regard to any such policy or contract, done either in person or by any form of dissemination of information or advertising.

(d) Violation of any provision of this code or of any other law applicable to the business of insurance in the course of dealing under the license.

(e) Violation of any lawful order or rule of the department.

(f) Failure or refusal, upon demand, to pay over to any insurer he or she represents or has represented any money coming into his or her hands belonging to the insurer.

(g) Violation of the provision against twisting as defined in s. 626.9541(1)(l).

(h) In the conduct of business under the license, engaging in unfair methods of competition or in unfair or deceptive acts or practices as prohibited under part IX of this chapter.

(i) Willful overinsurance of any property insurance risk.

(j) Fraudulent or dishonest practices in the conduct of business arising out of activities related to insurance, ~~or~~ the insurance agency, or the property insurance appraisal firm.

(k) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance arising out of activities related to insurance, ~~or~~ the insurance agency, or the property insurance appraisal firm.

(6) Failure to take corrective action or report a violation to the department within 30 days after an individual licensee's violation is known or should have been known by one or more of the partners, officers, or managers acting on behalf of the agency or firm. However, the existence of grounds for administrative action against a licensed agency or firm does not constitute grounds for action against any other licensed agency or firm, including an agency or firm that owns, is under common ownership with, or is owned by, in whole or in part, the agency or firm for which grounds for administrative action exist.

Section 26. Subsection (4) of section 626.641, Florida Statutes, is amended to read:

626.641 Duration of suspension or revocation.—

(4) During the period of suspension or revocation of a license or appointment, and until the license is reinstated or, if revoked, a new license issued, the former licensee or appointee may not engage in or attempt or profess to engage in any transaction or business for which a license or appointment

is required under this code or directly or indirectly own, control, or be employed in any manner by an agent, agency, adjuster, ~~or~~ adjusting firm, property insurance appraiser, property insurance appraisal umpire, or property insurance appraisal firm.

Section 27. Section 626.6515, Florida Statutes, is amended to read:

626.6515 Effect of suspension or revocation upon associated agencies or firms.—Upon suspension or revocation of the license of an insurance agency or property insurance appraisal firm, the department may at the same time revoke, suspend, or refuse to continue the license of any other insurance agency or property insurance appraisal firm under the management, ownership, control, or directorship of any person or persons who participated in activities which resulted in the suspension, revocation, or refusal to continue the initial license if acts occurred at that specific agency or firm location which are grounds for refusal, suspension, or revocation of a license under this code. The department shall not, during the period of revocation or suspension, grant any new license for the establishment of any additional agency or firm not in operation at the time of suspension, revocation, or refusal to any agency or firm under or proposed to be under substantially the same management, ownership, control, or directorship of individuals who directed or participated in activities which resulted in suspension, revocation, or refusal

of an agency or firm license.

Section 28. Subsections (1) and (2) of section 626.681, Florida Statutes, are amended to read:

626.681 Administrative fine in lieu of or in addition to suspension, revocation, or refusal of license, appointment, or disapproval.—

(1) Except as to insurance agencies or property insurance appraisal firms, if the department finds that one or more grounds exist for the suspension, revocation, or refusal to issue, renew, or continue any license or appointment issued under this chapter, or disapproval of a continuing education course provider, instructor, school official, or monitor groups, the department may, in its discretion, in lieu of or in addition to such suspension or revocation, or in lieu of such refusal, or disapproval, and except on a second offense or when such suspension, revocation, or refusal is mandatory, impose upon the licensee, appointee, course provider, instructor, school official, or monitor group an administrative penalty in an amount up to $500 or, if the department has found willful misconduct or willful violation on the part of the licensee, appointee, course provider, instructor, school official, or monitor group up to $3,500. The administrative penalty may, in the discretion of the department, be augmented by an amount equal to any commissions received by or accruing to the credit of the licensee or appointee in connection with any transaction as to which the grounds for suspension, revocation, or refusal

related.

(2) With respect to insurance agencies or property insurance appraisal firms, if the department finds that one or more grounds exist for the suspension, revocation, or refusal to issue, renew, or continue any license issued under this chapter, the department may, in its discretion, in lieu of or in addition to such suspension or revocation, or in lieu of such refusal, impose upon the licensee an administrative penalty in an amount not to exceed $10,000 per violation. The administrative penalty may, in the discretion of the department, be augmented by an amount equal to any commissions received by or accruing to the credit of the licensee in connection with any transaction as to which the grounds for suspension, revocation, or refusal related.

Section 29. Subsection (2) of section 626.7845, Florida Statutes, is amended to read:

626.7845 Prohibition against unlicensed transaction of life insurance.—

(2) Except as provided in s. 626.112(7) ~~626.112(6)~~, with respect to any line of authority specified in s. 626.015(10), no individual shall, unless licensed as a life agent:

(a) Solicit insurance or annuities or procure applications;

(b) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving

opinions to persons relative to insurance or insurance contracts other than:

1. As a consulting actuary advising an insurer; or

2. As to the counseling and advising of labor unions, associations, trustees, employers, or other business entities, the subsidiaries and affiliates of each, relative to their interests and those of their members or employees under insurance benefit plans; or

(c) In this state, from this state, or with a resident of this state, offer or attempt to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911.

Section 30. Section 626.8305, Florida Statutes, is amended to read:

626.8305 Prohibition against the unlicensed transaction of health insurance.—Except as provided in s. 626.112(7) ~~626.112(6)~~, with respect to any line of authority specified in s. 626.015(6), no individual shall, unless licensed as a health agent:

(1) Solicit insurance or procure applications; or

(2) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance contracts other than:

(a) As a consulting actuary advising insurers; or

(b) As to the counseling and advising of labor unions, associations, trustees, employers, or other business entities,

the subsidiaries and affiliates of each, relative to their interests and those of their members or employees under insurance benefit plans.

Section 31. Paragraph (a) of subsection (2) of section 626.8411, Florida Statutes, is amended to read:

626.8411 Application of Florida Insurance Code provisions to title insurance agents or agencies.—

(2) The following provisions of part I do not apply to title insurance agents or title insurance agencies:

(a) Section 626.112(8) ~~626.112(7)~~, relating to licensing of insurance agencies.

Section 32. Subsection (4) of section 626.8443, Florida Statutes, is amended to read:

626.8443 Duration of suspension or revocation.—

(4) During the period of suspension or after revocation of the license and appointment, the former licensee shall not engage in or attempt to profess to engage in any transaction or business for which a license or appointment is required under this code or directly or indirectly own, control, or be employed in any manner by any insurance agent or agency, ~~or~~ adjuster, ~~or~~ adjusting firm, property insurance appraiser, property insurance appraisal umpire, or property insurance appraisal firm.

Section 33. Part XIV of chapter 626, Florida Statutes, consisting of sections 626.9961 through 626.9968, is created to read:

PART XIV

PROPERTY INSURANCE APPRAISERS AND
PROPERTY INSURANCE APPRAISAL UMPIRES

626.9961 Short title.—This part may be referred to as the "Property Insurance Appraiser and Property Insurance Appraisal Umpire Law."

626.9962 Legislative purpose.—The Legislature finds it necessary to regulate persons and companies that hold themselves out to the public as qualified to provide services as property insurance appraisers, property insurance appraisal umpires, and property insurance appraisal firms to protect the public safety and welfare and to avoid economic injury to the residents of this state.

(2) This part applies only to property insurance appraisers, property insurance appraisal umpires, and property insurance appraisal firms as defined in this part.

626.9963 Part supplements licensing law.—This part is supplementary to part I, the "Licensing Procedures Law."

626.9964 Definitions.—As used in this part, the term:

(1) "Appraisal" means the process of alternative dispute resolution, as defined in a personal residential, commercial residential, or commercial property insurance contract, for determining the amount of loss after coverage is established and the insurer and insured are unable to agree on the amount of the loss, or for determining the scope of repairs if the insurer has elected to repair the property and the insurer and insured are unable to agree on the scope of repairs.

(2) "Competent" means sufficiently qualified and capable of performing an appraisal.

(3) "Department" means the Department of Financial Services.

(4) "Property insurance appraisal firm" or "appraisal firm" means a person, firm, partnership, corporation, association, or other entity offering property insurance appraisal services as an appraiser or umpire.

(5) "Property insurance appraisal umpire" or "umpire" means a person selected by the appraisers representing the insurer and the insured, or, if the appraisers cannot agree, by the court, who is charged with resolving issues that the appraisers are unable to agree upon during the course of an appraisal.

(6) "Property insurance appraiser" or "appraiser" means a person selected by an insurer or an insured to perform an appraisal.

626.9965 Qualification for license as a property insurance appraiser or property insurance appraisal umpire.—

(1) The department shall issue a license as a property insurance appraiser or a property insurance appraisal umpire to a person who meets the requirements of subsection (2) and is one of the following:

(a) A retired county, circuit, or appellate judge.

(b) Licensed as an engineer pursuant to chapter 471 or is a retired professional engineer as defined in s. 471.005.

(c) Licensed as a general contractor, building contractor, or residential contractor pursuant to part I of chapter 489.

(d) Licensed or registered as an architect to engage in the practice of architecture pursuant to part I of chapter 481.

(e) A member of The Florida Bar.

(f) Licensed as an adjuster pursuant to part VI of chapter 626, which license includes the property and casualty lines of insurance. An adjuster must have been licensed for at least 3 years as an adjuster before he or she may be licensed as an appraiser and must have been licensed for at least 5 years as an adjuster before he or she may be licensed as an umpire.

(2) An applicant may be licensed to practice in this state as an appraiser or umpire if the applicant:

(a) Is a natural person at least 18 years of age;

(b) Is a United Stated citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration;

(c) Is of good moral character;

(d) Has paid the applicable fees specified in s. 624.501; and

(e) Has, prior to the date of the application for licensure, satisfactorily completed education courses approved by the department covering:

1. Insurance claims estimating; and

2. Insurance law, ethics for insurance professionals, disciplinary trends, and case studies.

(3) The department may not reject an application solely because the applicant is or is not a member of a given appraisal organization.

626.9966 Application for property insurance appraisal firm license.—

(1) The department shall issue a license as a property insurance appraisal firm to a person who files a written application with the department and qualifies for such license.

(2) An application for a property insurance appraisal firm license must be signed by an individual required to be listed in the application under paragraph (a). An appraisal firm may permit a third party to complete, submit, and sign an application on the appraisal firm's behalf; however, the appraisal firm is responsible for ensuring that the information on the application is true and correct and is accountable for any misstatements or misrepresentations. The application for a property insurance appraisal firm license must include:

(a) The name of each owner, partner, officer, director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management or control of the appraisal firm, whether through ownership of voting securities, by contract, by ownership of any agency bank account, or otherwise.

(b) The residence address of each person required to be listed in the application under paragraph (a).

(c) The name, principal business street address, and valid

e-mail address of the appraisal firm and the name, address, and e-mail address of the appraisal firm's registered agent or person or company authorized to accept service on behalf of the firm.

(d) The physical address of each branch location, including its name, e-mail address, and telephone number, and the date that the branch location began appraisal activities.

(e) The name of the appraiser or umpire in full-time charge of the firm office, including branch locations, and his or her corresponding location.

(f) The fingerprints of each of the following:

1. A sole proprietor;

2. Each individual required to be listed in the application under paragraph (a); and

3. Each individual who directs or participates in the management or control of an incorporated firm. Fingerprints must be taken by a law enforcement agency or other entity approved by the department and must be accompanied by the fingerprint processing fee specified in s. 624.501. Fingerprints must be processed in accordance with s. 624.34. However, fingerprints need not be filed for an individual who is currently licensed and appointed under this chapter.

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

However, the department may not require that credit or character reports be submitted for persons required to be listed on the application.

(3) The department shall issue a license to each appraisal firm upon approval of the application, and each firm location must display the license prominently in a manner that makes it clearly visible to any customer or potential customer who enters the firm location.

(4)(a) Each place of business established by a property insurance appraisal firm must be in the active full-time charge of a licensed and appointed appraiser or umpire. The appraiser or umpire is considered the appraiser in charge of the firm. The appraiser or umpire in charge of an appraisal firm may also be in charge of additional branch office locations of the firm.

(b) Appraisal firms and each branch firm must file the name and license number of the appraiser or umpire in charge and the physical address of the firm location with the department at the department's designated website. The designation of an appraiser or umpire in charge may be changed at the option of the firm. A change of the designated appraiser or umpire in charge is effective upon notification to the department, which shall be provided within 30 days after such change.

(c) For the purposes of this subsection, an appraiser or umpire in charge is the licensed and appointed appraiser or umpire who is responsible for the supervision of all individuals within a firm location.

(d) An appraiser or umpire in charge of a firm is accountable for misconduct or violations of this code committed by the licensee or licensees under his or her supervision while acting on behalf of the firm. This section does not render an appraiser or umpire in charge criminally liable for an act unless he or she personally committed the act or knew or should have known of the act and of the facts constituting a violation of this chapter.

(e) A firm location may not conduct the business of insurance appraisal unless an appraiser or umpire in charge is designated by, and providing services to, the firm at all times. If the appraiser or umpire in charge designated with the department ends his or her affiliation with the firm for any reason and the firm fails to designate another appraiser or umpire in charge within the 30 days provided for in paragraph (b) and such failure continues for 90 days, the firm license shall automatically expire on the 91st day from the date the designated appraiser or umpire in charge ended his or her affiliation with the firm.

(5) An individual who conducts business as an appraiser or umpire in his or her individual name and not employing or otherwise using the services of or appointing other licensees shall be exempt from the appraisal firm licensing requirements of this section.

(6) A branch place of business that is established by a licensed appraisal firm is considered a branch location and is

not required to be licensed so long as it transacts business under the same name and federal tax identification number as the licensed appraisal firm and has designated with the department a licensed appraiser or umpire in charge of the branch location and the address and telephone number of the branch location have been submitted to the department for inclusion in the licensing record of the licensed appraisal firm within 30 days after appraisal activities begin at the branch location.

(7) If an appraisal firm is required to be licensed but fails to file an application for licensure in accordance with this section, the department shall impose on the firm an administrative penalty of up to $10,000.

626.9967 Grounds for refusal, suspension, or revocation of an appraiser or umpire license or appointment.—The department may deny an application for license or appointment under this part; suspend, revoke, or refuse to renew or continue a license or appointment of an applicant, property insurance appraiser, or property insurance appraisal umpire; or suspend or revoke eligibility for licensure or appointment as an appraiser or umpire if the department finds that one or more of the following applicable grounds exist:

(1) Violating a duty imposed upon him or her by law or by the terms of a contract, whether written, oral, expressed, or implied, during the course of an appraisal; aiding, assisting, or conspiring with any other person engaged in any such misconduct and in furtherance thereof; or forming the intent,

design, or scheme to engage in such misconduct and committing an overt act in furtherance of such intent, design, or scheme. An appraiser or umpire commits a violation of this part regardless of whether the victim or intended victim of the misconduct has sustained any damage or loss; the damage or loss has been settled and paid after the discovery of misconduct; or the victim or intended victim is an insurer or customer or a person in a confidential relationship with the appraiser or umpire or is an identified member of the general public.

(2) Having a registration, license, or certification to practice or conduct any regulated profession, business, or vocation revoked, suspended, or encumbered; or having an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied, by this or any other state, any nation, or any possession or district of the United States.

(3) Making or filing a report or record, written or oral, which the appraiser or umpire knows to be false; willfully failing to file a report or record required by state or federal law; willfully impeding or obstructing such filing; or inducing another person to impede or obstruct such filing.

(4) Agreeing to serve as an appraiser or umpire if service is contingent upon the appraiser or umpire reporting a predetermined amount, analysis, or opinion.

(5) Agreeing to serve as an umpire, if the fee to be paid for his or her services is contingent upon the opinion,

conclusion, or valuation he or she reaches.

(6) Failure of an umpire or appraiser, without good cause, to communicate within 5 business days of a request for communication from another appraiser or the umpire or failure or refusal to submit recommendations to the opposing appraiser within 5 business days of completing the appraisal.

(7) Violation of any ethical standard for appraisers and umpires specified in s. 626.9968.

626.9968 Ethical standards for property insurance appraisers and property insurance appraisal umpires.—

(1) CONFIDENTIALITY.—

(a) Unless disclosure is otherwise required by law, an appraiser or umpire shall maintain confidentiality of all information revealed during an appraisal. However, an appraiser may disclose such information to the person who hired him or her.

(b) An appraiser or umpire shall maintain confidentiality in the storage and disposal of records and may not disclose any identifying information if materials are used in research, training, or statistical compilations.

(2) FEES AND EXPENSES.—

(a) The fees charged by an appraiser or umpire must be reasonable and consistent with the nature of the case.

(b) In determining fees, an appraiser:

1.a. If charging on an hourly basis, may bill for services only for actual time spent on or allocated for the appraisal.

b. If charging based on a percentage of the claim, may not receive more than 20 percent of any additional money paid on the claim as a result of the appraisal process.

2. May charge for costs actually incurred, and no other costs.

(c) In determining fees, an umpire:

1. Must charge on an hourly basis and may bill only for actual time spent on or allocated for the appraisal.

2. May not charge, agree to, or accept as compensation or reimbursement any payment, commission, or fee that is based on a percentage of the value of the claim or that is contingent upon a specified outcome.

3. May charge for costs actually incurred, and no other costs.

(3) MAINTENANCE OF RECORDS.—An appraiser or umpire shall maintain records necessary to support charges for services and expenses, and, upon request, shall provide an accounting of all applicable charges to the insurer and insured. An appraiser or umpire shall retain original or true copies of any contracts engaging his or her services, appraisal reports, and supporting data assembled and formulated by the appraiser or umpire in preparing appraisal reports for at least 5 years. The appraiser or umpire shall make the records available to the department for inspection and copying within 3 business days of a request. If an appraisal has been the subject of, or has been admitted as evidence in, a lawsuit, reports and records related to the

appraisal must be retained for at least 2 years after the date that the trial ends.

(4) ADVERTISING.—An appraiser or umpire may not engage in marketing practices that contain false or misleading information. An appraiser or umpire shall ensure that any advertisement of his or her qualifications, services to be rendered, or the appraisal process are accurate and honest. An appraiser or umpire may not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

(5) INTEGRITY AND IMPARTIALITY.—

(a)1. An appraiser or umpire may not accept an appraisal unless he or she can serve competently, promptly commence the appraisal and, thereafter, devote the time and attention to its completion in the manner expected by all persons involved in the appraisal.

2. An appraiser or umpire shall conduct the appraisal process in a manner that advances the fair and efficient resolution of issues that arise. An appraiser shall make all reasonable efforts to prevent delays, harassment of the insured, the insurer, or other participants, or other abuse or disruption of the appraisal process.

3. After an appraiser or umpire accepts a selection, the appraiser or umpire may not withdraw or abandon the selection unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue or

unless the facts and circumstances of the appraisal prove to be beyond his or her skill or experience.

4. An appraiser or umpire shall deliberate and decide all issues within the scope of the appraisal, but may not render a decision on any other issues. An appraiser or umpire shall decide all matters justly, exercising independent judgment. An appraiser or umpire may not delegate his or her duties to any other person, but may employ the services of independent experts to assist in preparing estimates.

(b) An umpire may not engage in any business, provide any service, or perform any act that would compromise his or her integrity or impartiality.

(6) SKILL AND EXPERIENCE.—An appraiser or umpire shall decline or withdraw from an appraisal or request appropriate assistance when the facts and circumstances of the appraisal prove to be beyond his or her skill or experience.

(7) GIFTS AND SOLICITATION.—During the appraisal process, an appraiser or umpire may not solicit, give, or accept any gift, favor, loan, or other item of value or solicit or otherwise attempt to procure future work from any person who participates in the appraisal.

Section 34. For the 2016-2017 fiscal year, the sums of $74,851 in recurring funds and $3,882 in nonrecurring funds from the Insurance Regulatory Trust Fund and $67,398 in recurring funds and $38,882 in nonrecurring funds from the Administrative Trust Fund are appropriated to the Department of Financial

Services, and two full-time equivalent positions with associated salary rate of 83,106 are authorized, for the purpose of implementing this act.

Section 35. This act shall take effect October 1, 2016.

REGULATORY AFFAIRS COMMITTEE

CS/HB 79 by Rep. Artiles
Property Insurance Appraisers and Property Insurance Appraisal Umpires

AMENDMENT SUMMARY
January 14, 2016

Amendment 1 by Rep. Artiles (Strike all amendment):

- Removes the separate licensing program for property insurance appraisers and substitutes a requirement for licensure as a public adjuster or attorney to serve as an appraiser for an insured. Exempts appraisers who represent insurance companies.
- Removes the licensing program for property insurance appraisal firms.
- Limits the scope of the bill to personal residential and commercial residential property insurance claims.
- Caps the fees of a public adjuster who also serves as an appraiser to a total that does not exceed the adjuster fee cap currently in statute (10% of the paid claim amount for a period of one year after a declared emergency; in all other cases, 20% of the payment).
- Requires contracts for appraisal services to contain specified notice of an insured's right to negotiate the fee.
- Revises the definition of "appraisal."
- Authorizes direct payment from the insurer and the insured to the umpire.
- Makes technical corrections to language authorizing an umpire to consider the opinions of experts.
- Revises and strengthens the gift and solicitation restrictions.
- Transfers s. 627.70151, F.S., which specifies grounds for disqualifying an umpire, to the new part XIV of ch. 626, F.S., relating to umpires, which is created by the bill.
- Reduces the appropriation to reflect lower costs to implement the program as a result of the changes described above.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Artiles offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 624.04, Florida Statutes, is amended to read:

624.04 "Person" defined.—"Person" includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal insurer or interinsurance exchange, partnership, syndicate, business trust, corporation, agent, general agent, broker, service representative, adjuster, property insurance appraisal umpire, and every legal entity.

Section 2. Subsection (2) of section 624.303, Florida Statutes, is amended to read:

624.303 Seal; certified copies as evidence.—

(2) All certificates executed by the department or office, other than licenses of agents, property insurance appraisal umpires, ~~or~~ adjusters, or similar licenses or permits, shall bear its respective seal.

Section 3. Paragraphs (b) and (c) of subsection (4) of section 624.311, Florida Statutes, are amended to read:

624.311 Records; reproductions; destruction.—

(4) To facilitate the efficient use of floor space and filing equipment in its offices, the department, commission, and office may each destroy the following records and documents pursuant to chapter 257:

(b) Agent, adjuster, property insurance appraisal umpire, and similar license files, including license files of the Division of State Fire Marshal, over 2 years old; except that the department or office shall preserve by reproduction or otherwise a copy of the original records upon the basis of which each such licensee qualified for her or his initial license, except a competency examination, and of any disciplinary proceeding affecting the licensee;

(c) All agent, adjuster, property insurance appraisal umpire, and similar license files and records, including original license qualification records and records of disciplinary proceedings 5 years after a licensee has ceased to be qualified for a license;

Section 4. Subsection (1) of section 624.317, Florida Statutes, is amended to read:

624.317 Investigation of agents, adjusters, property insurance appraisal umpires, administrators, service companies, and others.—If it has reason to believe that any person has violated or is violating any provision of this code, or upon the written complaint signed by any interested person indicating that any such violation may exist: (1) The department shall conduct such investigation as it deems necessary of the accounts, records, documents, and transactions pertaining to or affecting the insurance affairs of any general agent, surplus lines agent, adjuster, property insurance appraisal umpire, managing general agent, insurance agent, insurance agency, customer representative, service representative, or other person subject to its jurisdiction, subject to the requirements of s. 626.601.

Section 5. Paragraph (c) of subsection (19) and subsection (28) of section 624.501, Florida Statutes, are amended, and subsection (29) is added to that section, to read:

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

(19) Miscellaneous services:

(c) For preparing lists of agents, adjusters, property insurance appraisal umpires, and other insurance representatives, and for other miscellaneous services, such

reasonable charge as may be fixed by the office or department.

(28) Late filing of appointment renewals for agents, adjusters, property insurance appraisal umpires, and other insurance representatives, each appointment
$20.00

(29) Property insurance appraisal umpires:

(a) Property insurance appraisal umpire's appointment and biennial renewal or continuation thereof, each appointment.....$60.00

(b) Fee to cover the actual cost of a credit report when such report must be secured by department.

Section 6. Paragraph (e) of subsection (1) of section 624.523, Florida Statutes, is amended to read:

624.523 Insurance Regulatory Trust Fund.—

(1) There is created in the State Treasury a trust fund designated "Insurance Regulatory Trust Fund" to which shall be credited all payments received on account of the following items:

(e) All payments received on account of items provided for under respective provisions of s. 624.501, as follows:

1. Subsection (1) (certificate of authority of insurer).

2. Subsection (2) (charter documents of insurer).

3. Subsection (3) (annual license tax of insurer). 4. Subsection (4) (annual statement of insurer).

5. Subsection (5) (application fee for insurance representatives).

6. The "appointment fee" portion of any appointment provided for under paragraphs (6)(a) and (b) (insurance representatives, property, marine, casualty and surety insurance, and agents).

7. Paragraph (6)(c) (nonresident agents).

8. Paragraph (6)(d) (service representatives).

9. The "appointment fee" portion of any appointment provided for under paragraph (7)(a) (life insurance agents, original appointment, and renewal or continuation of appointment).

10. Paragraph (7)(b) (nonresident agent license).

11. The "appointment fee" portion of any appointment provided for under paragraph (8)(a) (health insurance agents, agent's appointment, and renewal or continuation fee).

12. Paragraph (8)(b) (nonresident agent appointment).

13. The "appointment fee" portion of any appointment provided for under subsections (9) and (10) (limited licenses and fraternal benefit society agents).

14. Subsection (11) (surplus lines agent).

15. Subsection (12) (adjusters' appointment).

16. Subsection (13) (examination fee).

17. Subsection (14) (temporary license and appointment as agent or adjuster).

18. Subsection (15) (reissuance, reinstatement, etc.).

19. Subsection (16) (additional license continuation fees).

20. Subsection (17) (filing application for permit to form insurer).

21. Subsection (18) (license fee of rating organization).

22. Subsection (19) (miscellaneous services).

23. Subsection (20) (insurance agencies).

24. Subsection (29) (property insurance appraisal umpires' appointment).

Section 7. Subsections (15), (16), (17), (18), and (19) of section 626.015, Florida Statutes, are renumbered as subsections (16), (17), (18), (19), and (20), respectively, and new subsection (15) is added to that section, to read:

626.015 Definitions.—As used in this part:

(15) "Property insurance appraisal umpire" or "umpire" means a property insurance appraisal umpire as defined in s. 626.9964.

Section 8. Subsection (1) of section 626.016, Florida Statutes, is amended to read:

626.016 Powers and duties of department, commission, and office.—

(1) The powers and duties of the Chief Financial Officer and the department specified in this part apply only with respect to insurance agents, insurance agencies, managing general agents, insurance adjusters, umpires, reinsurance intermediaries, viatical settlement brokers, customer representatives, service representatives, and agencies.

Section 9. Subsection (1) of section 626.022, Florida Statutes, is amended to read:

626.022 Scope of part.—

(1) This part applies as to insurance agents, service representatives, adjusters, umpires, and insurance agencies; as to any and all kinds of insurance; and as to stock insurers, mutual insurers, reciprocal insurers, and all other types of insurers, except that:

(a) It does not apply as to reinsurance, except that ss. 626.011-626.022, ss. 626.112-626.181, ss. 626.191-626.211, ss. 626.291-626.301, s. 626.331, ss. 626.342-626.521, ss. 626.541-626.591, and ss. 626.601-626.711 shall apply as to reinsurance intermediaries as defined in s. 626.7492.

(b) The applicability of this chapter as to fraternal benefit societies shall be as provided in chapter 632.

(c) It does not apply to a bail bond agent, as defined in s. 648.25, except as provided in chapter 648 or chapter 903.

(d) This part does not apply to a certified public accountant licensed under chapter 473 who is acting within the scope of the practice of public accounting, as defined in s. 473.302, provided that the activities of the certified public accountant are limited to advising a client of the necessity of obtaining insurance, the amount of insurance needed, or the line of coverage needed, and provided that the certified public accountant does not directly or indirectly receive or share in any commission or referral fee.

Section 10. Subsections (6), (7), (8), and (9) of section 626.112, Florida Statutes, are renumbered as subsections (8), (9), (10), and (11), respectively, subsection (1) is amended, and a new subsection (6) and subsection (7) are added to that section, to read:

626.112 License and appointment required; agents, customer representatives, adjusters, umpires, insurance agencies, service representatives, managing general agents.—

(1)(a) No person may be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by the department and appointed by an appropriate appointing entity or person.

(b) Except as provided in subsection (7) ~~(6)~~ or in applicable department rules, and in addition to other conduct described in this chapter with respect to particular types of agents, a license as an insurance agent, service representative, customer representative, or limited customer representative is required in order to engage in the solicitation of insurance. For purposes of this requirement, as applicable to any of the license types described in this section, the solicitation of insurance is the attempt to persuade any person to purchase an insurance product by:

1. Describing the benefits or terms of insurance coverage, including premiums or rates of return;

2. Distributing an invitation to contract to prospective purchasers;

3. Making general or specific recommendations as to insurance products;

4. Completing orders or applications for insurance products;

5. Comparing insurance products, advising as to insurance matters, or interpreting policies or coverages; or

6. Offering or attempting to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911.

However, an employee leasing company licensed pursuant to chapter 468 which is seeking to enter into a contract with an employer that identifies products and services offered to employees may deliver proposals for the purchase of employee leasing services to prospective clients of the employee leasing company setting forth the terms and conditions of doing business; classify employees as permitted by s. 468.529; collect information from prospective clients and other sources as necessary to perform due diligence on the prospective client and to prepare a proposal for services; provide and receive enrollment forms, plans, and other documents; and discuss or explain in general terms the conditions, limitations, options, or exclusions of insurance benefit plans available to the client or employees of the employee leasing company were the client to

contract with the employee leasing company. Any advertising materials or other documents describing specific insurance coverages must identify and be from a licensed insurer or its licensed agent or a licensed and appointed agent employed by the employee leasing company. The employee leasing company may not advise or inform the prospective business client or individual employees of specific coverage provisions, exclusions, or limitations of particular plans. As to clients for which the employee leasing company is providing services pursuant to s. 468.525(4), the employee leasing company may engage in activities permitted by ss. 626.7315, 626.7845, and 626.8305, subject to the restrictions specified in those sections. If a prospective client requests more specific information concerning the insurance provided by the employee leasing company, the employee leasing company must refer the prospective business client to the insurer or its licensed agent or to a licensed and appointed agent employed by the employee leasing company.

(6) No person shall be, act as, or represent or hold himself or herself out to be a property insurance appraisal umpire unless he or she holds a currently effective license and appointment as a property insurance appraisal umpire.

(7) No person shall be, act as, or represent or hold himself or herself out to be a property insurance appraiser who is eligible to represent an insured on a personal residential or commercial residential property insurance claim unless he or she

holds a currently effective license as an adjuster or is exempt from licensure as an adjuster pursuant to s. 626.860.

Section 11. Subsections (1) and (4) of section 626.171, Florida Statutes, are amended to read:

626.171 Application for license as an agent, customer representative, adjuster, umpire, service representative, managing general agent, or reinsurance intermediary.—

(1) The department may not issue a license as agent, customer representative, adjuster, umpire, service representative, managing general agent, or reinsurance intermediary to any person except upon written application filed with the department, meeting the qualifications for the license applied for as determined by the department, and payment in advance of all applicable fees. The application must be made under the oath of the applicant and be signed by the applicant. An applicant may permit a third party to complete, submit, and sign an application on the applicant's behalf, but is responsible for ensuring that the information on the application is true and correct and is accountable for any misstatements or misrepresentations. The department shall accept the uniform application for nonresident agent licensing. The department may adopt revised versions of the uniform application by rule.

(4) An applicant for a license as an agent, customer representative, adjuster, umpire, service representative, managing general agent, or reinsurance intermediary must submit

a set of the individual applicant's fingerprints, or, if the applicant is not an individual, a set of the fingerprints of the sole proprietor, majority owner, partners, officers, and directors, to the department and must pay the fingerprint processing fee set forth in s. 624.501. Fingerprints shall be used to investigate the applicant's qualifications pursuant to s. 626.201. The fingerprints shall be taken by a law enforcement agency, designated examination center, or other department-approved entity. The department shall require all designated examination centers to have fingerprinting equipment and to take fingerprints from any applicant or prospective applicant who pays the applicable fee. The department may not approve an application for licensure as an agent, customer service representative, adjuster, umpire, service representative, managing general agent, or reinsurance intermediary if fingerprints have not been submitted.

Section 12. Subsection (9) of section 626.207, Florida Statutes, is amended to read:

626.207 Disqualification of applicants and licensees; penalties against licensees; rulemaking authority.—

(9) Section 112.011 does not apply to any applicants for licensure under the Florida Insurance Code, including, but not limited to, agents, agencies, adjusters, adjusting firms, umpires, customer representatives, or managing general agents.

Section 13. Subsections (1) and (2) of section 626.2815, Florida Statutes, are amended to read:

626.2815 Continuing education requirements.—

(1) The purpose of this section is to establish requirements and standards for continuing education courses for individuals licensed to solicit, sell, or adjust insurance or to serve as an umpire in the state.

(2) Except as otherwise provided in this section, this section applies to individuals licensed to transact ~~engage in the sale of~~ insurance or adjust ~~adjustment of~~ insurance claims in this state for all lines of insurance for which an examination is required for licensing and to individuals licensed to serve as an umpire ~~each insurer, employer, or appointing entity, including, but not limited to, those created or existing pursuant to s. 627.351~~. This section does not apply to an individual who holds a license for the sale of any line of insurance for which an examination is not required by the laws of this state or who holds a limited license as a crop or hail and multiple-peril crop insurance agent. Licensees who are unable to comply with the continuing education requirements due to active duty in the military may submit a written request for a waiver to the department.

Section 14. Subsections (1), (3), (5), and (6) of section 626.451, Florida Statutes, are amended to read:

626.451 Appointment of agent or other representative.—

(1) Each appointing entity or person designated by the department to administer the appointment process appointing an agent, adjuster, umpire, service representative, customer

representative, or managing general agent in this state shall file the appointment with the department or office and, at the same time, pay the applicable appointment fee and taxes. Every appointment shall be subject to the prior issuance of the appropriate agent's, adjuster's, umpire's, service representative's, customer representative's, or managing general agent's license.

(3) By authorizing the effectuation of the appointment of an agent, adjuster, umpire, service representative, customer representative, or managing general agent the appointing entity is thereby certifying to the department that it is willing to be bound by the acts of the agent, adjuster, umpire, service representative, customer representative, or managing general agent, within the scope of the licensee's employment or appointment.

(5) Any law enforcement agency or state attorney's office that is aware that an agent, adjuster, umpire, service representative, customer representative, or managing general agent has pleaded guilty or nolo contendere to or has been found guilty of a felony shall notify the department or office of such fact.

(6) Upon the filing of an information or indictment against an agent, adjuster, umpire, service representative, customer representative, or managing general agent, the state attorney shall immediately furnish the department or office a certified copy of the information or indictment.

Section 15. Section 626.461, Florida Statutes, is amended to read:

626.461 Continuation of appointment of agent or other representative.—Subject to renewal or continuation by the appointing entity, the appointment of the agent, adjuster, umpire, service representative, customer representative, or managing general agent shall continue in effect until the person's license is revoked or otherwise terminated, unless written notice of earlier termination of the appointment is filed with the department or person designated by the department to administer the appointment process by either the appointing entity or the appointee.

Section 16. Subsection (3) of section 626.521, Florida Statutes, is amended to read:

626.521 Character, credit reports.—

(3) As to an applicant for an adjuster's, umpire's, or reinsurance intermediary's license who is to be self-employed, the department may secure, at the cost of the applicant, a full detailed credit and character report made by an established and reputable independent reporting service relative to the applicant.

Section 17. Subsections (1) of section 626.541, Florida Statutes, are amended to read:

626.541 Firm, corporate, and business names; officers; associates; notice of changes.—

(1) Any licensed agent, ~~or~~ adjuster, or umpire doing business under a firm or corporate name or under any business name other than his or her own individual name shall, within 30 days after initially transacting ~~the initial transaction of~~ insurance or engaging in insurance activities under such business name, file with the department, on forms adopted and furnished by the department, a written statement of the firm, corporate, or business name being so used, the address of any office or offices or places of business making use of such name, and the name and social security number of each officer and director of the corporation and of each individual associated in such firm or corporation as to the insurance transactions thereof or in the use of such business name.

Section 18. Subsection (1) of section 626.601, Florida Statutes, is amended to read:

626.601 Improper conduct; inquiry; fingerprinting.—

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

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

Section 19. Subsection (1) of section 626.611, Florida Statutes, is amended to read:

626.611 Grounds for compulsory refusal, suspension, or revocation of agent's, title agency's, adjuster's, umpire's, customer representative's, service representative's, or managing general agent's license or appointment.—

(1) The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, umpire, customer representative, service representative, or managing general agent, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist:

(a) Lack of one or more of the qualifications for the license or appointment as specified in this code.

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

(c) Failure to pass to the satisfaction of the department any examination required under this code.

(d) If the license or appointment is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this code.

(e) Willful misrepresentation of any insurance policy or annuity contract or willful deception with regard to any such policy or contract, done either in person or by any form of dissemination of information or advertising.

(f) If, as an adjuster, or agent licensed and appointed to adjust claims under this code, he or she has materially misrepresented to an insured or other interested party the terms and coverage of an insurance contract with intent and for the purpose of effecting settlement of claim for loss or damage or benefit under such contract on less favorable terms than those provided in and contemplated by the contract.

(g) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance.

(h) Demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

(i) Fraudulent or dishonest practices in the conduct of business under the license or appointment.

(j) Misappropriation, conversion, or unlawful withholding of moneys belonging to insurers or insureds or beneficiaries or to others and received in conduct of business under the license or appointment.

(k) Unlawfully rebating, attempting to unlawfully rebate, or unlawfully dividing or offering to divide his or her commission with another.

(l) Having obtained or attempted to obtain, or having used or using, a license or appointment as agent or customer representative for the purpose of soliciting or handling "controlled business" as defined in s. 626.730 with respect to general lines agents, s. 626.784 with respect to life agents, and s. 626.830 with respect to health agents.

(m) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this code.

(n) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(o) Fraudulent or dishonest practice in submitting or aiding or abetting any person in the submission of an application for workers' compensation coverage under chapter 440

containing false or misleading information as to employee payroll or classification for the purpose of avoiding or reducing the amount of premium due for such coverage.

(p) Sale of an unregistered security that was required to be registered, pursuant to chapter 517.

(q) In transactions related to viatical settlement contracts as defined in s. 626.9911:

1. Commission of a fraudulent or dishonest act.

2. No longer meeting the requirements for initial licensure.

3. Having received a fee, commission, or other valuable consideration for his or her services with respect to viatical settlements that involved unlicensed viatical settlement providers or persons who offered or attempted to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911 and who were not licensed life agents.

4. Dealing in bad faith with viators.

Section 20. Section 626.621, Florida Statutes, is amended to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, umpire's, customer representative's, service representative's, or managing general agent's license or appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, umpire, customer representative,

service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(1) Any cause for which issuance of the license or appointment could have been refused had it then existed and been known to the department.

(2) Violation of any provision of this code or of any other law applicable to the business of insurance in the course of dealing under the license or appointment.

(3) Violation of any lawful order or rule of the department, commission, or office.

(4) Failure or refusal, upon demand, to pay over to any insurer he or she represents or has represented any money coming into his or her hands belonging to the insurer.

(5) Violation of the provision against twisting, as defined in s. 626.9541(1)(l).

(6) In the conduct of business under the license or appointment, engaging in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter, or having otherwise shown himself or herself to be a source of injury or loss to the public.

(7) Willful overinsurance of any property or health insurance risk.

(8) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(9) If a life agent, violation of the code of ethics.

(10) Cheating on an examination required for licensure or violating test center or examination procedures published orally, in writing, or electronically at the test site by authorized representatives of the examination program administrator. Communication of test center and examination procedures must be clearly established and documented.

(11) Failure to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof, or under the law of any other country without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case.

(12) Knowingly aiding, assisting, procuring, advising, or abetting any person in the violation of or to violate a

provision of the insurance code or any order or rule of the department, commission, or office.

(13) Has been the subject of or has had a license, permit, appointment, registration, or other authority to conduct business subject to any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, final agency action, or administrative order by any court of competent jurisdiction, administrative law proceeding, state agency, federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association involving a violation of any federal or state securities or commodities law or any rule or regulation adopted thereunder, or a violation of any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association.

(14) Failure to comply with any civil, criminal, or administrative action taken by the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. ss. 651 et seq., to determine paternity or to establish, modify, enforce, or collect support.

(15) Directly or indirectly accepting any compensation, inducement, or reward from an inspector for the referral of the owner of the inspected property to the inspector or inspection company. This prohibition applies to an inspection intended for submission to an insurer in order to obtain property insurance coverage or establish the applicable property insurance premium.

Section 21. Subsection (4) of section 626.641, Florida Statutes, is amended to read:

626.641 Duration of suspension or revocation.—

(4) During the period of suspension or revocation of a license or appointment, and until the license is reinstated or, if revoked, a new license issued, the former licensee or appointee may not engage in or attempt or profess to engage in any transaction or business for which a license or appointment is required under this code or directly or indirectly own, control, or be employed in any manner by an agent, agency, adjuster, ~~or~~ adjusting firm, or umpire.

Section 22. Subsection (2) of section 626.7845, Florida Statutes, is amended to read:

626.7845 Prohibition against unlicensed transaction of life insurance.—

(2) Except as provided in s. 626.112(8) ~~626.112(6)~~, with respect to any line of authority specified in s. 626.015(10), no individual shall, unless licensed as a life agent:

(a) Solicit insurance or annuities or procure applications;

(b) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance or insurance contracts other than:

1. As a consulting actuary advising an insurer; or

2. As to the counseling and advising of labor unions, associations, trustees, employers, or other business entities, the subsidiaries and affiliates of each, relative to their interests and those of their members or employees under insurance benefit plans; or

(c) In this state, from this state, or with a resident of this state, offer or attempt to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911.

Section 23. Section 626.8305, Florida Statutes, is amended to read:

626.8305 Prohibition against the unlicensed transaction of health insurance.—Except as provided in s. 626.112(8) ~~626.112(6)~~, with respect to any line of authority specified in s. 626.015(6), no individual shall, unless licensed as a health agent:

(1) Solicit insurance or procure applications; or

(2) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance contracts other than:

(a) As a consulting actuary advising insurers; or(b) As to the counseling and advising of labor unions, associations, trustees, employers, or other business entities, the subsidiaries and affiliates of each, relative to their interests and those of their members or employees under insurance benefit plans.

Section 24. Paragraph (a) of subsection (2) of section 626.8411, Florida Statutes, is amended to read:

626.8411 Application of Florida Insurance Code provisions to title insurance agents or agencies.—

(2) The following provisions of part I do not apply to title insurance agents or title insurance agencies:

(a) Section 626.112(9) ~~626.112(7)~~, relating to licensing of insurance agencies.

Section 25. Subsection (4) of section 626.8443, Florida Statutes, is amended to read:

626.8443 Duration of suspension or revocation.—

(4) During the period of suspension or after revocation of the license and appointment, the former licensee shall not engage in or attempt to profess to engage in any transaction or business for which a license or appointment is required under this code or directly or indirectly own, control, or be employed in any manner by any insurance agent or agency, ~~or~~ adjuster, ~~or~~ adjusting firm, umpire.

Section 26. Subsection (11) of section 626.854, F.S., is amended to read:

626.854 "Public adjuster" defined; prohibitions. The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(11)(a) If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental

claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or any other thing of value must be based only on the claim payments or settlement obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. In no event shall the contracts described in this paragraph exceed the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments made by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in subparagraph 2. apply.

2. Twenty percent of the amount of insurance claim payments made by the insurer for claims that are not based on

events that are the subject of a declaration of a state of emergency by the Governor.

(c) Any maneuver, shift, or device through which the limits on compensation set forth in this subsection are exceeded is a violation of this chapter punishable as provided under s. 626.8698.

(d) If a public adjuster enters into a contract with an insured or a claimant to perform an appraisal, as defined in s. 626.9964, the public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value in excess of the limitations set forth in paragraph (b) for the appraisal services or, if also serving as adjuster on the claim, adjuster services and appraisal services combined.

Section 26. Section 626.8791 is created to read:

626.8791 Contracts for appraisal services; required notice.— Any contract between an adjuster and an insured or claimant to perform an appraisal must contain the following language in at least 14 point, bold and all capital letters type: "THERE IS NO LEGAL REQUIREMENT THAT AN APPRAISER CHARGE A CLIENT A SET FEE OR A PERCENTAGE OF MONEY RECOVERED IN A CASE. YOU, THE CLIENT, HAVE THE RIGHT TO TALK WITH YOUR APPRAISER ABOUT THE PROPOSED FEE AND TO BARGAIN ABOUT THE RATE OR PERCENTAGE AS IN ANY OTHER CONTRACT. IF YOU DO NOT REACH AN AGREEMENT WITH ONE APPRAISER YOU MAY TALK WITH OTHER APPRAISERS."

Section 27. Part XIV of chapter 626, Florida Statutes, consisting of sections 626.9961 through 626.9968, is created to read:

PART XIV

PROPERTY INSURANCE APPRAISAL UMPIRES

626.9961 Short title.—This part may be referred to as the "Property Insurance Appraisal Umpire Law."

626.9962 Legislative purpose.—The Legislature finds it necessary to regulate persons that hold themselves out to the public as qualified to provide services as property insurance appraisal umpires in order to protect the public safety and welfare and to avoid economic injury to the residents of this state.

(2) This part applies only to property insurance appraisal umpires as defined in this part.

626.9963 Part supplements licensing law.—This part is supplementary to part I, the "Licensing Procedures Law."

626.9964 Definitions.—As used in this part, the term:

(1) "Appraisal" means a process of alternative dispute resolution used in a personal residential or commercial residential property insurance claim.

(2) "Competent" means sufficiently qualified and capable of performing an appraisal.

(3) "Department" means the Department of Financial Services.

(4) "Property insurance appraisal umpire" or "umpire" means a person selected by the appraisers representing the insurer and the insured, or, if the appraisers cannot agree, by the court, who is charged with resolving issues that the appraisers are unable to agree upon during the course of an appraisal.

(5) "Property insurance appraiser" or "appraiser" means the person selected by an insurer or insured to perform an appraisal.

626.9965 Qualification for license as an umpire.—

(1) The department shall issue a license as an umpire to a person who meets the requirements of subsection (2) and is one of the following:

(a) A retired county, circuit, or appellate judge.

(b) Licensed as an engineer pursuant to chapter 471 or is a retired professional engineer as defined in s. 471.005.

(c) Licensed as a general contractor, building contractor, or residential contractor pursuant to part I of chapter 489.

(d) Licensed or registered as an architect to engage in the practice of architecture pursuant to part I of chapter 481.

(e) A member of The Florida Bar.

(f) Licensed as an adjuster pursuant to part VI of chapter 626, which license includes the property and casualty lines of insurance. An adjuster must have been licensed for at least 5 years as an adjuster before he or she may be licensed as an umpire.

(2) An applicant may be licensed to practice in this state as an umpire if the applicant:

(a) Is a natural person at least 18 years of age;

(b) Is a United Stated citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration;

(c) Is of good moral character;

(d) Has paid the applicable fees specified in s. 624.501; and

(e) Has, prior to the date of the application for licensure, satisfactorily completed education courses approved by the department covering:

1. Insurance claims estimating; and

2. Insurance law, ethics for insurance professionals, disciplinary trends, and case studies.

(3) The department may not reject an application solely because the applicant is or is not a member of a given appraisal organization.

626.9966 Grounds for refusal, suspension, or revocation of an umpire license or appointment.—The department may deny an application for license or appointment under this part; suspend, revoke, or refuse to renew or continue a license or appointment of an umpire; or suspend or revoke eligibility for licensure or appointment as an umpire if the department finds that one or more of the following applicable grounds exist:

(1) Violating a duty imposed upon him or her by law or by the terms of the umpire agreement; aiding, assisting, or conspiring with any other person engaged in any such misconduct and in furtherance thereof; or forming the intent, design, or scheme to engage in such misconduct and committing an overt act in furtherance of such intent, design, or scheme. An umpire commits a violation of this part regardless of whether the victim or intended victim of the misconduct has sustained any damage or loss; the damage or loss has been settled and paid after the discovery of misconduct; or the victim or intended victim is an insurer or customer or a person in a confidential relationship with the umpire or is an identified member of the general public.

(2) Having a registration, license, or certification to practice or conduct any regulated profession, business, or vocation revoked, suspended, or encumbered; or having an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied, by this or any other state, any nation, or any possession or district of the United States.

(3) Making or filing a report or record, written or oral, which the umpire knows to be false; willfully failing to file a report or record required by state or federal law; willfully impeding or obstructing such filing; or inducing another person to impede or obstruct such filing.

(4) Agreeing to serve as an umpire if service is contingent upon the umpire reporting a predetermined amount, analysis, or opinion.

(5) Agreeing to serve as an umpire, if the fee to be paid for his or her services is contingent upon the opinion, conclusion, or valuation he or she reaches.

(6) Failure of an umpire, without good cause, to communicate within 10 business days of a request for communication from an appraiser.

(7) Violation of any ethical standard for umpires specified in s. 626.9967.

626.9967 Ethical standards for umpires.—

(1) CONFIDENTIALITY.—

(a) Unless disclosure is otherwise required by law, an umpire shall maintain confidentiality of all information revealed during an appraisal.

(b) An umpire shall maintain confidentiality in the storage and disposal of records and may not disclose any identifying information if materials are used in research, training, or statistical compilations.

(2) FEES AND EXPENSES.—

(a) The fees charged by an umpire must be reasonable and consistent with the nature of the case.

(b) In determining fees, an umpire:

1. Must charge on an hourly basis and may bill only for actual time spent on or allocated for the appraisal.

2. May not charge, agree to, or accept as compensation or reimbursement any payment, commission, or fee that is based on a percentage of the value of the claim or that is contingent upon a specified outcome.

3. May charge for costs actually incurred, and no other costs.

(c) The appraisers may assign the duty to pay the umpire's fee to, and the umpire is entitled to receive payment directly from, the insurer and the insured if the insurer and the insured have acknowledged and accepted the duty and agreed in writing to be responsible for payment.

(3) MAINTENANCE OF RECORDS.—An umpire shall maintain records necessary to support charges for services and expenses, and, upon request, shall provide an accounting of all applicable charges to the insurer and insured. An umpire shall retain original or true copies of any contracts engaging his or her services, appraisal reports, and supporting data assembled and formulated by the umpire in preparing appraisal reports for at least 5 years. The umpire shall make the records available to the department for inspection and copying within 7 business days of a request. If an appraisal has been the subject of, or has been admitted as evidence in, a lawsuit, reports and records related to the appraisal must be retained for at least 2 years after the date that the trial ends.

(4) ADVERTISING.—An umpire may not engage in marketing practices that contain false or misleading information. An

umpire shall ensure that any advertisement of his or her qualifications, services to be rendered, or the appraisal process are accurate and honest. An umpire may not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

(5) INTEGRITY AND IMPARTIALITY.—

(a)1. An umpire may not accept an appraisal unless he or she can serve competently, promptly commence the appraisal and, thereafter, devote the time and attention to its completion in the manner expected by all persons involved in the appraisal.

2. An umpire shall conduct the appraisal process in a manner that advances the fair and efficient resolution of issues that arise.

3. An umpire shall deliberate and decide all issues within the scope of the appraisal, but may not render a decision on any other issues. An umpire shall decide all matters justly, exercising independent judgment. An umpire may not delegate his or her duties to any other person. An umpire who considers the opinion of an independent expert does not violate this paragraph.

(b) An umpire may not engage in any business, provide any service, or perform any act that would compromise his or her integrity or impartiality.

(6) SKILL AND EXPERIENCE.—An umpire shall decline or withdraw from an appraisal or request appropriate assistance

when the facts and circumstances of the appraisal prove to be beyond his or her skill or experience.

(7) GIFTS AND SOLICITATION.— An umpire or any individual or entity acting on behalf of an umpire may not solicit, accept, give, or offer to give, directly or indirectly, any gift, favor, loan, or other item of value in excess of $25 to any individual who participates in the appraisal, for the purpose of solicitation or otherwise attempting to procure future work from any person who participates in the appraisal, or as an inducement to entering into an appraisal with an umpire. This does not prevent an umpire from accepting other appraisals where the appraisers agree to the umpire or the court appoints the umpire.

626.9968 Conflicts of interest.—An insurer may challenge an umpire's impartiality and disqualify the proposed umpire only if:

(1) A familial relationship within the third degree exists between the umpire and a party or a representative of a party;

(2) The umpire has previously represented a party in a professional capacity in the same claim or matter involving the same property;

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

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

Section 28. Section 627.70151 is repealed.

Section 29. For the 2016-2017 fiscal year, the sums of $24,000 in recurring funds from the Insurance Regulatory Trust Fund and $73,107 in recurring funds and $39,230 in nonrecurring funds from the Administrative Trust Fund are appropriated to the Department of Financial Services, and one full-time equivalent position with associated salary rate of 47,291 are authorized, for the purpose of implementing this act.

Section 30. This act shall take effect October 1, 2016. and applies to all appraisals requested on or after that date.

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

Remove everything before the enacting clause and insert: An act relating to property insurance appraisers and property insurance appraisal umpires; amending s. 624.04, F.S.; revising the definition of the term "person"; amending s. 624.303, F.S.; exempting certificates issued to property insurance appraisal umpires from the requirement to bear a seal of the Department of Financial Services; amending s. 624.311, F.S.; providing a schedule for destruction of property insurance appraisal umpire licensing files and records; amending s. 624.317, F.S.; authorizing the department to investigate property insurance appraisal umpires for violations of the insurance code; amending

s. 624.501, F.S.; authorizing specified licensing fees for property insurance appraisal umpires; amending s. 624.523, F.S.; requiring fees associated with property insurance appraisal umpires' appointments to be deposited into the Insurance Regulatory Trust Fund; amending s. 626.015, F.S.; providing a definition; amending s. 626.016, F.S.; revising the scope of the Chief Financial Officer's powers and duties and the department's enforcement jurisdiction to include umpires; amending s. 626.022, F.S.; including umpire licensing in the scope of part I of chapter 626, F.S., relating to licensing procedures; amending s. 626.112, F.S.; requiring licensure as an umpire, or licensing as an adjuster when serving as an appraiser; amending s. 626.171, F.S.; requiring applicants for licensure as an umpire to submit fingerprints to the department; requiring disclosure on the application of discipline against a professional license amending s. 626.207, F.S.; excluding applicants for licensure as umpires from application of s. 112.011, F.S., relating to disqualification from license or public employment; amending s. 626.2815, F.S.; requiring specified continuing education for licensure as an umpire; amending s. 626.451, F.S.; providing requirements relating to the appointment of an umpire; amending s. 626.461, F.S.; providing that an umpire appointment continues in effect, subject to renewal or earlier written notice of termination, until the person's license is revoked or otherwise terminated; amending s. 626.521, F.S.; authorizing the department to obtain a credit and character report for certain

967 umpire applicants; amending s. 626.541, F.S.; requiring an
968 umpire to provide certain information to the department when
969 doing business under a different business name or when
970 information in the licensure application changes; amending s.
971 626.601, F.S.; authorizing the department to investigate
972 improper conduct of any licensed umpire; amending s. 626.611,
973 F.S.; requiring the department to refuse, suspend, or revoke an
974 umpire's license under certain circumstances; amending s.
975 626.621, F.S.; authorizing the department to refuse, suspend, or
976 revoke an umpire's license under certain circumstances; amending
977 s. 626.641, F.S.; prohibiting an umpire from owning,
978 controlling, or being employed by other licensees during the
979 period the umpire's license is suspended or revoked; amending
980 ss. 626.7845, 626.8305, and 626.8411, F.S.; conforming
981 provisions to changes made by the act; amending s. 626.8443,
982 F.S.; prohibiting a title insurance agent from owning,
983 controlling, or being employed by an umpire during the period
984 the agent's license is suspended or revoked; amending s.
985 626.854, F.S.; providing limitations on fees charged by a public
986 adjuster during an appraisal; creating s. 626.8791, F.S.;
987 establishing required notice in a contract for appraisal
988 services; creating part XIV of chapter 626, F.S., relating to
989 umpires; creating s. 626.9961, F.S.; providing a short title;
990 creating s. 626.9962, F.S.; providing legislative purpose;
991 creating s. 626.9963, F.S.; providing that the part supplements
992 part I of chapter 626, F.S., the "Licensing Procedure Law;

creating s. 626.9964, F.S.; providing definitions; creating s. 626.9965, F.S.; providing qualifications for license as an umpire; creating s. 626.9966, F.S.; authorizing the department to refuse, suspend, or revoke an umpire's license under certain circumstances; creating s. 626.9967, F.S.; providing ethical standards; creating s. 626.9968, F.S.; providing for disqualification of an umpire under certain circumstances; repealing s. 627.70151, F.S.; providing for disqualification of an umpire under certain circumstances; providing an appropriation and authorizing positions; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 145 Financial Transactions
SPONSOR(S): Insurance & Banking Subcommittee; McGhee
TIED BILLS: **IDEN./SIM. BILLS:** SB 260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Bauer	Luczynski
2) Regulatory Affairs Committee		Bauer JB	Hamon K.W.H.

SUMMARY ANALYSIS

Transfers of Funds

Funds transfers are generally large, rapid money transfers between commercial entities, and involve a series of transactions. A funds transfer may involve numerous commercial parties, including financial institutions that accept a payment order and carry out the transfer. The rights and obligations of these commercial parties involved in a funds transfer are primarily governed by ch. 670, F.S. (the Act), which is Florida's codification of the Uniform Commercial Code (UCC) Article 4A. On the other hand, a federal law known as the Electronic Funds Transfer Act (EFTA) governs *electronic funds transfers*, which are initiated through certain electronic means, such as direct deposits and telephone transfers, for the purpose of having a financial institution debit or credit a *consumer's* account. The primary purpose of the EFTA is to provide individual consumer rights. Both the Act and the EFTA may apply to a transfer, depending on how the transaction is structured.

Effective 2013, the EFTA was amended to add consumer protections for transfers of funds sent from U.S. consumers to recipients (individuals or businesses) in other countries, known as *remittance transfers*. As the Act is currently written, there is uncertainty as to the Act's applicability to certain types of remittance transfers. The bill amends s. 670.108, F.S., to clarify that the Act applies to funds transfers that are remittance transfers under the EFTA, unless the remittance transfer is also an electronic funds transfer under the EFTA. The bill also provides that the federal EFTA will preempt the Act in the event any inconsistency exists between the Act and the EFTA regarding a funds transfer.

Cancellation of Mortgages

Currently, once a borrower fully repays his or her mortgage securing property in Florida, s. 701.03, F.S., requires the lender to cancel the mortgage within 60 days of payment. This is required regardless whether the mortgage is open-end, which allows a borrower to borrow new sums of money on the same loan up to a certain limit. The cancellation restriction can be burdensome on consumers and lending institutions, as a new line must be established each time the consumer seeks additional access to credit. The bill amends s. 701.03, F.S., to clarify that a lender must cancel an open-end mortgage within 60 days of receiving the borrower's written notice of intent to close the open-end mortgage *and* full payment of the mortgage, so that an open-end mortgage may remain open after payoff for future credit draws if the borrower wishes.

The bill does not appear to have a fiscal impact on state and local governments. The bill may have a positive fiscal impact on the private sector.

The bill is effective on July 1, 2016, and applies prospectively to all remittance transfers and mortgages made on or after July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation: Transfers of Funds

Individuals and businesses alike rely on transfers of bank funds to efficiently satisfy payment obligations of all sizes. Two bodies of law apply to funds transfers, electronic funds transfers, and remittance transfers: the federal Electronic Funds Transfer Act and the Uniform Commercial Code's Article 4A, as adopted by the states.

Federal Electronic Funds Transfer Act

In 1978, Congress enacted the federal Electronic Funds Transfers Act (EFTA) to protect individual consumers when they use electronic funds transfers.[1] Under the EFTA, *electronic funds transfers* mean any transfer of funds initiated through certain electronic means for the purpose of having a financial institution debit or credit a consumer's account.[2] Electronic funds transfers include transfers made by automated teller machines (ATMs), direct deposits, gift cards, overdrafts, point of sale transfers, and telephone transfers, but does *not* include transactions originated by paper instruments (such as checks) and certain other transfers set forth in the EFTA. The EFTA covers topics such as disclosure of fees and limits, error resolution procedures, liability, preauthorized transfers, and receipts.

Uniform Commercial Code Article 4A & Ch. 670, F.S.

In 1989, the Uniform Law Commission finalized Uniform Commercial Code (UCC) Article 4A for the states' adoption, and described it as an essential statutory backdrop to promote uniformity, efficiency, and certainty by governing the rights and obligations among the commercial participants in funds transfers and allocating the risk of loss for unauthorized or improperly executed payment orders. At the time UCC Article 4A was originally drafted, it was intended to govern large, rapid money transfers (typically wholesale wire transfers) between the commercial parties to a funds transfer, keeping in mind that the primary objective of the EFTA is the provision of individual consumer rights.[3]

A majority of the states have adopted UCC Article 4A. In 1991, the Florida Legislature adopted the UCC Article 4A through the enactment of ch. 670, F.S. (the Act), relating to funds transfers.[4] The Act defines "*funds transfers*" as a series of transactions that begin with the originator's *payment order* (an unconditional instruction to a bank to pay a fixed amount), made for the purpose of making payment to the beneficiary of the order.[5] The funds transfer transaction includes the relationship between intermediary banks that execute and settle the payment order, and concludes upon the ultimate, actual payment to the beneficiary. A basic example of a funds transfer, as effectuated by Alpha Corporation's payment order, is described below:

Alpha Corp.		First Bank		Second Bank		Beta Corp.
(originator/sender)	→	*(originator's bank)*	→	*(receiving bank)*	→	*(beneficiary)*

[1] The EFTA is codified at 15 U.S.C. 1693 et seq. The EFTA is implemented in the Federal Reserve Board of Governors' Regulation E, at 12 C.F.R. pt. 1005.
[2] 15 U.S.C. §1693a(7).
[3] 15 U.S.C. §1693(b). *See also* UNIFORM LAW COMMISSION, *Why States Should Adopt UCC Article 4A*, at http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UCC%20Article%204A (last viewed Sept. 28, 2015).
[4] Ch. 91-70, Laws of Fla.
[5] ss. 670.103(1)(c) and 670.104(1), F.S.

Frequently, the EFTA may partially apply to a funds transfer because the transfer is intended to credit a *consumer's* account in a financial institution. In these cases, the Act does *not* apply to the funds transfer to the extent it is governed by the EFTA.[6]

Remittance Transfers

According to World Bank data, the United States is the number one sender of international remittances, accounting for nearly a quarter of remittances (23.3%).[7] Several studies from the mid- to late 2000s estimated that $12-42 billion in monetary transfers were made from the U.S. to family and friends abroad.[8]

Although remittances can be sent through depository institutions (such as an automated clearinghouse transaction or a wire transfer), a large number of U.S. remittance transfers are sent through money transmitters, which are primarily regulated by state money transmitter laws requiring licensure and examination by their state banking and financial regulators. In Florida, ch. 560, F.S., governs non-bank money services businesses, which include "money transmitters" who receive and transmit currency or monetary value through a broad range of means within the U.S. or to or from the U.S.[9] However, ch. 560, F.S., is a regulatory statute setting forth licensure, examination, recordkeeping, and reporting requirements for money transmitters and is administratively enforced by the Office of Financial Regulation, but does not contain specific consumer protections or private remedies.[10]

On the federal level, wire transfers and transfers sent by money transmitters have generally fallen outside of the scope of the EFTA and its implementing rule, Regulation E. Until 2010, no federal consumer protection law directly regulated foreign remittance transfers, which can be sent through depository institutions as well as money transmitters. In 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173, commonly referred to as "Dodd-Frank") was signed into law. Among many changes to federal financial regulatory law, Dodd-Frank amended the EFTA to create new compliance requirements for *remittance transfers.*[11] A remittance transfer is:

- an electronic transfer of funds requested by a consumer sender, regardless of whether the remittance transfer is also an electronic funds transfer under the EFTA,
- initiated by a remittance transfer provider (a person or financial institution that provides this service for a consumer in the normal course of its business), and
- sent to a designated recipient (which can be either an individual or business), located in a foreign country.

Similar to the other consumer protections in the EFTA, these new remittance regulations require certain protections for the sending consumer, including disclosures, error resolution procedures, cancellation and refund policies, and a remittance transfer provider's liability for the acts of its agents.

Under the EFTA, not all remittance transfers qualify as an "electronic funds transfer", raising questions about the applicability of the EFTA. This could occur, for example, if the transfer permits payment in

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[6] s. 670.108, F.S.; Business Law Section of the Florida Bar, *White Paper in support of the proposed amendment to UCC Section 670.108*, p. 1 (on file with the Insurance & Banking Subcommittee staff).

[7] PEW RESEARCH CENTER, *Remittance Flows Worldwide in 2012*, http://www.pewsocialtrends.org/2014/02/20/remittance-map/

[8] Electronic Fund Transfers (Regulation E); Final Rule and Proposed Rule, 77 Fed. Reg. 6195 (issued Feb. 7, 2012) (codified at 12 C.F.R. pt. 1005).

[9] s. 560.103(23), F.S.

[10] Ch. 560, F.S., does require money transmitter licensees to maintain a corporate surety bond or a collateral deposit to ensure a source of recovery for aggrieved claimants. Section 560.209, F.S.

[11] Section 1073 of Dodd-Frank created Section 919 of the EFTA, relating to remittance transfers. Section 919 is codified at 15 U.S.C. §1693o-1. Dodd-Frank transferred EFTA rulemaking authority from the Federal Reserve Board to the CFPB. The CFPB's remittance transfer rule became effective on October 28, 2013. The CFPB's final remittance transfer rule was codified as new subpart B to Regulation E, 12 C.F.R. §§ 1005.30-1005.36.

cash and does not instruct nor authorize a financial institution to credit a consumer account in a financial institution. The Uniform Law Commission expressed concern that absent a change to UCC Article 4A, there could be legal uncertainty for some remittance transfers currently governed by Article 4A, particularly for industry participants.[12] The Consumer Financial Protection Bureau (CFPB), in its proposed remittance transfer rules (Regulation E), also noted the uncertainty raised for traditional cash-based remittances sent through money transmitters (which have not been covered by the EFTA) and international wire transfers, which are not electronic funds transfers.[13]

In 2012, the Uniform Law Commission proposed an amendment to UCC Article 4A, which a majority of states have adopted.[14] The amendment provides an affirmative statement of the Act's applicability to remittance transfers that are *not* electronic funds transfers under the EFTA. Without this amendment, neither the federal EFTA nor UCC Article 4A (as codified in the Act) will apply to some aspects of remittance transfers, and the result would be no statutory rules for remittance transfers that may involve mistaken addresses or payees, duties of intermediaries and other issues beyond the initial sending of the transfer.[15]

Effect of the Bill on Transfers of Funds

Section 1 of the bill adopts the Uniform Law Commission's 2012 amendment, and amends s. 670.108, F.S., to clarify that the Act applies to funds transfers that are remittance transfers as defined in the EFTA, *unless* the remittance transfer is an electronic funds transfer (which will be covered by federal law). The bill provides that if there is any inconsistency between a funds transfer under the Act and the EFTA, the EFTA will govern the inconsistency. This parallels language in the EFTA stating that state law is preempted only if it is inconsistent with the EFTA or Regulation E, and then only to the extent of the inconsistency.[16]

Current Situation: Cancellation of Mortgages

Currently, a lender must cancel a mortgage within 60 days after it has been paid off.[17] The statute is silent as to different types of mortgages, such as open-end mortgages and home equity lines of credit, and does not provide any exceptions. "Open-end mortgages" are not defined in the Florida Statutes, but are generally understood in the financial services industry to allow borrowers to pay down the balance and then draw credit back up to the maximum limit as needed, in contrast to "closed-end mortgages" that disburse the entire loan amount upfront to or on behalf of the borrower and do not allow future redraws of credit.[18]

According to the Florida Bankers Association, open-end lines of credit provide flexibility to consumers by allowing continual access to their home equity by paying off the mortgage in full and then re-accessing the equity when and if needed by the consumer. Under current law, lenders must cancel

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[12] UNIFORM LAW COMMISSION, *UCC Article 4A Amendments (2012) Summary*, at http://www.uniformlaws.org/ActSummary.aspx?title=UCC%20Article%204A%20Amendments%20(2012)

[13] Electronic Fund Transfers (Regulation E); Final Rule and Proposed Rule, 77 Fed. Reg. 6211-6212 (issued Feb. 7, 2012) (codified at 12 C.F.R. pt. 1005).

[14] UNIFORM LAW COMMISSION, *UCC Article 4A Amendments (2012): Enactment Status Map*, at http://www.uniformlaws.org/Act.aspx?title=UCC Article 4A Amendments (2012) (last viewed Sept. 30, 2015).

[15] *See* footnote 12, above.

[16] 15 U.S.C. §1693q.

[17] s. 701.03, F.S.

[18] CONSUMER FINANCIAL PROTECTION BUREAU, *Ask CFPB: What is a second mortgage loan or "junior-lien"?*, at http://www.consumerfinance.gov/askcfpb/105/what-is-a-second-mortgage-loan-or-junior-lien.html (last viewed Sept. 29, 2015). Additionally, Regulation Z, which implements the federal Truth in Lending Act, defines "open-end credit" as "consumer credit extended by a credit under a plan in which: (i) The creditor reasonably contemplates repeated transactions; (ii) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and (iii) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. 12 C.F.R. § 226.2(20).

"any mortgage" upon payoff and must release the lien without exception. This undermines the purpose of open-end mortgages and creates costly and burdensome work for both the consumer and the lender each time the consumer seeks new access to credit secured by the home.[19]

Surrounding states such as Alabama, Georgia, Mississippi, and North Carolina have laws requiring that open-end mortgages and similar lines of credit be cancelled only upon the borrower's full payment and written notice to the lender that he or she wishes to terminate the open-end mortgage.[20]

Effect of the Bill on Cancellation of Mortgages

The bill amends s. 701.03, F.S., to clarify that a mortgagee or assignee's duty to cancel a mortgage is triggered upon 60 days of *full payment* of the mortgage. The bill also provides that this section does not apply to open-end mortgages, unless the borrower provides written notice after full payoff that he or she intends to close the open-end mortgage. If these conditions are met, the mortgagee or assignee must cancel the open-end mortgage within 60 days after receiving the notice as if it were any other type of mortgage.

B. SECTION DIRECTORY:

Section 1. Amends 670.108, F.S., relating to the exclusion of consumer transactions governed by federal law.

Section 2. Amends s. 701.03, F.S., relating to cancellation of mortgages.

Section 3. Provides an effective date of July 1, 2016, and provides that the bill applies to all remittance transfers and mortgages made on or after that date.

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:

Indeterminate but positive. The bill's clarification of the coverage of the Act to remittance transfers may provide greater transactional and operational efficiency for remittance transfer providers and

[19] E-mail from the Florida Bankers Association, RE: HB 145 – Financial Transactions, regarding background of Section 2 (Sept. 28, 2015).
[20] Ala. Code 1975 §35-10-26; Ga. Code Ann. § 44-14-3; Miss. Code Ann. § 89-5-21; N.C.G.S.A. § 45-36.9.

intermediary institutions. In addition, the bill's allowance for open-end mortgages to remain open after a borrower pays it off may reduce administrative costs for lenders and borrowers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 4, 2015, the Insurance & Banking Subcommittee considered and adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified the bill's effective date of July 1, 2016 to provide that it applies prospectively to all remittance transfers and mortgages made on or after that date.

This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to financial transactions; amending s. 670.108, F.S.; revising applicability; providing that ch. 670, F.S., governs certain funds transfers that are remittance transfers; providing that the federal Electronic Fund Transfer Act governs any inconsistency between a funds transfer made under the federal act and a funds transfer made under ch. 670, F.S.; amending s. 701.03, F.S.; requiring that an open-end mortgage be cancelled within a specified timeframe if the borrower provides written notice of his or her intent to close the open-end mortgage; providing applicability; providing an effective date.

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

Section 1. Section 670.108, Florida Statutes, is amended to read:

670.108 Relationship to Electronic Fund Transfer Act ~~Exclusion of consumer transactions governed by federal law.~~

(1) Except as provided in subsection (2), this chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. No. 95-630, 92 Stat. 3728, 15 U.S.C. ss. 1693 et seq.), as amended from time to time.

(2) This chapter applies to a funds transfer that is a

remittance transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C. s. 1693o-1, as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C s. 1693a, as amended from time to time.

(3) If there is an inconsistency between a funds transfer under this chapter and the Electronic Fund Transfer Act, the Electronic Fund Transfer Act governs the inconsistency.

Section 2. Section 701.03, Florida Statutes, is amended to read:

701.03 Cancellation.—When ~~Whenever~~ the amount of money due on any mortgage is ~~shall be~~ fully paid, the mortgagee or assignee shall, within 60 days of full payment, ~~thereafter~~ cancel the mortgage ~~same~~ in the manner provided by law. This section does not apply to an open-end mortgage unless, after fully paying the mortgage, the borrower provides written notice of his or her intent to close the open-end mortgage. If such notice is given, the mortgagee or assignee shall cancel the open-end mortgage within 60 days after receiving the notice.

Section 3. This act shall take effect July 1, 2016, and applies to all remittance transfers and mortgages made on or after that date.

REGULATORY AFFAIRS COMMITTEE

CS/HB 145 by Rep. McGhee
Financial Transactions

AMENDMENT SUMMARY
January 14, 2016

Amendment 1 by Rep. McGhee (strike-all): Retains the provisions of the bill and makes the following changes:

- Exempts private schools from the prohibition against credit card surcharge fees to a student or family paying tuition fees, or other student account charges by credit card;
- Allows licensed consumer finance lenders to pay compensation to any person for referring loan applicants to a licensee, only if such amount is not charged directly or indirectly to the borrower;
- Requires a lender to cancel a mortgage within 45 days, instead of 60 days, of satisfaction. In the case of an open-ended mortgage, the amendment requires the lender to cancel the mortgage within 45 days of satisfaction and receipt of the borrower's written notice of intent to close the mortgage; and
- Provides that the changes to s. 701.03, F.S., relating to the cancellation of mortgages, do not apply to any existing or future open-ended mortgage, unless otherwise stated in the loan agreement.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative McGhee offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 501.0117, Florida Statutes, is amended to read:

501.0117 Credit cards; transactions in which seller or lessor prohibited from imposing surcharge; penalty.—

(1) A seller or lessor in a sales or lease transaction may not impose a surcharge on the buyer or lessee for electing to use a credit card in lieu of payment by cash, check, or similar means, if the seller or lessor accepts payment by credit card. A surcharge is any additional amount imposed at the time of a sale or lease transaction by the seller or lessor that increases the charge to the buyer or lessee for the privilege of using a

credit card to make payment. Charges imposed pursuant to approved state or federal tariffs are not considered to be a surcharge, and charges made under such tariffs are exempt from this section. A convenience fee imposed upon a student or family paying tuition, fees, or other student account charges by credit card to a William L. Boyd, IV, Florida resident access grant eligible institution, as defined in s. 1009.89, or to a private school, as defined in s. 1002.01, is not considered to be a surcharge and is exempt from this section if the amount of the convenience fee does not exceed the total cost charged by the credit card company to the institution. The term "credit card" includes those cards for which unpaid balances are payable on demand. This section does not apply to the offering of a discount for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card, if the discount is offered to all prospective customers.

(2) A person who violates the provisions of subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Paragraph (k) of subsection (1) of section 516.07, Florida Statutes, is amended to read:

516.07 Grounds for denial of license or for disciplinary action.—

(1) The following acts are violations of this chapter and constitute grounds for denial of an application for a license to make consumer finance loans and grounds for any of the

disciplinary actions specified in subsection (2):

(k) Paying money or anything else of value, directly or indirectly, to any person as compensation, inducement, or reward for referring loan applicants to a licensee, if such amount is charged directly or indirectly to the borrower.

Section 3. Section 670.108, Florida Statutes, is amended to read:

670.108 Relationship to Electronic Fund Transfer Act ~~Exclusion of consumer transactions governed by federal law.~~

(1) Except as provided in subsection (2), this chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. No. 95-630, 92 Stat. 3728, 15 U.S.C. ss. 1693 et seq.), as amended from time to time.

(2) This chapter applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C. s. 1693o-1, as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C s. 1693a, as amended from time to time.

(3) If there is an inconsistency between a funds transfer under this chapter and the Electronic Fund Transfer Act, the Electronic Fund Transfer Act governs the inconsistency.

Section 4. Section 701.03, Florida Statutes, is amended to read:

701.03 Cancellation.—When ~~Whenever~~ the amount ~~of money~~ due under a promissory note secured by ~~on~~ any mortgage is ~~shall be~~ fully paid, the mortgagee or assignee shall within 45 ~~60~~ days of satisfaction of the mortgage, ~~thereafter~~ cancel the mortgage ~~same~~ in the manner provided by law. This section does not apply to any future or existing open-ended mortgage unless otherwise stated in the loan agreement. If after fully satisfying the mortgage, the borrower provides written notice of his or her intent to close the open-ended mortgage, the mortgagee or assignee shall cancel the open-ended mortgage within 45 days of receiving said notice.

Section 5. This act applies to all remittance transfers initiated on or after July 1, 2016.

Section 6. This act shall take effect July 1, 2016.

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

Remove lines 2-13 and insert:

An act relating to financial transactions; amending s. 501.0117, F.S.; exempting a private school from the prohibition against charging a convenience fee to a student or family paying tuition, fees, or other student account charges by credit card under certain circumstances; amending s. 516.07, F.S., prohibiting a licensee from making payments to a person as a reward for referring loan applications to the licensee under

certain circumstances; amending s. 670.108, F.S., revising applicability; providing that ch. 670, F.S., governs certain funds transfers that are remittance transfers; providing that the federal Electronic Fund Transfer Act governs any inconsistency between a funds transfer under ch. 670, F.S.; amending s. 701.03, F.S.; requiring that a mortgage be cancelled upon within a specified timeframe; requiring that an open-end mortgage be cancelled within a specified timeframe if the borrower provides written notice of his or her intent to close the open-end mortgage; providing applicability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 193 Renewable Energy Source Devices & Components/Exemption from Certain Taxation & Assessment
SPONSOR(S): Rodrigues and others
TIED BILLS: HB 195 **IDEN./SIM. BILLS:** SJR 170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 1 N	Whittier	Keating
2) Finance & Tax Committee	14 Y, 0 N	Dugan	Langston
3) Regulatory Affairs Committee		Whittier	Hamon

SUMMARY ANALYSIS

The Florida Constitution (Constitution) provides for local government ad valorem taxes on real property and tangible personal property, assessment of property for tax purposes, and exemptions to these taxes.

Article VII, section 4(i) of the Constitution provides that the legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:

(1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
(2) The installation of a renewable energy source device.

This joint resolution proposes two amendments to the Constitution. The first amendment exempts the assessed value of a renewable energy source device, or a component thereof, from ad valorem tax on tangible personal property.

The second amendment authorizes the Legislature to prohibit, by general law, a property appraiser from considering the installation of a renewable energy source device, or a component thereof, in the determination of assessed value of real property for the purpose of ad valorem taxation. This expands the current constitutional provision by specifying that it applies also to a component of a renewable energy source device and by extending it to all real property, not just real property used for residential purposes. This provision is permissive and does not require the Legislature to enact legislation. Any change or improvement to real property for the purposes of resistance to wind damage remains limited to residential real property.

Assuming that the constitutional amendments proposed by HJR 193 are adopted by the voters, the Revenue Estimating Conference (REC) estimates that the self-executing provisions related to tangible personal property will have an indeterminate negative fiscal impact. Further, if the Legislature passes HB 195, which implements the provisions of HJR 193 that are related to real property, the REC estimates that the combined school and non-school impact of those provisions on local government revenues beginning in Fiscal Year 2017-18 will be -$17.0 million, growing to -$21.0 million in Fiscal Year 2020-21, holding the 2015 statewide average property tax rates constant.

The joint resolution provides an effective date of January 1, 2017.

The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.[1] The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.[2] The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,[3] and it provides for specified assessment limitations, property classifications and exemptions.[4] After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.[5]

Article VII, section 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Under Florida law, "just valuation" is synonymous with "fair market value," and is defined as what a willing buyer would pay a willing seller for property in an arm's length transaction.[6]

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.[7] The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[8]

Anyone who owns tangible personal property on January 1 of each year and who has a proprietorship, partnership, or corporation, or is a self-employed agent or a contractor, must file a tangible personal property return to the property appraiser by April 1 each year.[9] Property owners who lease, lend, or rent property must also file. Each tangible personal property tax return is eligible for an exemption from ad valorem taxation of up to $25,000 of assessed value.[10] A single return must be filed for each site in the county where the owner of tangible personal property transacts business.[11] The requirement to file an annual tangible personal property return is waived for taxpayers if they file an initial return on which the exemption is taken and the value of the tangible personal property is less than $25,000.[12]

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[1] Fla. Const. art. VII, s. 1(a).
[2] Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.
[3] Fla. Const. art. VII, s. 4.
[4] Fla. Const. art. VII, ss. 3, 4, and 6.
[5] s. 196.031, F.S.
[6] s. 193.011, F.S. *See, also, Walter v. Shuler,* 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So.2d 4 (Fla. 1973).
[7] The constitutional provisions in art. VII, s. 4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.
[8] Fla. Const. art. VII, s. 4(i).
[9] s. 193.062, F.S.; See also FLORIDA DEPARTMENT OF REVENUE, TANGIBLE PERSONAL PROPERTY, available at http://dor.myflorida.com/dor/property/tpp/ (last visited Nov. 13, 2015).
[10] Fla. Const., article VII, s. 3.
[11] s. 196.183(1), F.S.
[12] s. 196.183(3), F.S.

Renewable Energy Property Tax Exemptions and Constitutional Amendment #3 (2008)

In 1980, Florida voters added the following authorization to article VII, section 3(d) of the Constitution:

> By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

During the same year, based on the new constitutional authority, the Legislature implemented this exemption for real property on which a renewable energy source device is installed and operated.[13] However, the exemption expired after 10 years, as provided in the Constitution. Specifically, the exemption period authorized in statute was from January 1, 1980, through December 31, 1990. Therefore, if an exemption was granted in December 1990, the exemption terminated in December 2000. The implementing statute limited the exemption to the lesser of the following:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.[14]

In December 2000, the last of these exemptions expired.

During the 2008 Legislative Session, HB 7135 (ch. 2008-227, L.O.F.) was enacted, removing the expiration date of the property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. The period of each exemption, however, remained at 10 years. The bill also revised the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property.

In the November 2008 General Election, Florida voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission, adding the following language to article VII, section 4 of the Constitution:

> (i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes: [15]
> (1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
> (2) The installation of a renewable energy source device.

The 2008 constitutional amendment only addressed residential property. In 2013, the Legislature passed a law implementing the renewable energy source device portion of the amendment.[16]

The 2008 constitutional amendment also repealed the constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which the device is installed and operated. This repealed language had provided the constitutional basis for

[13] ss. 196.175 and 196.012(14), F.S. (2000)
[14] *Id.*
[15] The 2008 constitutional amendment is permissive and does not *require* the Legislature to enact legislation.
[16] Ch. 2013-77, Laws of Fla.

the legislation passed in 1980 and 2008; thereby nullifying the property tax exemption that the Legislature had just passed.

Under current law, the renewable energy property tax exemption is implemented in s. 193.624, F.S. The statute applies to a renewable energy source device installed on or after January 1, 2013, on new and existing residential real property. The statute defines the term "renewable energy source device" to mean any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:[17]

- Solar energy collectors, photovoltaic modules, and inverters;
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks;
- Rockbeds;
- Thermostats and other control devices;
- Heat exchange devices;
- Pumps and fans;
- Roof ponds;
- Freestanding thermal containers;
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type;
- Windmills and wind turbines;
- Wind-driven generators;
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy; and
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

Effect of Proposed Changes

The joint resolution proposes two amendments to the Constitution. The first amendment proposes an amendment to article VII, section 3 to exempt the assessed value of a renewable energy source device, or a component thereof, from the ad valorem tax on tangible personal property.

The second amendment proposes an amendment to article VII, section 4 that authorizes the Legislature, by general law, to prohibit a property appraiser from considering the installation of a renewable energy source device, or a component thereof, in the determination of assessed value of real property for the purpose of ad valorem taxation. This expands the current constitutional provision by specifying that it applies also to a component of a renewable energy source device and by extending it to all real property, not just real property used for residential purposes. This provision is permissive and does not require the Legislature to enact legislation. Any change or improvement to real property for the purposes of resistance to wind damage remains limited to residential real property.

The joint resolution also creates section 34 of article XII to provide a schedule of implementation.

The amendments and addition to the Constitution would take effect January 1, 2017.

B. SECTION DIRECTORY:

As this legislation is a joint resolution proposing constitutional amendments, it does not contain bill sections.

[17] s. 193.624(1), F.S.

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:

   See *Fiscal Comments.*

2. Expenditures:

   See *Fiscal Comments.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The joint resolution will result in lower ad valorem tax expenses for taxpayers who make qualifying improvements to real property and may encourage the purchase of more renewable energy source devices throughout the state.

D. FISCAL COMMENTS:

Assuming that the constitutional amendments proposed by HJR 193 are adopted by the voters, the Revenue Estimating Conference (REC) estimates that the self-executing provisions related to tangible personal property will have an indeterminate negative fiscal impact. Further, if the Legislature passes HB 195, which implements the provisions of HJR 193 that are related to real property, the REC estimates that the combined school and non-school impact of those provisions on local government revenues beginning in Fiscal Year 2017-18 will be -$17.0 million, growing to -$21.0 million in Fiscal Year 2020-21, holding the 2015 statewide average property tax rates constant.

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III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This is not a general bill and is therefore not subject to the municipality/county mandates provision of article VII, section 18 of the Florida Constitution.

2. Other:

Article XI, section 1 of the Florida Constitution, provides for proposed changes to the Constitution by the Legislature:

SECTION 1: **Proposal by legislature.** – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published. Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision. Article XI, section 5(e) of the State Constitution, requires 60 percent voter approval for a proposed constitutional amendment to pass.

If the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election.[18]

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[18] FLA. CONST. art. XI, s. 5(e).

House Joint Resolution

A joint resolution proposing amendments to Sections 3 and 4 of Article VII and the creation of Section 34 of Article XII of the State Constitution to require the Legislature, by general law, to exempt from ad valorem taxation the assessed value of renewable energy source devices, or components thereof, that are subject to tangible personal property taxes and to allow the Legislature, by general law, to prohibit consideration of such installed devices or components in assessment of the value of real property for the purpose of ad valorem taxation, and to provide an effective date.

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

That the following amendment to Sections 3 and 4 of Article VII and the creation of Section 34 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 3. Taxes; exemptions.—

(a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be

exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

(b) There shall be exempt from taxation, cumulatively, to every head of a family residing in this state, household goods and personal effects to the value fixed by general law, not less than one thousand dollars, and to every widow or widower or person who is blind or totally and permanently disabled, property to the value fixed by general law not less than five hundred dollars.

(c) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant community and economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law. Such an exemption may be granted only by ordinance of the county or municipality, and only after the electors of the county or municipality voting on such question in a referendum authorize the county or municipality to adopt such ordinances. An exemption so granted shall apply to improvements to real property made by or for the use of a new business and improvements to real property related to the expansion of an existing business and shall also apply to tangible personal

property of such new business and tangible personal property related to the expansion of an existing business. The amount or limits of the amount of such exemption shall be specified by general law. The period of time for which such exemption may be granted to a new business or expansion of an existing business shall be determined by general law. The authority to grant such exemption shall expire ten years from the date of approval by the electors of the county or municipality, and may be renewable by referendum as provided by general law.

(d) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant historic preservation ad valorem tax exemptions to owners of historic properties. This exemption may be granted only by ordinance of the county or municipality. The amount or limits of the amount of this exemption and the requirements for eligible properties must be specified by general law. The period of time for which this exemption may be granted to a property owner shall be determined by general law.

(e) By general law and subject to conditions specified therein:~~,~~

(1) Twenty-five thousand dollars of the assessed value of property subject to tangible personal property tax shall be exempt from ad valorem taxation.

(2) The assessed value of a renewable energy source device, or a component thereof, subject to tangible personal

property tax shall be exempt from ad valorem taxation.

(f) There shall be granted an ad valorem tax exemption for real property dedicated in perpetuity for conservation purposes, including real property encumbered by perpetual conservation easements or by other perpetual conservation protections, as defined by general law.

(g) By general law and subject to the conditions specified therein, each person who receives a homestead exemption as provided in section 6 of this article; who was a member of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard; and who was deployed during the preceding calendar year on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the legislature shall receive an additional exemption equal to a percentage of the taxable value of his or her homestead property. The applicable percentage shall be calculated as the number of days during the preceding calendar year the person was deployed on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the legislature divided by the number of days in that year.

SECTION 4. Taxation; assessments.—By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for

noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(d) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of paragraph (8) apply. Thereafter, the homestead shall be assessed as provided in this subsection.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead, unless the provisions of paragraph (8) apply. That assessment shall only change as provided in this subsection.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(8)a. A person who establishes a new homestead as of January 1, 2009, or January 1 of any subsequent year and who has received a homestead exemption pursuant to Section 6 of this Article as of January 1 of either of the two years immediately preceding the establishment of the new homestead is entitled to

have the new homestead assessed at less than just value. If this revision is approved in January of 2008, a person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007. The assessed value of the newly established homestead shall be determined as follows:

1. If the just value of the new homestead is greater than or equal to the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this subsection.

2. If the just value of the new homestead is less than the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the prior homestead and multiplied by the assessed value of the prior homestead. However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this sub-subparagraph is greater than $500,000, the assessed value of the new homestead shall be increased so that

the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this subsection.

b. By general law and subject to conditions specified therein, the legislature shall provide for application of this paragraph to property owned by more than one person.

(e) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(f) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

(g) For all levies other than school district levies, assessments of residential real property, as defined by general law, which contains nine units or fewer and which is not subject to the assessment limitations set forth in subsections (a) through (d) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) After a change of ownership or control, as defined by general law, including any change of ownership of a legal entity that owns the property, such property shall be assessed at just value as of the next assessment date. Thereafter, such property shall be assessed as provided in this subsection.

(4) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(h) For all levies other than school district levies, assessments of real property that is not subject to the assessment limitations set forth in subsections (a) through (d) and (g) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) The legislature must provide that such property shall be assessed at just value as of the next assessment date after a qualifying improvement, as defined by general law, is made to such property. Thereafter, such property shall be assessed as provided in this subsection.

(4) The legislature may provide that such property shall be assessed at just value as of the next assessment date after a change of ownership or control, as defined by general law, including any change of ownership of the legal entity that owns the property. Thereafter, such property shall be assessed as provided in this subsection.

(5) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property ~~used for residential purposes~~:

(1) Any change or improvement to residential real property

made to improve ~~for the purpose of improving~~ the property's resistance to wind damage.

(2) The installation of a renewable energy source device or a component thereof.

(j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:

a. Land used predominantly for commercial fishing purposes.

b. Land that is accessible to the public and used for vessel launches into waters that are navigable.

c. Marinas and drystacks that are open to the public.

d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.

(2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law.

ARTICLE XII

SCHEDULE

SECTION 34. Renewable energy source devices and components thereof; exemption from certain taxation and assessment.—This section, the amendment to subsection (e) of Section 3 of Article VII requiring the legislature, by general law, to exempt the assessed value of a renewable energy source device, or a component thereof, subject to tangible personal property tax from ad valorem taxation, and the amendment to subsection (i) of

Section 4 of Article VII allowing the legislature, by general law, to prohibit consideration of a renewable energy source device, or a component thereof, in assessing the value of real property for the purpose of ad valorem taxation shall take effect on January 1, 2017.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTIONS 3 AND 4

ARTICLE XII, SECTION 34

RENEWABLE ENERGY SOURCE DEVICES AND COMPONENTS THEREOF; EXEMPTION FROM CERTAIN TAXATION AND ASSESSMENT.—Proposing an amendment to the State Constitution to require the Legislature, by general law, to exempt from ad valorem taxation the assessed value of renewable energy source devices, or components thereof, that are subject to tangible personal property taxes and allow the Legislature, by general law, to prohibit consideration of such devices or components in assessing the value of real property for the purpose of ad valorem taxation. This amendment takes effect January 1, 2017.

REGULATORY AFFAIRS COMMITTEE
HJR 193 by Rep. Rodrigues
Renewable Energy Source Devices

AMENDMENT SUMMARY

Amendment 1 by Rep. Rodrigues (Strike-all)

- Removes the phrase "or a component thereof" from references to "renewable energy source device."

- Provides an expiration date of December 31, 2036, for the constitutional provisions proposed by the joint resolution.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Rodrigues, R. offered the following:

Amendment (with title amendment)

Remove everything after the resolving clause and insert:

That the following amendment to Sections 3 and 4 of Article VII and the creation of Section 34 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 3. Taxes; exemptions.—

(a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be

exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

(b) There shall be exempt from taxation, cumulatively, to every head of a family residing in this state, household goods and personal effects to the value fixed by general law, not less than one thousand dollars, and to every widow or widower or person who is blind or totally and permanently disabled, property to the value fixed by general law not less than five hundred dollars.

(c) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant community and economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law. Such an exemption may be granted only by ordinance of the county or municipality, and only after the electors of the county or municipality voting on such question in a referendum authorize the county or municipality to adopt such ordinances. An exemption so granted shall apply to improvements to real property made by or for the use of a new business and improvements to real property related to the expansion of an existing business and shall also apply to tangible personal

property of such new business and tangible personal property related to the expansion of an existing business. The amount or limits of the amount of such exemption shall be specified by general law. The period of time for which such exemption may be granted to a new business or expansion of an existing business shall be determined by general law. The authority to grant such exemption shall expire ten years from the date of approval by the electors of the county or municipality, and may be renewable by referendum as provided by general law.

(d) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant historic preservation ad valorem tax exemptions to owners of historic properties. This exemption may be granted only by ordinance of the county or municipality. The amount or limits of the amount of this exemption and the requirements for eligible properties must be specified by general law. The period of time for which this exemption may be granted to a property owner shall be determined by general law.

(e) By general law and subject to conditions specified therein:~~,~~

(1) Twenty-five thousand dollars of the assessed value of property subject to tangible personal property tax shall be exempt from ad valorem taxation.

(2) The assessed value of a renewable energy source device subject to tangible personal property tax shall be exempt from

ad valorem taxation.

(f) There shall be granted an ad valorem tax exemption for real property dedicated in perpetuity for conservation purposes, including real property encumbered by perpetual conservation easements or by other perpetual conservation protections, as defined by general law.

(g) By general law and subject to the conditions specified therein, each person who receives a homestead exemption as provided in section 6 of this article; who was a member of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard; and who was deployed during the preceding calendar year on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the legislature shall receive an additional exemption equal to a percentage of the taxable value of his or her homestead property. The applicable percentage shall be calculated as the number of days during the preceding calendar year the person was deployed on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the legislature divided by the number of days in that year.

SECTION 4. Taxation; assessments.—By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for

noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(d) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of paragraph (8) apply. Thereafter, the homestead shall be assessed as provided in this subsection.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead, unless the provisions of paragraph (8) apply. That assessment shall only change as provided in this subsection.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(8)a. A person who establishes a new homestead as of January 1, 2009, or January 1 of any subsequent year and who has received a homestead exemption pursuant to Section 6 of this Article as of January 1 of either of the two years immediately preceding the establishment of the new homestead is entitled to

have the new homestead assessed at less than just value. If this revision is approved in January of 2008, a person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007. The assessed value of the newly established homestead shall be determined as follows:

1. If the just value of the new homestead is greater than or equal to the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this subsection.

2. If the just value of the new homestead is less than the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the prior homestead and multiplied by the assessed value of the prior homestead. However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this sub-subparagraph is greater than $500,000, the assessed value of the new homestead shall be increased so that

the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this subsection.

b. By general law and subject to conditions specified therein, the legislature shall provide for application of this paragraph to property owned by more than one person.

(e) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(f) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

(g) For all levies other than school district levies, assessments of residential real property, as defined by general law, which contains nine units or fewer and which is not subject to the assessment limitations set forth in subsections (a) through (d) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) After a change of ownership or control, as defined by general law, including any change of ownership of a legal entity that owns the property, such property shall be assessed at just value as of the next assessment date. Thereafter, such property shall be assessed as provided in this subsection.

(4) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(h) For all levies other than school district levies, assessments of real property that is not subject to the assessment limitations set forth in subsections (a) through (d) and (g) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) The legislature must provide that such property shall be assessed at just value as of the next assessment date after a qualifying improvement, as defined by general law, is made to such property. Thereafter, such property shall be assessed as provided in this subsection.

(4) The legislature may provide that such property shall be assessed at just value as of the next assessment date after a change of ownership or control, as defined by general law, including any change of ownership of the legal entity that owns the property. Thereafter, such property shall be assessed as provided in this subsection.

(5) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property ~~used for residential purposes~~:

(1) Any change or improvement <u>to residential real property</u>

made to improve ~~for the purpose of improving~~ the property's resistance to wind damage.

(2) The installation of a renewable energy source device.

(j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:

a. Land used predominantly for commercial fishing purposes.

b. Land that is accessible to the public and used for vessel launches into waters that are navigable.

c. Marinas and drystacks that are open to the public.

d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.

(2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law.

ARTICLE XII

SCHEDULE

SECTION 34. Renewable energy source devices; exemption from certain taxation and assessment.—This section, the amendment to subsection (e) of Section 3 of Article VII requiring the legislature, by general law, to exempt the assessed value of a renewable energy source device subject to tangible personal property tax from ad valorem taxation, and the amendment to subsection (i) of Section 4 of Article VII allowing the legislature, by general law, to prohibit consideration of a

renewable energy source device in assessing the value of real property for the purpose of ad valorem taxation shall take effect on January 1, 2017, and shall expire on December 31, 2036. Upon expiration, this section shall be repealed and the text of subsection (e) of Section 3 of Article VII and subsection (i) of Section 4 of Article VII shall revert to that in existence on December 31, 2016, except that any amendments to such text otherwise adopted shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire pursuant to this section.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTIONS 3 AND 4

ARTICLE XII, SECTION 34

RENEWABLE ENERGY SOURCE DEVICES; EXEMPTION FROM CERTAIN TAXATION AND ASSESSMENT.—Proposing an amendment to the State Constitution to require the Legislature, by general law, to exempt from ad valorem taxation the assessed value of renewable energy source devices that are subject to tangible personal property taxes and allow the Legislature, by general law, to prohibit consideration of such devices in assessing the value of real property for the purpose of ad valorem taxation. This amendment takes effect January 1, 2017, and expires on December 31, 2036.

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

Remove everything before the resolving clause and insert:

House Joint Resolution

A joint resolution proposing amendments to Sections 3 and 4 of Article VII and the creation of Section 34 of Article XII of the State Constitution to require the Legislature, by general law, to exempt from ad valorem taxation the assessed value of renewable energy source devices that are subject to tangible personal property taxes and to allow the Legislature, by general law, to prohibit consideration of such installed devices in assessment of the value of real property for the purpose of ad valorem taxation, and to provide effective and expiration dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 195 Renewable Energy Source Devices
SPONSOR(S): Rodrigues and others
TIED BILLS: HJR 193 **IDEN./SIM. BILLS:** SB 172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 1 N	Whittier	Keating
2) Finance & Tax Committee	14 Y, 0 N	Dugan	Langston
3) Regulatory Affairs Committee		Whittier	Hamon

SUMMARY ANALYSIS

This bill implements HJR 193, which amends article VII, sections 3 and 4 of the Florida Constitution (Constitution) and creates article XII, section 34 of the Constitution. HJR 193 proposes to exempt the assessed value of a renewable energy source device, or a component thereof, from ad valorem tax on tangible personal property. HJR 193 also proposes to authorize the Legislature, through general law, to prohibit the consideration of the installation of a renewable energy source device, or a component thereof, in determining the assessed value of any real property for the purpose of ad valorem taxation.

The bill amends s. 193.624, F.S., to expand the definition of "renewable energy source device" to include devices for the storage of solar energy, wind energy, and energy derived from geothermal deposits. The bill also amends that section to prohibit the consideration of the installation of a renewable energy source device, or a component thereof, from assessments of *all* real property, rather than just for residential property, beginning January 1, 2017.

The bill creates s. 196.182, F.S., to exempt a renewable energy source device, as defined in s. 193.624, F.S., or a component thereof, from ad valorem tax on tangible personal property.

The Revenue Estimating Conference estimates that if HJR 193 is passed by the voters, the estimated local government revenue impact of HB 195 beginning in Fiscal Year 2017-18 would be -$17.0 million, growing to -$21.0 million in Fiscal Year 2020-21, holding the 2015 statewide average property tax rates constant.

The act will take effect January 1, 2017, if HJR 193 or a similar joint resolution having substantially the same specific intent and purpose is approved by the electors at the general election to be held in November 2016 or at an earlier special election specifically authorized by law for that purpose. The proposed amendment must be approved by at least 60 percent of the votes cast in order to pass.

The county/municipality mandates provision of article VII, section 18 of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by reducing ad valorem tax bases compared to that which would exist under current law. However, an exemption may apply because the fiscal impact may be insignificant.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Property Taxes and Assessments

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.[1] The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.[2] The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,[3] and it provides for specified assessment limitations, property classifications and exemptions.[4] After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.[5]

Article VII, section 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Under Florida law, "just valuation" is synonymous with "fair market value," and is defined as what a willing buyer would pay a willing seller for property in an arm's length transaction.[6]

Section 193.011, F.S., lists the following factors to be taken into consideration when a property appraiser is determining just valuation:

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

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[1] Fla. Const. art. VII, s. 1(a).
[2] Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.
[3] Fla. Const. art. VII, s. 4.
[4] Fla. Const. art. VII, ss. 3, 4, and 6.
[5] s. 196.031, F.S.
[6] s. 193.011, F.S. *See, also, Walter v. Shuler,* 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So.2d 4 (Fla. 1973).

(3) The location of said property;

(4) The quantity or size of said property;

(5) The cost of said property and the present replacement value of any improvements thereon;

(6) The condition of said property;

(7) The income from said property; and

(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.[7] The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[8]

Anyone who owns tangible personal property on January 1 of each year and who has a proprietorship, partnership, or corporation, or is a self-employed agent or a contractor, must file a tangible personal property return to the property appraiser by April 1 each year.[9] Property owners who lease, lend, or rent property must also file. Each tangible personal property tax return is eligible for an exemption from ad valorem taxation of up to $25,000 of assessed value.[10] A single return must be filed for each site in the county where the owner of tangible personal property transacts business.[11] The requirement to file an annual tangible personal property return is waived for taxpayers if they file an initial return on which the exemption is taken and the value of the tangible personal property is less than $25,000.[12]

Renewable Energy Property Tax Exemptions and Constitutional Amendment #3 (2008)

In 1980, Florida voters added the following authorization to article VII, section 3(d) of the Constitution:

> By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

During the same year, based on the new constitutional authority, the Legislature implemented this exemption for real property on which a renewable energy source device is installed and operated.[13] However, the exemption expired after 10 years, as provided in the Constitution. Specifically, the exemption period authorized in statute was from January 1, 1980, through December 31, 1990.

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[7] The constitutional provisions in art. VII, s. 4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.
[8] Fla. Const. art. VII, s. 4(i).
[9] s. 193.062, F.S.; See also FLORIDA DEPARTMENT OF REVENUE, TANGIBLE PERSONAL PROPERTY, available at http://dor.myflorida.com/dor/property/tpp/ (last visited Nov. 13, 2015).
[10] Fla. Const., article VII, s. 3.
[11] s. 196.183(1), F.S.
[12] s. 196.183(3), F.S.
[13] ss. 196.175 and 196.012(14), F.S. (2000)

Therefore, if an exemption was granted in December 1990, the exemption terminated in December 2000. The implementing statute limited the exemption to the lesser of the following:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.[14]

In December 2000, the last of these exemptions expired.

During the 2008 Legislative Session, HB 7135 (ch. 2008-227, L.O.F.) was enacted, removing the expiration date of the property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. The period of each exemption, however, remained at 10 years. The bill also revised the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property.

In the November 2008 General Election, Florida voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission, adding the following language to article VII, section 4 of the Constitution:

> (i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes: [15]
> (1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
> (2) The installation of a renewable energy source device.

The 2008 constitutional amendment only addressed residential property. In 2013, the Legislature passed a law implementing the renewable energy source device portion of the amendment.[16]

The 2008 constitutional amendment also repealed the constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which the device is installed and operated. This repealed language had provided the constitutional basis for the legislation passed in 1980 and 2008; thereby nullifying the property tax exemption that the Legislature had just passed.

In 2013, the Legislature created s. 193.624, F.S., which provides that in determining the assessed value of real property used for residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered. The law applies to the installation of a renewable energy source device installed on or after January 1, 2013, to new and existing residential real property. The wind mitigation portion of the constitutional amendment for residential properties was not included in the law.

"Renewable energy source devices" means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

- Solar energy collectors, photovoltaic modules, and inverters.
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
- Rockbeds.

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[14] *Id.*
[15] The 2008 constitutional amendment is permissive and does not *require* the Legislature to enact legislation.
[16] Ch. 2013-77, Laws of Fla.

- Thermostats and other control devices.
- Heat exchange devices.
- Pumps and fans.
- Roof ponds.
- Freestanding thermal containers.
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type.
- Windmills and wind turbines.
- Wind-driven generators.
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.[17]

Effect of Proposed Changes

The bill implements HJR 193, which amends article VII, sections 3 and 4 of the Florida Constitution and creates article XII, section 34 of the Florida Constitution. HJR 193 proposes to exempt the assessed value of a renewable energy source device, or a component thereof, from ad valorem tax on tangible personal property.

HJR 193 also proposes to authorize the Legislature, through general law, to prohibit the consideration of the installation of a renewable energy source device, or a component thereof,[18] in determining the assessed value of all real property (not just residential) for the purpose of ad valorem taxation, beginning January 1, 2017. The provision is permissive and does not require the Legislature to enact legislation. Any change or improvement to real property for the purposes of resistance to wind damage remains limited to residential real property.

To implement the joint resolution, the bill creates s. 196.182, F.S., to exempt a renewable energy source device, or any component thereof from ad valorem taxation. It amends s. 193.624, F.S., to prohibit the consideration of an increase in the just value of a property attributable to the installation of a renewable energy source device, or a component thereof, in determining assessments of *all* real property, rather than just for residential property, beginning January 1, 2017. The bill clarifies that the provision applies to new and existing real property.

The bill expands the definition of "renewable energy source device" in s. 193.624, F.S., to include power conditioning and storage devices that store or use solar energy (in addition to wind energy) or energy derived from geothermal deposits to generate electricity or mechanical forms of energy.

B. SECTION DIRECTORY:

Section 1. Amends s. 193.624, F.S., relating to assessments of real property.

Section 2. Creates s. 196.182, F.S., exempting a renewable energy source device or any component thereof from ad valorem taxation.

Section 3. Reenacts s. 193.155, F.S., relating to homestead assessments.

Section 4. Reenacts s. 193.1554, F.S., relating to non-homestead residential property assessments.

[17] s. 193.624(1), F.S.
[18] Although this is not defined in the bill or the joint resolution, it may be referring to battery backups for photovoltaic systems.

Section 5. Provides an effective date of January 1, 2017, if HJR 193 or a similar joint resolution having substantially the same specific intent and purpose, is approved by the electors at the November 2016 general election or at an earlier special election specifically authorized by law for that purpose.

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:

   See *Fiscal Comments.*

2. Expenditures:

   See *Fiscal Comments.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will result in lower ad valorem tax expenses for taxpayers who make qualifying improvements to real property and may encourage the purchase of more renewable energy source devices throughout the state.

D. FISCAL COMMENTS:

The Revenue Estimating Conference estimates that if HJR 193 is passed by the voters, the estimated local government revenue impact of HB 195 beginning in Fiscal Year 2017-18 would be -$17.0 million, growing to -$21.0 million in Fiscal Year 2020-21, holding the 2015 statewide average property tax rates constant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of article VII, section 18 of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by reducing ad valorem tax bases compared to that which would exist under current law. However, an exemption may apply because the fiscal impact may be insignificant.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to renewable energy source devices; amending s. 193.624, F.S.; revising the definition of the term "renewable energy source device" to include certain devices that store or use solar energy, wind energy, or energy derived from geothermal deposits to generate specified forms of energy; specifying a period during which a property appraiser is prohibited from considering an increase in the just value of real property used for residential purposes which is attributable to the installation of a renewable energy source device; prohibiting consideration by a property appraiser of an increase in the just value of real property used for any purpose which is attributable to the installation of a renewable energy source device or a component thereof on or after a specified date; creating s. 196.182, F.S.; exempting certain renewable energy source devices, or components thereof, from ad valorem taxation; reenacting ss. 193.155(4)(a) and 193.1554(6)(a), F.S., relating to homestead assessments and nonhomestead residential property assessments, respectively, to incorporate the amendment made to s. 193.624, F.S., in references thereto; providing a contingent effective date.

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

Section 1. Section 193.624, Florida Statutes, is amended to read:

193.624 Assessment of real ~~residential~~ property.—

(1) As used in this section, the term "renewable energy source device" means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

(a) Solar energy collectors, photovoltaic modules, and inverters.

(b) Storage tanks and other storage systems, excluding swimming pools used as storage tanks.

(c) Rockbeds.

(d) Thermostats and other control devices.

(e) Heat exchange devices.

(f) Pumps and fans.

(g) Roof ponds.

(h) Freestanding thermal containers.

(i) Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type.

(j) Windmills and wind turbines.

(k) Wind-driven generators.

(l) Power conditioning and storage devices that store or use solar energy, wind energy, or energy derived from geothermal

deposits to generate electricity or mechanical forms of energy.

(m) Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

(2) In determining the assessed value of new and existing real property used for:

(a) Residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device between January 1, 2013, and December 31, 2016, may not be considered.

(b) ~~(3)~~ Any purpose, an increase in the just value of the property attributable ~~This section applies~~ to the installation of a renewable energy source device or a component thereof ~~installed~~ on or after January 1, 2017, may not be considered ~~January 1, 2013, to new and existing residential real property~~.

Section 2. Section 196.182, Florida Statutes, is created to read:

196.182 Exemption of renewable energy source devices and components.—A renewable energy source device, as defined in s. 193.624, or a component thereof, which is considered tangible personal property, is exempt from ad valorem taxation.

Section 3. For the purpose of incorporating the amendment made by this act to section 193.624, Florida Statutes, in a reference thereto, paragraph (a) of subsection (4) of section 193.155, Florida Statutes, is reenacted to read:

193.155 Homestead assessments.—Homestead property shall be

assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8) apply.

(4)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to homestead property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 4. For the purpose of incorporating the amendment made by this act to section 193.624, Florida Statutes, in a reference thereto, paragraph (a) of subsection (6) of section 193.1554, Florida Statutes, is reenacted to read:

193.1554 Assessment of nonhomestead residential property.—

(6)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to nonhomestead residential property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 5. This act shall take effect January 1, 2017, if HJR 193, or a similar joint resolution having substantially the same specific intent and purpose, is approved by the electors at the general election to be held in November 2016 or at an earlier special election specifically authorized by law for that purpose.

REGULATORY AFFAIRS COMMITTEE
HB 195 by Rep. Rodrigues
Renewable Energy Source Devices

AMENDMENT SUMMARY

Amendment 1 by Rep. Rodrigues (Strike-all)

- Revises the definition of "renewable energy source device" to include specific components and removes the phrase "or a component thereof" from references to "renewable energy source device."

- Provides an expiration date of December 31, 2036.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Rodrigues, R. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 193.624, Florida Statutes, is amended to read:

193.624 Assessment of real ~~residential~~ property.—

(1) As used in this section, the term "renewable energy source device" means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

(a) Solar energy collectors, photovoltaic modules, and inverters.

(b) Storage tanks and other storage systems, excluding swimming pools used as storage tanks.

(c) Rockbeds.

(d) Thermostats and other control devices.

(e) Heat exchange devices.

(f) Pumps and fans.

(g) Roof ponds.

(h) Freestanding thermal containers.

(i) Pipes, ducts, refrigerant handling systems, wiring, structural supports, and other components ~~equipment~~ used as integral parts of ~~to interconnect~~ such systems; however, such equipment does not include conventional backup systems of any type or any equipment or structures that would be required in the absence of the renewable energy source device.

(j) Windmills and wind turbines.

(k) Wind-driven generators.

(l) Power conditioning and storage devices that store or use solar energy, wind energy, or energy derived from geothermal deposits to generate electricity or mechanical forms of energy.

(m) Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

(2) In determining the assessed value of new and existing real property used for:

(a) Residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device between January 1, 2013, and December 31, 2016, may not be considered.

(b) ~~(3)~~ Any purpose, an increase in the just value of the property attributable ~~This section applies~~ to the installation of a renewable energy source device ~~installed~~ on or after January 1, 2017, may not be considered ~~January 1, 2013, to new and existing residential real property~~.

Section 2. Section 196.182, Florida Statutes, is created to read:

196.182 Exemption of renewable energy source devices.—A renewable energy source device, as defined in s. 193.624, which is considered tangible personal property, is exempt from ad valorem taxation.

Section 3. For the purpose of incorporating the amendment made by this act to section 193.624, Florida Statutes, in a reference thereto, paragraph (a) of subsection (4) of section 193.155, Florida Statutes, is reenacted to read:

193.155 Homestead assessments.—Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8) apply.

(4)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to homestead property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 4. For the purpose of incorporating the amendment

made by this act to section 193.624, Florida Statutes, in a reference thereto, paragraph (a) of subsection (6) of section 193.1554, Florida Statutes, is reenacted to read:

193.1554 Assessment of nonhomestead residential property.—

(6)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to nonhomestead residential property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 5. The amendment made by this act to s. 193.624, Florida Statutes, expires December 31, 2036, and the text of that section shall revert to that in existence on December 31, 2016, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portion of text which expires pursuant to this section.

Section 6. Section 196.182, Florida Statutes, as created by this act, expires December 31, 2036, and shall be repealed on that date.

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 renewable energy source devices; amending s. 193.624, F.S.; redefining the term

"renewable energy source device"; specifying a period during which a property appraiser is prohibited from considering an increase in the just value of real property used for residential purposes which is attributable to the installation of a renewable energy source device; prohibiting consideration by a property appraiser of an increase in the just value of real property used for any purpose which is attributable to the installation of a renewable energy source device on or after a specified date; creating s. 196.182, F.S.; exempting certain renewable energy source devices from ad valorem taxation; reenacting ss. 193.155(4)(a) and 193.1554(6)(a), F.S., relating to homestead assessments and nonhomestead residential property assessments, respectively, to incorporate the amendment made to s. 193.624, F.S., in references thereto; providing specified provisions of the act that expire on a certain date; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 347 Utility Projects
SPONSOR(S): Finance & Tax Committee; Sprowls and other
TIED BILLS: **IDEN./SIM. BILLS:** SB 324

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	11 Y, 1 N	Keating	Keating
2) Finance & Tax Committee	15 Y, 0 N, As CS	Pewitt	Langston
3) Regulatory Affairs Committee		Keating	Hamon

SUMMARY ANALYSIS

The bill establishes a new financing mechanism – "Utility Cost Containment Bonds" – available to an intergovernmental authority to finance or refinance, on behalf of a municipality, county, special district, public corporation, regional water authority, or other governmental entity (including the authority itself), projects related to water or wastewater service. The creation of this financing mechanism, referred to as securitization, is designed to satisfy rating agency criteria to achieve a higher bond rating and, therefore, a lower interest rate and more favorable terms for bonds issued to fund eligible utility projects for these entities.

In summary, the financing mechanism created by the bill operates as follows:

- A "local agency" applies to the intergovernmental utility authority to finance the costs of an eligible project using "utility cost containment bonds."
- The intergovernmental utility authority adopts a "financing resolution" setting forth certain requirements for issuance of the bonds. (To finance the project, the intergovernmental utility authority may form a single-purpose limited liability company or, together with two or more of its members or other public agencies, may create a new single-purpose entity to perform the duties and responsibilities of the authority under the bill.)
- The bonds are secured by the revenues from a separate "utility project charge" stated on the bill of each present and future customer of the services specified in the financing resolution.
- This charge is imposed by the intergovernmental utility authority on behalf of the local government receiving financing for an eligible project.
- The intergovernmental utility authority and the local government enter into a servicing agreement under which the local government collects the charge.
- The moneys from the charge are transferred to the intergovernmental utility authority and used to secure bonds issued for the benefit of the local government.
- The moneys collected from the charge are held in trust for the benefit of the bondholders. These moneys are not considered revenues of the local government but are treated as revenues of the intergovernmental utility authority.
- The intergovernmental utility authority may not file bankruptcy while any of the bonds are outstanding.

The Florida Governmental Utility Authority is the only intergovernmental authority that currently meets the criteria to provide financing under the bill. FGUA's current purpose is to own and operate a public utility system for the provision of water and wastewater service.

The bill does not impact state government revenues or expenditures. The bill may reduce local government expenditures by reducing financing costs for water or wastewater utility projects by a municipality, county, special district, public corporation, regional water authority, or other governmental entity sponsoring or refinancing a utility project. The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Financing Authority of Local Government Entities for Public Works Projects

Local governments are authorized under current law to issue bonds, revenue certificates, and other forms of indebtedness related to the provision of public works projects.

Upon a resolution, a county may issue water revenue bonds, sewer revenue bonds, or general obligation bonds to pay all or part of the cost to purchase, construct, improve, extend, enlarge, or reconstruct water supply systems or sewage disposal systems.[1] Water revenue bonds are payable solely from water service charges.[2] Sewer revenue bonds are payable solely from sewer service charges.[3] Neither type of revenue bond pledges the property, credit, or general tax revenue of the county. General obligation bonds are payable from ad valorem taxes alone or from ad valorem taxes with an additional secured pledge of water service charges, sewer service charges, special assessments, or a combination of these sources.[4] Issuance of general obligation bonds, as required by the State Constitution,[5] requires approval by referendum, and a county is required to levy annually a special tax upon all taxable property within the county to pay the principle and interest as it becomes due.[6] Counties may also create special water and sewer districts to serve unincorporated areas, and the district's board may issue revenue bonds to finance all or part of the cost of a water system, sewer system, or both. Such bonds are payable from the revenues derived from operation of the utility system as provided by law and the authorizing resolution of the district's board.[7]

Upon approval of a municipality's governing body, a municipality may issue revenue bonds, general obligation bonds, ad valorem bonds, or improvement bonds to finance capital expenditures made for a public purpose. Revenue bonds are payable from sources other than ad valorem taxes and are not secured by a pledge of the property, credit, or general tax revenue of the municipality. General obligation bonds are payable from any special taxes levied for the purpose of repayment and any other sources as provided by the authorizing ordinance or resolution. Such bonds are secured by the full faith and credit and taxing power of the municipality and may require approval by referendum. Ad valorem bonds are payable from the proceeds of ad valorem taxes and, as required by the State Constitution[8], require approval by referendum. Improvement bonds are special obligations payable solely from the proceeds of special assessments levied for a project.[9]

Further, a municipality may issue mortgage revenue certificates or debentures to acquire, construct, or extend public works, including, among other things, water and alternative water supply facilities, sewage collection and disposal facilities, gas plants and distribution systems, and stormwater projects.[10] These instruments constitute a lien only against the property and revenue of the utility.

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[1] s. 153.03(1) and (2), F.S.
[2] s. 153.02(9), F.S.
[3] s. 153.02(10), F.S.
[4] s. 153.02(11), F.S.
[5] FLA. CONST. art. VII, s. 12 (providing that counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation only "to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation.")
[6] s. 153.07, F.S.
[7] s. 153.63(1), F.S. Such bonds may also be secured by the pledge of special assessments or the full faith and credit of the district.
[8] See Footnote 5.
[9] s. 166.101, F.S., et seq.
[10] ss. 180.06 and 180.08, F.S.

These instruments may not impose any tax liability upon any real or personal property in the municipality and may not constitute a debt against the issuing municipality.[11]

The Division of Bond Finance (DBF) of the State Board of Administration provides information to, and collects information from, units of local government[12] concerning the issuance of bonds by such entities.[13] Each unit of local government must provide DBF a complete description of its new general obligation bonds and revenue bonds and must provide advanced notice of the impending sale of a new issue of bonds.[14] According to DBF, a public utility generally finances projects with revenue bonds, securing the debt with a pledge of net revenues of the utility system. These net revenues consist of the income of the public utility remaining after paying expenses necessary to operate and maintain the utility. DBF notes that this current practice requires the efficient operation of the utility system to assure that sufficient net revenues are available to pay debt service.

Creation and Financing Authority of Intergovernmental Utility Authorities

The Florida Interlocal Cooperation Act of 1969 (Act) is intended to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.[15] The Act provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.[16] Under such an agreement, the local governmental units may create a separate legal or administrative entity "to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities."[17] A separate entity created by an interlocal agreement possesses the authority specified in the agreement.[18] Among the authority granted such an entity is the power to authorize, issue, and sell bonds.[19]

The Act specifically addresses the establishment of such entities to provide water service or sewer service (hereinafter referred to as "intergovernmental utility authorities" or "IGUAs"). Section 163.01(7)(g), F.S., authorizes the creation of IGUAs to acquire, own, construct, improve, operate, and manage public facilities relating to a governmental function or purpose, including water and alternative water supply facilities, wastewater facilities, and water reuse facilities.[20] An IGUA created under this provision may also finance such facilities on behalf of any person. The membership of an IGUA created under this provision is limited to two or more special districts, municipalities, or counties of the state. The IGUA's facilities may serve populations "within or outside of the members of the entity" but not within the service area of an existing utility system. IGUAs are not subject to regulation by the Public Service Commission.

An IGUA created under s. 163.07(g), F.S., may finance or refinance the acquisition, construction, expansion, and improvement of facilities through the issuance of bonds, notes, or other obligations. Except as may be limited by the interlocal agreement under which the entity is created, all of the privileges, benefits, powers, and terms of the statutes relating to counties[21] and municipalities[22] are fully

[11] s. 180.08, F.S.
[12] "Unit of local government" is defined in s. 218.369, F.S., as "a county, municipality, special district, district school board, local agency, authority, or consolidated city-county government or any other local governmental body or public body corporate and politic authorized or created by general or special law and granted the power to issue general obligation or revenue bonds."
[13] s. 218.37, F.S.
[14] s. 218.38, F.S. DBF is authorized only to collect information concerning these bonds; it does not exercise any substantive authority to review or approve these transactions.
[15] s. 163.01(2), F.S.
[16] s. 163.01(5), F.S.
[17] s. 163.01(2), F.S.
[18] s. 163.01(7)(b), F.S.
[19] s. 163.01(7)(d), F.S.
[20] s. 163.01(7)(g), F.S.
[21] s. 125.01, F.S.

applicable to the IGUA. Bonds, notes, and other obligations issued by the IGUA are issued on behalf of the public agencies that are members of the IGUA.[23]

The Florida Governmental Utility Authority (FGUA) was formed in 1999 pursuant to s. 163.01(7)(g), F.S. As noted on its website, FGUA was created by interlocal agreement for the purpose of acquiring, owning, improving, and operating water and wastewater facilities. FGUA owns and operates over 80 water and wastewater utility systems across 14 counties: Alachua, Citrus, Collier, Hardee, Hillsborough, Lake, Lee, Marion, Orange, Pasco, Polk, Putnam, Seminole, and Volusia counties have systems in FGUA.[24] FGUA's governing board is comprised of six members, with six alternates, representing Citrus, Hendry, Lee, Marion, Pasco, and Polk counties.[25] Each board member is a county employee appointed by their local government.[26]

Utility Securitization Financing in Florida

Following the severe tropical storm seasons that Florida faced in 2004 and 2005, the Legislature created a new financing mechanism, referred to as securitization, by which investor-owned electric utilities could petition the Public Service Commission for issuance of a financing order authorizing the utility to issue bonds through a separate legal entity.[27] If granted, the financing order was required to establish a nonbypassable charge to the utility's customers in order to provide a secure stream of revenues to the separate legal entity from which the bonds would be paid. The purpose of this mechanism was to allow the utilities access to low-cost financing to cover storm recovery costs and to replenish storm reserve funds. This mechanism has been implemented in only one instance.[28]

Effect of Proposed Changes

The bill establishes a new mechanism – "Utility Cost Containment Bonds" – available to an intergovernmental authority to finance, on behalf of a municipality, county, special district, public corporation, regional water authority, or other governmental entity (including the IGUA itself), projects related to water or wastewater service. The creation of this financing mechanism, referred to as securitization, is designed to satisfy rating agency criteria to achieve a higher bond rating and, therefore, a lower interest rate and more favorable terms for bonds issued to fund eligible projects.

In summary, the financing mechanism created by the bill operates as follows:

- A "local agency" applies to the intergovernmental utility authority to finance the costs of an eligible project using "utility cost containment bonds."
- The intergovernmental utility authority adopts a "financing resolution" setting forth certain requirements for issuance of the bonds. (To finance the project, the intergovernmental utility authority may form a single-purpose limited liability company or, together with two or more of its members or other public agencies, may create a new single-purpose entity to perform the duties and responsibilities of the authority under the bill.)
- The bonds are secured by the revenues from a separate "utility project charge" stated on the bill of each present and future customer of the services specified in the financing resolution.
- This charge is imposed by the intergovernmental utility authority on behalf of the local government receiving financing for an eligible project.
- The intergovernmental utility authority and the local government enter into a servicing agreement under which the local government collects the charge.

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[22] s. 166.021, F.S.
[23] s. 163.01(7)(g)7., F.S.
[24] FGUA, *History,* http://fgua.com/about-us/history/ and *Systems* http://fgua.com/systems/ (last visited January 8, 2016).
[25] FGUA, *Meet the Board,* http://fgua.com/about-us/meet-the-board/ (last visited January 8, 2016).
[26] *Id.*
[27] s. 366.8260, F.S.
[28] Docket No. 060038-EI, Florida Public Service Commission.

- The moneys from the charge are transferred to the intergovernmental utility authority and used to secure bonds issued for the benefit of the local government.
- The moneys collected from the charge are held in trust for the benefit of the bondholders. These moneys are not considered revenues of the local government but are treated as revenues of the intergovernmental utility authority.
- The intergovernmental utility authority may not file for bankruptcy while any of the bonds are outstanding.
- Any cost savings from issuing utility cost containment bonds must be used for the benefit of utility customers through lower rates or other programs.

The Florida Governmental Utility Authority is the only intergovernmental authority that currently meets the criteria to provide financing under the bill. Thus, the bill expands FGUA's original purpose of owning and operating a public utility system.

Definitions

The bill provides the following definitions:

- **"Authority"** means an entity, including a successor to the powers and functions of such entity, created pursuant to s. 163.01(7)(g), F.S., that provides public utility services and whose membership consists of at least three counties.[29]

- **"Cost,"** as applied to a utility project or portion of a utility project financed under this section, means any of the following:
  - Any part of the expense of constructing, renovating, or acquiring lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a utility project.
  - The expense of demolishing or removing any buildings or structures on acquired land, including the expense of acquiring any lands to which the buildings or structures may be moved, and the cost of all machinery and equipment used for the demolition or removal.
  - Finance charges.
  - Interest, as determined by the authority.
  - Provisions for working capital and debt service reserves.
  - Expenses for extensions, enlargements, additions, replacements, renovations, and improvements.
  - Expenses for architectural, engineering, financial, accounting, and legal services, and for plans, specifications, estimates, and administration.
  - Any other expenses necessary or incidental to determining the feasibility of constructing a utility project or incidental to the construction, acquisition, or financing of a utility project.

- **"Customer"** means a person receiving water or wastewater service from a publicly owned utility.

- **"Finance" or "financing"** includes refinancing.

- **"Financing cost"** means any of the following:
  - Interest and redemption premiums that are payable on utility cost containment bonds.
  - The cost of retiring the principal of utility cost containment bonds, whether at maturity, including acceleration of maturity upon an event of default, or upon redemption, including sinking fund redemption.
  - The cost related to issuing or servicing utility cost containment bonds, including payment under an interest rate swap agreement, and any type of fee.

[29] Only the Florida Governmental Utility Authority currently meets this definition.

- A payment or expense associated with a bond insurance policy; financial guaranty; contract, agreement, or other credit or liquidity enhancement for bonds; or contract, agreement, or other financial agreement entered into in connection with utility cost containment bonds.
- Any coverage charges.
- The funding of one or more reserve accounts related to utility cost containment bonds.

- **"Financing resolution"** means a resolution adopted by the governing body of an authority that provides for the financing or refinancing of a utility project with utility cost containment bonds and that imposes a utility project charge in connection with the utility cost containment bonds. A financing resolution may be separate from a resolution authorizing the issuance of the bonds.

- **"Governing body"** means the body that governs a local agency.

- **"Local agency"** means a member of the authority, or an agency or subdivision of that member, that is sponsoring or refinancing a utility project, or any municipality, county, authority, special district, public corporation, regional water authority, or other governmental entity of the state that is sponsoring or refinancing a utility project.[30]

- **"Public utility services"** means water or wastewater services provided by a publicly owned utility. The term does not include Internet or cable services.

- **"Publicly owned utility"** means a utility furnishing retail or wholesale water or wastewater services that is owned and operated by a local agency. The term includes any successor to the powers and functions of such a utility.

- **"Revenue"** means income and receipts of the authority related to the financing of utility projects and issuance of utility cost containment bonds, including any of the following:
  - Bond purchase agreements.
  - Bonds acquired by the authority.
  - Installment sale agreements and other revenue-producing agreements entered into by the authority.
  - Utility projects financed or refinanced by the authority.
  - Grants and other sources of income.
  - Moneys paid by a local agency.
  - Interlocal agreements with a local agency, including all service agreements.
  - Interest or other income from any investment of money in any fund or account established for the payment of principal, interest, or premiums on utility cost containment bonds, or the deposit of proceeds of utility cost containment bonds.

- **"Utility cost containment bonds"** means bonds, notes, commercial paper, variable rate securities, and any other evidences of indebtedness issued by an authority, the proceeds of which are used directly or indirectly to pay or reimburse a local agency or its publicly owned utility for the costs of a utility project and which are secured by a pledge of, and are payable from, utility project property.

- **"Utility project"** means the acquisition, construction, installation, retrofitting, rebuilding, or other addition to or improvement of any equipment, device, structure, process, facility, technology, rights, or property located in or out of the state that is used in connection with the operations of a publicly owned utility.

[30] Because FGUA provides "public utility services" (water and wastewater services) that may be supported by a financeable "utility project," it appears to qualify as an authority or other governmental entity of the state and would meet the definition of a "local agency." Thus, FGUA could be both an "authority" and a "local agency" under the bill. See Comments section for further discussion.

- **"Utility project charge"** means a charge levied on customers of a publicly owned utility to pay the financing costs of utility cost containment bonds issued pursuant to the bill. The term includes any authorized adjustment to the utility project charge.

- **"Utility project property"** means the property right created by the bill, including the right, title, and interest of an authority in any of the following:
  - The financing resolution, the utility project charge, and any adjustment to the utility project charge.
  - The financing costs of the utility cost containment bonds and all revenues, and all collections, claims, payments, moneys, or proceeds for, or arising from, the utility project charge.
  - All rights to obtain adjustments to the utility project charge pursuant to the bill.

  The term does not include any interest in a customer's real or personal property.

Local Agency Authority

The bill provides that a local agency that owns and operates a publicly owned utility may apply to the intergovernmental utility authority to finance the costs of a utility project using the proceeds of utility cost containment bonds. In its application, the local agency must specify the utility project to be financed, the maximum principal amount, the maximum interest rate, and the maximum stated terms of the utility cost containment bonds.

Before applying, the governing body of the local agency must determine the following:

- The project to be financed is a utility project.[31]
- The local agency will finance costs of the utility project and the associated financing costs will be paid from utility project property (i.e., the charge to utility customers).
- Based on the best information available, the rates charged to the local agency's retail customers by the publicly owned utility, including the utility project charge resulting from the financing of the utility project with utility cost containment bonds, are expected to be lower than the rates that would be charged if the project was financed with bonds payable from revenues of the publicly owned utility.

The bill provides that savings resulting from issuance of the bonds for a utility project must be used to directly benefit the customers of the publicly owned utility through rate reductions or other programs. If a local agency that has outstanding utility cost containment bonds ceases to operate a water or wastewater utility, directly or through its publicly owned utility, any successor entity must assume and perform all obligations of the local agency and its publicly owned utility and assume the servicing agreement with the authority while the utility cost containment bonds remain outstanding.

Powers of the Intergovernmental Utility Authority

In addition to its existing powers under s. 163.01(7)(g), F.S., the bill provides that an intergovernmental utility authority may issue utility cost containment bonds to finance or refinance utility projects; to refinance debt of a local agency previously issued to finance or refinance such projects, if the refinancing results in present value savings; or, upon approval of a local agency, to refinance previously issued utility cost containment bonds.

To finance a utility project, the authority may form a single-purpose limited liability company and authorize the company to adopt the financing resolution. Alternatively the authority and two or more of its members or other public agencies may create a new single-purpose entity by interlocal agreement.

[31] This determination is deemed "final and conclusive" by the bill.

Either type of entity may be created by the authority solely for the purposes of performing the duties and responsibilities of the authority and is treated as an authority for purposes of the bill.

The governing body of an authority that is financing the costs of an eligible utility project must adopt a financing resolution and impose a utility project charge. All provisions of the financing resolution are binding on the authority. The financing resolution must include the following:

- A description of the financial calculation method the authority will use to determine the utility project charge. The calculation method must include a periodic adjustment methodology to be applied at least annually to the utility project charge. The adjustment methodology may not be changed. The authority must establish the allocation of the utility project charge among classes of customers of the publicly owned utility. The decisions of the authority are final and conclusive.
- A requirement that each customer in the class or classes of customers specified in the financing resolution who receives water or wastewater service through the publicly owned utility must pay the utility project charge, regardless of whether the customer has an agreement to receive water or wastewater service from a person other than the publicly owned utility.
- A requirement that the utility project charge be charged separately from other charges on the bill of each customer of the utility that is in the class or classes of customers specified in the financing resolution.
- A requirement that the authority enter into a servicing agreement with the local agency or its publicly owned utility to collect the utility project charge.

The authority may require in the financing resolution that, in the event of default by the local agency or its publicly owned utility, the authority must order the sequestration and payment to the beneficiaries of the revenues arising from the utility project property (discussed in detail, below) if the beneficiaries apply for payment of the revenues under a lien.

With respect to regional water projects, the authority must work with local agencies that request assistance to determine the most cost-effective manner of financing. If these entities determine that issuance of utility cost containment bonds will result in lower financing costs for a project, the authority must issue the bonds at the request of the local agencies.

Utility Project Charges

The bill requires the authority to impose a utility project charge sufficient to ensure timely payment of all financing costs with respect to utility cost containment bonds. The charge must be based on estimates of water or wastewater service usage. The authority may require information from the local agency or its publicly owned utility to establish the charge.

The utility project charge is a nonbypassable charge on all present and future customers of the publicly owned utility in the class or classes of customers specified in the financing resolution at the time of its adoption. If the regulatory structure for the water or wastewater industry changes in a manner that allows a customer to choose to take service from an alternative supplier and the customer chooses an alternative supplier, the customer remains liable for payment of the utility project charge if the customer continues to receive any service from the publicly owned utility for the transmission, distribution, delivery, or metering of the underlying water or wastewater service.

At least annually, and at any other interval specified in the financing resolution and related documents, the authority must determine whether adjustments to the utility project charge are required and, if so, make the necessary adjustments to correct for any overcollection or undercollection of financing costs from the charge or to otherwise ensure timely payment of the financing costs of the bonds, including payment of any required debt service coverage. The authority may require information from the local agency or its publicly owned utility to adjust the charge. If an adjustment is deemed necessary, it must be made using the methodology specified in the financing resolution. An adjustment may not impose

the charge upon a class of customers not previously subject to the charge under the financing resolution.

Revenues from a utility project charge are deemed special revenues of the authority and do not constitute revenue of the local agency or its publicly owned utility for any purpose. The local agency or its publicly owned utility must act as a servicing agent for collecting the charge pursuant to a servicing agreement to be required by the financing resolution. The money collected must be held in trust for the exclusive benefit of the persons entitled to have the financing costs paid from the utility project charge.

The timely and complete payment of all utility project charges by the customer is a condition of receiving water or wastewater service from the publicly owned utility. The bill authorizes the local agency or its publicly owned utility to use its established collection policies and remedies under law to enforce collection of the charge. A customer liable for a utility project charge is not permitted to withhold payment of any portion of the charge.

The pledge of a utility project charge to secure payment of utility cost containment bonds is irrevocable, and the state or any other entity is not permitted to reduce, impair, or otherwise adjust the utility project charge, except for the periodic adjustments that the authority is required to make pursuant to the financing resolution.

Utility Project Property

The bill provides that the utility project charge constitutes utility project property when a financing resolution authorizing the charge becomes effective. As defined by the bill, utility project property constitutes property, including contracts that secure utility cost containment bonds, whether or not the revenues and proceeds arising with respect to the utility project property have accrued. The utility project property continuously exists as property for all purposes for the period provided in the financing resolution or until all financing costs with respect to the related utility cost containment bonds are paid in full, whichever occurs first.

Upon the effective date of the financing resolution, the utility project property is subject to a first priority statutory lien to secure the payment of the utility cost containment bonds. The lien secures the payment of all financing costs that exist at that time or that subsequently arise to the holders of the bonds, the trustee or representative for the holders of the bonds, and any other entity specified in the financing resolution or the documents relating to the bonds. The lien attaches to the utility project property regardless of the current ownership of the utility project property, including any local agency or its publicly owned utility, the authority, or other person. Upon the effective date of the financing resolution, the lien is valid and enforceable against the owner of the utility project property and all third parties, and additional public notice is not required. The lien is a continuously perfected lien on all revenues and proceeds generated from the utility project property, regardless of whether the revenues or proceeds have accrued.

All revenues with respect to utility project property related to utility cost containment bonds, including payments of the utility project charge, must first be applied to the payment of the financing costs of the bonds then due, including the funding of reserves for the bonds. Any excess revenues will be applied as determined by the authority for the benefit of the utility for which the bonds were issued.

Utility Cost Containment Bonds

The bill provides that the proceeds of utility cost containment bonds made available to the local agency or its publicly owned utility must be used for the utility project identified in the application for financing of the project or used to refinance indebtedness of the local agency that financed or refinanced the project.

The bonds must be issued pursuant to the provisions of the bill and the procedures specified for intergovernmental utility authorities under s. 163.01(7)(g)8., F.S., and may be validated pursuant to existing procedures for such entities under s. 163.01(7)(g)9., F.S.

The authority must pledge the utility project property as security for payment of the bonds. All rights of the authority with respect to the pledged property are for the benefit of, and enforceable by, the beneficiaries of the pledge as provided in the related financing documents. If utility project property is pledged as security for the payment of utility cost containment bonds, the local agency or its publicly owned utility must enter into a contract with the authority which requires that the local agency or its utility:

- Continue to operate the utility, including the utility project that is being financed or refinanced.
- Collect the utility project charge from customers for the benefit and account of the authority and the beneficiaries of the pledge of the charge.
- Separately account for and remit revenue from the utility project charge to, or for the account of, the authority.

The utility cost containment bonds are nonrecourse to the credit or any assets of the local agency or the publicly owned utility but are payable from, and secured by, a pledge of the utility project property relating to the bonds and any additional security or credit enhancement specified in the documents relating to the bonds. If the authority is financing the project through a single-purpose limited liability company, the bonds are payable from, and secured by, a pledge of amounts paid by the company to the authority from the applicable utility project property. This represents the exclusive method of perfecting a pledge of utility project property by the company.

The issuance of utility cost containment bonds does not obligate the state or any political subdivision of the state to levy or to pledge any form of taxation to pay the bonds or to make any appropriation for their payment. The bill provides that each bond must contain on its face the following statement or a similar statement: "Neither the full faith and credit nor the taxing power of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of, or interest on, this bond."

The authority may not rescind, alter, or amend any resolution or document that pledges utility cost charges for payment of utility cost containment bonds.

Subject to the terms of the pledge document, the validity and relative priority of a pledge is not defeated or adversely affected by the commingling of revenues generated by the utility project property with other funds of the local agency or the publicly owned utility collecting a utility project charge on behalf of an authority.

The bill provides that financing costs in connection with utility cost containment bonds are a special obligation of the authority and do not constitute a liability of the state or any political subdivision of the state. Financing costs are not a pledge of the full faith and credit of the state or any political subdivision, including the authority, but are payable solely from the funds identified in the documents relating to the bonds. This does not preclude guarantees or credit enhancements in connection with the bonds.

Except as provided in the bill with respect to adjustments to a utility project charge, recovery of the financing costs for utility cost containment bonds from the utility project charge is irrevocable. Further, the authority is prohibited from: rescinding, altering, or amending the applicable financing resolution to revalue or revise the financing costs of the bonds for ratemaking purposes; determining that the financing costs for the related bonds or the utility project charge is unjust or unreasonable; or in any way reducing or impairing the value of utility project property that includes the charge. The amount of revenues arising with respect to the financing costs for the related bonds or the charge are not subject to reduction, impairment, postponement, or termination for any reason until all financing costs to be paid from the charge are fully met and discharged.

Further, except as provided in the bill with respect to adjustments to a utility project charge, the bill establishes a pledge that the state may not limit or alter the financing costs or the utility project property, including the utility project charge associated with the bonds, or any rights related to the utility project property until all financing costs with respect to the bonds are fully discharged. This provision does not preclude limitation or alteration if adequate provision is made by law to protect the owners of the bonds. The state's pledge may be included by the authority in the governing documents for the bonds.

Bankruptcy Prohibition

The bill provides that, notwithstanding any other law, an authority that has issued utility cost containment bonds may not become a debtor under the United States Bankruptcy Code or become the subject of any similar case or proceeding under any other state or federal law if any payment obligation from utility project property remains with respect to the bonds. Further, no governmental officer or organization may authorize the authority to become such a debtor or become subject to such a case or proceeding in this circumstance.

Construction

The bill provides for its liberal construction to effectively carry out its intent and purposes. Further, the bill expressly grants and confers upon public entities all incidental powers necessary to carry the bill into effect.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of law to be cited as the Utility Cost Containment Bond Act.

Section 2. Provides an effective date of July 1, 2016.

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:

   Indeterminate. The bill may reduce local government expenditures by reducing financing costs for water or wastewater utility projects for utilities owned and operated by a local agency, including any municipality, county, special district, public corporation, regional water authority, or other governmental entity sponsoring or refinancing a utility project.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Customers may benefit from lower financing costs for local agency utility projects. The bill requires that savings be passed through to customers of the utility.

D. FISCAL COMMENTS:

The creation of the utility cost containment bond financing mechanism is designed to satisfy rating agency criteria to achieve a higher bond rating and, therefore, a lower interest rate on bonds issued to fund eligible local agency utility projects. The lower rate could result in lower financing costs for these projects.

Because the intergovernmental utility authority (or a single purpose limited liability company created by the authority or a new single-purpose entity formed by interlocal agreement) is the obligor on the bonds, the debt from an issuance of utility cost containment bonds will not be reflected on the local agency or utility's balance sheet. Also, revenues from the utility project charge and expenses for debt service on the bonds will not be reflected on the local agency or utility's financial statements.

A local agency that uses this financing mechanism may have less incentive to carefully control operating expenses of its public utility, because bondholders are paid from the separate fee regardless of the utility's financial condition. Also, the mechanism may encourage the issuance of additional debt because the debt is paid from the revenues of the authority regardless of any change in the utility's operating expenses.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Financing of Projects of the Intergovernmental Utility Authority

The bill requires interaction between the local agency and the intergovernmental utility authority in certain instances, including the requirement that a local agency apply to the authority for financing and the requirement that the authority enter into a servicing agreement with the local agency. However, as defined in the bill, it appears that an intergovernmental utility authority could seek financing itself as a "local agency," creating a situation in which the authority must seek approval from itself and enter into an agreement with itself. The bill authorizes the authority to form a single-purpose limited liability company or, together with two or more of its members, to create a new single-purpose entity by local agreement to perform the intergovernmental utility authority duties. If the authority creates one of these entities, it may avoid a situation in which it must apply to itself for financing or enter into a servicing agreement with itself. However, the authority may have a role in the governance of either entity.

Establishment of Utility Project Charges

The bill provides that the governing body of an authority that is financing the costs of a utility project must adopt a financing resolution and impose a utility project charge, and the decisions of the authority are final and conclusive. A local agency that uses this financing mechanism is not required to be or to become a member of the authority. Though the authority may require and utilize information from the local agency or its publicly owned utility in setting utility project charges and rate classes, a local agency that does not become a member of the authority does not appear to have a formal role in the adoption of a financing resolution setting the charge and rate classes. In turn, the customers of those local agencies' public utilities may lack representation in this rate-setting process.

Use of Cost Savings to Benefit Customers

The bill requires that any cost savings that arise from the issuance of a utility cost containment bond be used to benefit customers of the utility through lower rates or other programs. However, no mechanism for determining the amount of cost savings is provided.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

The bill was amended in a meeting of the Finance & Tax Committee on December 1, 2015. The amendment required that any savings resulting from issuing utility cost containment bonds be used for the benefit of utility customers through lower rates or other programs. This analysis reflects the changes made by the amendment.

A bill to be entitled

An act relating to utility projects; providing a short title; defining terms; authorizing certain local governmental entities to finance the costs of a utility project by issuing utility cost containment bonds upon application by a local agency; specifying application requirements; requiring a successor entity of a local agency to assume and perform the obligations of the local agency with respect to the financing of a utility project; providing procedures for local agencies to use when applying to finance a utility project using utility cost containment bonds; authorizing an authority to issue utility cost containment bonds for specified purposes related to utility projects; authorizing an authority to form alternate entities to finance utility projects; requiring the governing body of the authority to adopt a financing resolution and impose a utility project charge on customers of a publicly owned utility as a condition of utility project financing; specifying required and optional provisions of the financing resolution; specifying powers of the authority; requiring the local agency or its publicly owned utility to assist the authority in the establishment or adjustment of the utility project charge; requiring that customers of the public utility specified in the

financing resolution pay the utility project charge; providing for adjustment of the utility project charge; establishing ownership of the revenues of the utility project charge; requiring the local agency or its publicly owned utility to collect the utility project charge; conditioning a customer's receipt of public utility services on payment of the utility project charge; authorizing a local agency or its publicly owned utility to use available remedies to enforce collection of the utility project charge; providing that the pledge of the utility project charge to secure payment of bonds issued to finance the utility project is irrevocable and cannot be reduced or impaired except under certain conditions; providing that a utility project charge constitutes utility project property; providing that utility project property is subject to a lien to secure payment of costs relating to utility cost containment bonds; establishing payment priorities for the use of revenues of the utility project property; providing for the issuance and validation of utility cost containment bonds; securing the payment of utility cost containment bonds and related costs; providing that utility cost containment bonds do not obligate the state or any political subdivision and are not backed by their full faith and credit and taxing

power; requiring that certain disclosures be printed on utility cost containment bonds; providing that financing costs related to utility cost containment bonds are an obligation of the authority only; providing limitations on the state's ability to alter financing costs or utility project property under certain circumstances; prohibiting an authority with outstanding payment obligations on utility cost containment bonds from becoming a debtor under certain federal or state laws; providing for construction; endowing public entities with certain powers; providing an effective date.

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

Section 1. Utility Cost Containment Bond Act.—

(1) SHORT TITLE.—This section may be cited as the "Utility Cost Containment Bond Act."

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

(a) "Authority" means an entity created under s. 163.01(7)(g), Florida Statutes, which provides public utility services and whose membership consists of at least three counties. The term includes any successor to the powers and functions of such an entity.

(b) "Cost," as applied to a utility project or a portion of a utility project financed under this section, means:

1. Any part of the expense of constructing, renovating, or acquiring lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a utility project;

2. The expense of demolishing or removing any buildings or structures on acquired land, including the expense of acquiring any lands to which the buildings or structures may be moved, and the cost of all machinery and equipment used for the demolition or removal;

3. Finance charges;

4. Interest, as determined by the authority;

5. Provisions for working capital and debt service reserves;

6. Expenses for extensions, enlargements, additions, replacements, renovations, and improvements;

7. Expenses for architectural, engineering, financial, accounting, and legal services, plans, specifications, estimates, and administration; or

8. Any other expenses necessary or incidental to determining the feasibility of constructing a utility project or incidental to the construction, acquisition, or financing of a utility project.

(c) "Customer" means a person receiving water or wastewater service from a publicly owned utility.

(d) "Finance" or "financing" includes refinancing.

(e) "Financing cost" means:

1. Interest and redemption premiums that are payable on utility cost containment bonds;

2. The cost of retiring the principal of utility cost containment bonds, whether at maturity, including acceleration of maturity upon an event of default, or upon redemption, including sinking fund redemption;

3. The cost related to issuing or servicing utility cost containment bonds, including any payment under an interest rate swap agreement and any type of fee;

4. A payment or expense associated with a bond insurance policy; financial guaranty; contract, agreement, or other credit or liquidity enhancement for bonds; or contract, agreement, or other financial agreement entered into in connection with utility cost containment bonds;

5. Any coverage charges; or

6. The funding of one or more reserve accounts relating to utility cost containment bonds.

(f) "Financing resolution" means a resolution adopted by the governing body of an authority that provides for the financing or refinancing of a utility project with utility cost containment bonds and that imposes a utility project charge in connection with the utility cost containment bonds in accordance with subsection (4). A financing resolution may be separate from a resolution authorizing the issuance of the bonds.

(g) "Governing body" means the body that governs a local agency.

(h) "Local agency" means a member of the authority, or an agency or subdivision of that member, which is sponsoring or refinancing a utility project, or any municipality, county, authority, special district, public corporation, regional water authority, or other governmental entity of the state that is sponsoring or refinancing a utility project.

(i) "Public utility services" means water or wastewater services provided by a publicly owned utility. The term does not include communications services, as defined in s. 202.11, Florida Statutes, Internet access services, or information services.

(j) "Publicly owned utility" means a utility providing retail or wholesale water or wastewater services which is owned and operated by a local agency. The term includes any successor to the powers and functions of such a utility.

(k) "Revenue" means income and receipts of the authority related to the financing of utility projects and issuance of utility cost containment bonds, including any of the following:

1. Bond purchase agreements;

2. Bonds acquired by the authority;

3. Installment sales agreements and other revenue-producing agreements entered into by the authority;

4. Utility projects financed or refinanced by the authority;

5. Grants and other sources of income;

6. Moneys paid by a local agency;

7. Interlocal agreements with a local agency, including all service agreements; or

8. Interest or other income from any investment of money in any fund or account established for the payment of principal, interest, or premiums on utility cost containment bonds, or the deposit of proceeds of utility cost containment bonds.

(l) "Utility cost containment bonds" means bonds, notes, commercial paper, variable rate securities, and any other evidence of indebtedness issued by an authority the proceeds of which are used directly or indirectly to pay or reimburse a local agency or its publicly owned utility for the costs of a utility project and which are secured by a pledge of, and are payable from, utility project property.

(m) "Utility project" means the acquisition, construction, installation, retrofitting, rebuilding, or other addition to or improvement of any equipment, device, structure, process, facility, technology, rights, or property located within or outside this state which is used in connection with the operations of a publicly owned utility.

(n) "Utility project charge" means a charge levied on customers of a publicly owned utility to pay the financing costs of utility cost containment bonds issued under subsection (4). The term includes any adjustments to the utility project charge made under subsection (5).

(o) "Utility project property" means the property right created pursuant to subsection (6). The term does not include

any interest in a customer's real or personal property but includes the right, title, and interest of an authority in any of the following:

1. The financing resolution, the utility project charge, and any adjustment to the utility project charge established in accordance with subsection (5);

2. The financing costs of the utility cost containment bonds and all revenues, and all collections, claims, payments, moneys, or proceeds for, or arising from, the utility project charge; or

3. All rights to obtain adjustments to the utility project charge pursuant to subsection (5).

(3) UTILITY PROJECTS.—

(a) A local agency that owns and operates a publicly owned utility may apply to an authority to finance the costs of a utility project using the proceeds of utility cost containment bonds. In its application to the authority, the local agency shall specify the utility project to be financed by the utility cost containment bonds and the maximum principal amount, the maximum interest rate, and the maximum stated terms of the utility cost containment bonds.

(b) A local agency may not apply to an authority for the financing of a utility project under this section unless the governing body has determined, in a duly noticed public meeting, all of the following:

1. The project to be financed is a utility project.

2. The local agency will finance costs of the utility project, and the costs associated with the financing will be paid from utility project property, including the utility project charge for the utility cost containment bonds.

3. Based on the best information available to the governing body, the rates charged to the local agency's retail customers by the publicly owned utility, including the utility project charge resulting from the financing of the utility project with utility cost containment bonds, are expected to be lower than the rates that would be charged if the project were financed with bonds payable from revenues of the publicly owned utility.

(c) A determination by the governing body that a project to be financed with utility cost containment bonds is a utility project is final and conclusive, and the utility cost containment bonds issued to finance the utility project and the utility project charge are valid and enforceable as set forth in the financing resolution and the documents relating to the utility cost containment bonds.

(d) The savings resulting from the issuance of utility cost containment bonds for a utility project must be used to directly benefit the customers of the publicly owned utility through rate reductions or other programs.

(e) If a local agency that has outstanding utility cost containment bonds ceases to operate a water or wastewater utility, directly or through its publicly owned utility,

references in this section to the local agency or to its publicly owned utility must be to the successor entity. The successor entity shall assume and perform all obligations of the local agency and its publicly owned utility required by this section and shall assume the servicing agreement required under subsection (4) while the utility cost containment bonds remain outstanding.

(4) FINANCING UTILITY PROJECTS.—

(a) An authority may issue utility cost containment bonds to finance or refinance utility projects; refinance debt of a local agency incurred in financing or refinancing utility projects, provided such refinancing results in present value savings to the local agency; or, with the approval of the local agency, refinance previously issued utility cost containment bonds.

1. To finance a utility project, the authority may:

a. Form a single-purpose limited liability company and authorize the company to adopt the financing resolution of such utility project; or

b. Create a new single-purpose entity by interlocal agreement under s. 163.01, Florida Statutes, the membership of which shall consist of the authority and two or more of its members or other public agencies.

2. A single-purpose limited liability company or a single-purpose entity may be created by the authority solely for the purpose of performing the duties and responsibilities of the

authority specified in this section and constitutes an authority for all purposes of this section. Reference to the authority includes a company or entity created under this paragraph.

(b) The governing body of an authority that is financing the costs of a utility project shall adopt a financing resolution and shall impose a utility project charge as described in subsection (5). All provisions of a financing resolution adopted pursuant to this section are binding on the authority.

1. The financing resolution must:

a. Provide a brief description of the financial calculation method the authority will use in determining the utility project charge. The calculation method must include a periodic adjustment methodology to be applied at least annually to the utility project charge. The authority shall establish the allocation of the utility project charge among classes of customers of the publicly owned utility. The decision of the authority is final and conclusive, and the method of calculating the utility project charge and the periodic adjustment may not be changed;

b. Require each customer in the class or classes of customers specified in the financing resolution who receives water or wastewater service through the publicly owned utility to pay the utility project charge regardless of whether the customer has an agreement to receive water or wastewater service from a person other than the publicly owned utility;

c. Require that the utility project charge be charged separately from other charges on the bill of customers of the publicly owned utility in the class or classes of customers specified in the financing resolution; and

d. Require that the authority enter into a servicing agreement with the local agency or its publicly owned utility to collect the utility project charge.

2. The authority may require in the financing resolution that, in the event of a default by the local agency or its publicly owned utility with respect to revenues from the utility project property, the authority, upon application by the beneficiaries of the statutory lien as set forth in subsection (6), shall order the sequestration and payment to the beneficiaries of revenues arising from utility project property. This subparagraph does not limit any other remedies available to the beneficiaries by reason of default.

(c) An authority has all the powers provided in this section and s. 163.01(7)(g), Florida Statutes.

(d) Each authority shall work with local agencies that request assistance to determine the most cost-effective manner of financing regional water projects. If the entities determine that the issuance of utility cost containment bonds will result in lower financing costs for a project, the authority shall cooperate with such local agencies and, if requested by the local agencies, issue utility cost containment bonds as provided in this section.

(5) UTILITY PROJECT CHARGE.—

(a) The authority shall impose a sufficient utility project charge, based on estimates of water or wastewater service usage, to ensure timely payment of all financing costs with respect to utility cost containment bonds. The local agency or its publicly owned utility shall provide the authority with information concerning the publicly owned utility which may be required by the authority in establishing the utility project charge.

(b) The utility project charge is a nonbypassable charge to all present and future customers of the publicly owned utility in the class or classes of customers specified in the financing resolution upon its adoption. If the regulatory structure for the water or wastewater industry changes in a manner that authorizes a customer to choose to take service from an alternative supplier and the customer chooses an alternative supplier, the customer remains liable for paying the utility project charge if the customer continues to receive any service from the publicly owned utility for the transmission, distribution, processing, delivery, or metering of the underlying water or wastewater service.

(c) The authority shall determine at least annually and at such additional intervals as provided in the financing resolution and documents related to the applicable utility cost containment bonds whether adjustments to the utility project charge are required. The authority shall use the adjustment to

correct for any overcollection or undercollection of financing costs from the utility project charge or to make any other adjustment necessary to ensure the timely payment of the financing costs of the utility cost containment bonds, including adjustment of the utility project charge to pay any debt service coverage requirement for the utility cost containment bonds. The local agency or its publicly owned utility shall provide the authority with information concerning the publicly owned utility which may be required by the authority in adjusting the utility project charge.

1. If the authority determines that an adjustment to the utility project charge is required, the adjustment must be made using the methodology specified in the financing resolution.

2. The adjustment may not impose the utility project charge on a class of customers which was not subject to the utility project charge pursuant to the financing resolution imposing the utility project charge.

(d) Revenues from a utility project charge are special revenues of the authority and do not constitute revenue of the local agency or its publicly owned utility for any purpose, including any dedication, commitment, or pledge of revenue, receipts, or other income that the local agency or its publicly owned utility has made or will make for the security of any of its obligations.

(e) The local agency or its publicly owned utility shall act as a servicing agent for collecting the utility project

charge throughout the duration of the servicing agreement required by the financing resolution. The local agency or its publicly owned utility shall hold the money collected in trust for the exclusive benefit of the persons entitled to have the financing costs paid from the utility project charge, and the money does not lose its designation as revenues of the authority by virtue of possession by the local agency or its publicly owned utility.

(f) The customer must make timely and complete payment of all utility project charges as a condition of receiving water or wastewater service from the publicly owned utility. The local agency or its publicly owned utility may use its established collection policies and remedies provided under law to enforce collection of the utility project charge. A customer liable for a utility project charge may not withhold payment, in whole or in part, thereof.

(g) The pledge of a utility project charge to secure payment of utility cost containment bonds is irrevocable, and the state, or any other entity, may not reduce, impair, or otherwise adjust the utility project charge, except that the authority shall implement the periodic adjustments to the utility project charge as provided under this subsection.

(6) UTILITY PROJECT PROPERTY.—

(a) A utility project charge constitutes utility project property on the effective date of the financing resolution authorizing such utility project charge. Utility project

property constitutes property, including contracts for securing utility cost containment bonds, regardless of whether the revenues and proceeds arising with respect to the utility project property have accrued. Utility project property shall continuously exist as property for all purposes with all of the rights and privileges of this section through the end of the period provided in the financing resolution or until all financing costs with respect to the related utility cost containment bonds are paid in full, whichever occurs first.

(b) Upon the effective date of the financing resolution, the utility project property is subject to a first-priority statutory lien to secure the payment of the utility cost containment bonds.

1. The lien secures the payment of all financing costs then existing or subsequently arising to the holders of the utility cost containment bonds, the trustees or representatives of the holders of the utility cost containment bonds, and any other entity specified in the financing resolution or the documents relating to the utility cost containment bonds.

2. The lien attaches to the utility project property regardless of the current ownership of the utility project property, including any local agency or its publicly owned utility, the authority, or any other person.

3. Upon the effective date of the financing resolution, the lien is valid and enforceable against the owner of the utility project property and all third parties, and additional

public notice is not required.

4. The lien is a continuously perfected lien on all revenues and proceeds generated from the utility project property regardless of whether the revenues or proceeds have accrued.

(c) All revenues with respect to utility project property related to utility cost containment bonds, including payments of the utility project charge, shall be applied first to the payment of the financing costs of the utility cost containment bonds then due, including the funding of reserves for the utility cost containment bonds. Any excess revenues shall be applied as determined by the authority for the benefit of the utility for which the utility cost containment bonds were issued.

(7) UTILITY COST CONTAINMENT BONDS.—

(a) Utility cost containment bonds shall be issued within the parameters of the financing provided by the authority pursuant to this section. The proceeds of the utility cost containment bonds made available to the local agency or its publicly owned utility shall be used for the utility project identified in the application for financing of the utility project or used to refinance indebtedness of the local agency which financed or refinanced utility projects.

(b) Utility cost containment bonds shall be issued as set forth in this section and s. 163.01(7)(g)8., Florida Statutes, and may be validated pursuant to s. 163.01(7)(g)9., Florida

Statutes.

(c) The authority shall pledge the utility project property as security for the payment of the utility cost containment bonds. All rights of an authority with respect to utility project property pledged as security for the payment of utility cost containment bonds shall be for the benefit of, and enforceable by, the beneficiaries of the pledge to the extent provided in the financing documents relating to the utility cost containment bonds.

1. If utility project property is pledged as security for the payment of utility cost containment bonds, the local agency or its publicly owned utility shall enter into a contract with the authority which requires, at a minimum, that the publicly owned utility:

a. Continue to operate its publicly owned utility, including the utility project that is being financed or refinanced;

b. Collect the utility project charge from customers for the benefit and account of the authority and the beneficiaries of the pledge of the utility project charge; and

c. Separately account for and remit revenue from the utility project charge to, or for the account of, the authority.

2. The pledge of a utility project charge to secure payment of utility cost containment bonds is irrevocable, and the state or any other entity may not reduce, impair, or otherwise adjust the utility project charge, except that the

authority shall implement periodic adjustments to the utility project charge as provided under subsection (5).

(d) Utility cost containment bonds shall be nonrecourse to the credit or any assets of the local agency or the publicly owned utility but are payable from, and secured by, a pledge of the utility project property relating to the utility cost containment bonds and any additional security or credit enhancement specified in the documents relating to the utility cost containment bonds. If, pursuant to subsection (4), the authority is financing the project through a single-purpose limited liability company, the utility cost containment bonds shall be payable from, and secured by, a pledge of amounts paid by the company to the authority from the applicable utility project property. This paragraph is the exclusive method of perfecting a pledge of utility project property by the company securing the payment of financing costs under any agreement of the company in connection with the issuance of utility cost containment bonds.

(e) The issuance of utility cost containment bonds does not obligate the state or any political subdivision thereof to levy or to pledge any form of taxation to pay the utility cost containment bonds or to make any appropriation for their payment. Each utility cost containment bond must contain on its face a statement in substantially the following form:

"Neither the full faith and credit nor the taxing power of the

State of Florida or any political subdivision thereof is pledged to the payment of the principal of, or interest on, this bond."

(f) Notwithstanding any other law or this section, a financing resolution or other resolution of the authority, or documents relating to utility cost containment bonds, the authority may not rescind, alter, or amend any resolution or document that pledges utility cost charges for payment of utility cost containment bonds.

(g) Subject to the terms of any pledge document created under this section, the validity and relative priority of a pledge is not defeated or adversely affected by the commingling of revenues generated by the utility project property with other funds of the local agency or the publicly owned utility collecting a utility project charge on behalf of an authority.

(h) Financing costs in connection with utility cost containment bonds are a special obligation of the authority and do not constitute a liability of the state or any political subdivision thereof. Financing costs are not a pledge of the full faith and credit of the state or any political subdivision thereof, including the authority, but are payable solely from the funds identified in the documents relating to the utility cost containment bonds. This paragraph does not preclude guarantees or credit enhancements in connection with utility cost containment bonds.

(i) Except as otherwise provided in this section with

respect to adjustments to a utility project charge, the recovery of the financing costs for the utility cost containment bonds from the utility project charge is irrevocable, and the authority does not have the power, by rescinding, altering, or amending the applicable financing resolution, to revalue or revise for ratemaking purposes the financing costs of utility cost containment bonds; to determine that the financing costs for the related utility cost containment bonds or the utility project charge is unjust or unreasonable; or to in any way, either directly or indirectly, reduce or impair the value of utility project property that includes the utility project charge. The amount of revenues arising with respect to the financing costs for the related utility cost containment bonds or the utility project charge is not subject to reduction, impairment, postponement, or termination for any reason until all financing costs to be paid from the utility project charge are fully met and discharged.

(j) Except as provided in subsection (5) with respect to adjustments to a utility project charge, the state pledges and agrees with the owners of utility cost containment bonds that the state may not limit or alter the financing costs or the utility project property, including the utility project charge, relating to the utility cost containment bonds, or any rights related to the utility project property, until all financing costs with respect to the utility cost containment bonds are fully met and discharged. This paragraph does not preclude

limitation or alteration if adequate provision is made by law to protect the owners. The authority may include the state's pledge in the governing documents for utility cost containment bonds.

(8) LIMITATION ON DEBT RELIEF.—Notwithstanding any other law, an authority that issued utility cost containment bonds may not, and a governmental officer or organization may not authorize the authority to, become a debtor under the United States Bankruptcy Code or become the subject of any similar case or proceeding under any other state or federal law if any payment obligation from utility project property remains with respect to the utility cost containment bonds.

(9) CONSTRUCTION.—This section and all grants of power and authority in this section shall be liberally construed to effectuate their purposes. All incidental powers necessary to carry this section into effect are expressly granted to, and conferred upon, public entities.

Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 413 Title Insurance
SPONSOR(S): Insurance & Banking Subcommittee; Hager
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 548

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Lloyd	Luczynski
2) Regulatory Affairs Committee		Lloyd	Hamon

SUMMARY ANALYSIS

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

Title insurers are regulated by the Office of Insurance Regulation (OIR). Among other things, Florida law provides that a title insurer cannot assume a risk that exceeds one half of its surplus. However, the title insurer may underwrite a risk that exceeds this limit if it simultaneously reinsures the excess amount. They must do this using one or more approved title insurers. There are 42 jurisdictions that have higher or no limits (21 states) related to a single title insurance risk.

Insurers purchase insurance of their own, which is known as reinsurance. Through reinsurance a reinsurer assumes a certain amount of the risk underwritten by the primary insurer in exchange for a share of the premium of the underlying policy. This spreads risks across the industry and provides the primary insurer with access to additional capital. The reinsurance market is global; however, in regard to title insurance, reinsurance may only be purchased from other title insurers in the state.

The bill increases the limit that a single title insurer can assume, whether as a primary risk or as assumed reinsurance or coinsurance, from one half of the dollar value of its surplus to the full amount of its surplus. It also allows the title insurer to purchase reinsurance for any amounts underwritten in excess of their statutory risk limitation from any eligible reinsurer. This expands the number of insurers that may provide title insurance reinsurance from only Florida's title insurers to the many reinsurers participating in the Florida market.

The bill has no fiscal impact on state or local government. It has an indeterminate positive impact on the private sector.

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Title Insurance

Title insurance insures owners of real property or others having an interest in real property, such as lenders, against loss by: encumbrance; defective title; invalidity; or adverse claim to title.[1] Title insurance is a policy issued by a title insurer that, after evaluating a search of title, insures against certain covered risks including: forgery; fraud; liens; and encumbrances on a title. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others 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 by the title insurer to defend against adverse claims on the subject property's title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.[2]

Title insurers are regulated by the Office of Insurance Regulation (OIR) and are subject to the provisions of ch. 627, F.S., Part XIII, Title Insurance Contracts. Section 627.778, F.S., among other things, limits the amount of risk that a title insurer can assume regarding insurance covering an estate, lien, or interest in property in the state.[3] The title insurer cannot assume a risk that exceeds one half of its surplus.[4] However, the title insurer may underwrite a risk that exceeds this limit if they simultaneously reinsure the amount of the risk in excess of the limit. They must do this using one or more approved title insurers.[5, 6] This results in the primary and reinsurance title insurance risks competing in the same market with a limited number of insurers.[7]

Florida is among the minority of states with a single risk limit at this level or that are more restrictive. Forty-two states, including the District of Columbia, have higher or no single risk limits (21 states have no limitation in this regard). While Florida's risk limit is similar to the single risk limit found in the National Association of Insurance Commissioners Title Insurers Model Act,[8] Florida's single risk limit

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[1] s. 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., AMERICAN LAND TITLE ASSOCIATION (ALTA), http://www.alta.org (last visited Nov. 10, 2015). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies. AMERICAN LAND TITLE ASSOCIATION, *Title Insurance: A Comprehensive Overview*, http://www.alta.org/about/TitleInsuranceOverview.pdf (last visited Nov. 10, 2015).

[3] This limitation is applicable to both primary risk assumed by the title insurer and any reinsurance or coinsurance it issues to other title insurers. s. 627.778(1), F.S.

[4] "Surplus" is the amount by which assets exceed liabilities. BEST'S INSURANCE RESOURCES, *Glossary of Insurance Terms*, http://www.ambest.com/resource/glossary.html (last visited Nov. 13, 2015).

[5] The Insurance Code does not define or commonly use the term "approved insurer." This term is conventionally accepted to mean "authorized insurer," which is defined under section 624.09, F.S., and means an insurer that holds a certificate of authority issued by the OIR.

[6] Title insurance is a mono-line product, meaning that an insurer is prohibited from transacting title insurance in combination with any other line of insurance. s. 627.786, F.S. Since title insurance is a mono-line risk, only other authorized title insurers may be used to reinsure or coinsure title insurance risks.

[7] There are 18 title insurance companies participating in the state according to the OIR web site. FLORIDA OFFICE OF INSURANCE REGULATION, *Active Company Search*, http://www.floir.com/CompanySearch/ (last visited Nov. 13, 2015), "Company Type" search term limited to "Title Insurance."

[8] "The net retained liability of a title insurer for a single risk in regard to property, whether assumed directly or as reinsurance, shall not exceed the aggregate of fifty percent (50%) of surplus as regards policyholders plus the statutory premium reserve less the company's investment in title plants, all as shown in the most recent annual statement of the insurer on file with the commissioner." Section 8. A. Single Risk Limit, Title Insurers Model Act, MDL-628, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, *Products & Services*, http://www.naic.org/store/free/MDL-628.pdf (last visited Nov. 16, 2015).

does not take statutory premium reserves into account, which could significantly increase the allowable single risk retention, if utilized.[9]

Reinsurance

An insurer limits their risk of loss by purchasing insurance of their own. This is known as reinsurance.[10] Through reinsurance a reinsurer assumes a certain amount of the risk underwritten by the primary insurer in exchange for a share of the premium of the underlying policy. This spreads risks across the industry and provides the primary insurer with access to additional capital. The reinsurance market is global;[11] however, in regard to title insurance, reinsurance may only be purchased from other title insurers in the state.[12] Reinsurers do not pay claims directly to policyholders; rather, the reinsurer reimburses the primary insurer for excess benefits paid.

Effect of the Bill

The bill increases the limit that a single title insurer can assume, whether as a primary risk or as assumed reinsurance or coinsurance, from one half of the dollar value of its surplus to the full amount of its surplus. It also allows the title insurer to purchase reinsurance for any amounts underwritten in excess of their statutory risk limitation from any eligible reinsurer. This expands the number of insurers that may provide title insurance reinsurance from only Florida's title insurers to the many reinsurers participating in the Florida market.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.778, F.S., relating to limit of risk.

Section 2: Provides an effective date of July 1, 2016.

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.

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[9] According to financial data published by the ALTA, nationwide aggregate statutory surplus is approximately $3.81 billion and statutory reserve is $3.76 billion. AMERICAN LAND TITLE ASSOCIATION (ALTA), *Industry Financial Data*, http://www.alta.org/industry/financial.cfm (last visited Nov. 16, 2015).

[10] INSURANCE INFORMATION INSTITUTE, *Glossary*, http://www.iii.org/services/glossary (last viewed Nov. 19, 2015).

[11] Section 624.610, F.S., establishes certain criteria related to reinsurers that allow the OIR to grant accounting credit for premiums ceded to reinsurers. The OIR reports that 19 reinsurers have established their eligibility pursuant to statute. FLORIDA OFFICE OF INSURANCE REGULATION, *Eligible Reinsurers*, http://www.floir.com/sections/pandc/eligiblereinsurers.aspx (last viewed Nov. 19, 2015).

[12] *See* footnote 6, above.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill expands the amount of risk that a single title insurer can underwrite and allows reinsurance to be obtained from a larger class of insurers. This should benefit the private sector to the extent that it reduces the burdens on consumers and title insurance companies when they are attempting to underwrite high value risks and it allows title insurers access to more capital when they are required to place excess risk with a reinsurer.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 18, 2015, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably with a committee substitute. The amendment removed a proposed exception allowing title insurance reinsurance to be purchased from reinsurers with a specified financial strength rating. Instead, it allows title insurance reinsurance to be obtained from any eligible reinsurer.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to title insurance; amending s. 627.778, F.S.; revising certain limitations on assumption of risk by title insurers; authorizing a title insurer to obtain reinsurance from an eligible reinsurer; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 627.778, Florida Statutes, is amended 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 authorized ~~approved~~ insurers or one or more reinsurers that may provide reinsurance under s. 624.610.

Section 2. This act shall take effect July 1, 2016.

Regulatory Affairs Committee

CS/HB 413 by Rep. Hager
Title Insurance

AMENDMENT SUMMARY
January 14, 2016

Amendment 1 by Rep. Hager (Line 22): The amendment makes a technical change to the committee substitute and revises another portion of the same subsection of law to make a parallel reference consistent with the language and purpose of the committee substitute.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 413 (2016)

Amendment No. 1

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Hager offered the following:

Amendment (with directory amendment)

Remove lines 22-23 and insert:

insurers or one or more reinsurers that meet the requirements of s. 624.610.

(c) This subsection does not prohibit:

1. The simultaneous issuance of policies insuring different estates, liens, or interests in the same property, if each of the simultaneous policies excepts the paramount estates, liens, or interests to which the insured estate, lien, or interest is subject and if each of the simultaneous policies conforms to this subsection.

2. Ceding portions of the total risk to authorized insurers or reinsurers that meet the requirements of s. 624.610.

Insurance ceded, including coinsurance effected, is a retention of risk by the insurer assuming the ceded risk, and not by the insurer ceding the risk.

D I R E C T O R Y A M E N D M E N T

Remove lines 10-11 and insert:

Section 1. Paragraphs (a) and (c) of subsection (1) of section 627.778, Florida Statutes, are amended to read:

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 577 Liability Insurance Coverage
SPONSOR(S): Insurance & Banking Subcommittee; Lee
TIED BILLS: **IDEN./SIM. BILLS:** SB 774

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 0 N, As CS	Lloyd	Luczynski
2) Regulatory Affairs Committee		Lloyd	Hamon

SUMMARY ANALYSIS

Liability insurance is a form of casualty insurance covering the legal obligations of the insured for bodily injuries or property damage caused to another person. When a person is injured or their property is damaged by another person or by conditions or by property for which the other person is responsible, the injured person may have a legal claim for their losses. To facilitate ready and timely access to insurance coverage information, Florida law provides a mechanism to obtain insurance information related to the claim. Upon receipt of the relevant coverage information, the injured person can then make an informed decision about how to proceed with their claim, such as filing insurance claims or pursuing litigation.

Florida law allows claimants to make written requests for disclosure of specific insurance information regarding liability insurance coverage. Upon receipt of a written request, the insured or their insurance agent are required to forward the request to all affected insurers. The written request may also be filed directly with any insurer that is or may be responsible for covering the insured.

Within 30 days of receipt of the written request, the insurer must disclose the following information regarding every known policy that may be related to the claim:

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement; and
- A copy of the policy.

The information must be provided under oath, subject to penalties for perjury, by a corporate officer, claims manager, or claims superintendent of the insurer. This sworn statement of coverage information must be amended upon the discovery of additional material facts, such as additional policies or defenses that were not initially identified.

The bill adds "company employee adjusters" to the list of individuals that may issue a sworn statement detailing the required coverage information on behalf of the insurer.

The bill has no impact on state and local governments. The bill has a positive impact on the private sector.

The bill is effective on July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Liability insurance is "insurance against legal liability for the death, injury, or disability of any human being, or for damage to property, with provision for medical, hospital, and surgical benefits to the injured persons, irrespective of the legal liability of the insured, when issued as a part of a liability insurance contract."[1] It is a form of casualty insurance[2] covering the legal obligations of the insured for bodily injuries or property damage caused to another person.

When a person is injured or their property is damaged by another person or by conditions or by property for which the other person is responsible, the injured person may have a legal claim for their losses. However, the injured person usually has no knowledge of or information about the insurance coverage of the person responsible for the loss. To facilitate ready and timely access to insurance coverage information, Florida law provides a mechanism to obtain insurance information related to the claim. Upon receipt of coverage information, the injured person can then make an informed decision about how to proceed with their claim, such as filing insurance claims or pursuing litigation.

Section 627.4137, F.S., allows claimants to make written requests for disclosure of specific insurance information regarding liability insurance coverage. Upon receipt of a written request for disclosure, the insured or their insurance agent are required to forward the request to all affected insurers. The written request may also be filed directly with any insurer that is or may be responsible for liability insurance coverage of the insured.

Within 30 days of receipt of the written request,[3] the insurer must provide the following information regarding every known policy:[4]

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement; and
- A copy of the policy.

The information must be provided under oath by a corporate officer, claims manager, or claims superintendent of the insurer.[5] This sworn statement must be amended upon the discovery of

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[1] s. 624.605(1)(b), F.S.

[2] s. 624.605, F.S. The following forms of insurance are also casualty insurance: vehicle, workers' compensation and employer's liability, burglary and theft, personal property floaters, glass, boiler and machinery, leakage and fire extinguishing equipment, credit, credit property, malpractice, animal, elevator, entertainments, failure of certain institutions to record documents, failure to file certain personal property instruments, debt cancellation products, and, when not contrary to law or public policy or within any other line of insurance, any insurance providing coverage against liabilities for loss or damage to person or property. Medical, hospital, surgical, and funeral benefits covered under policies for vehicle, liability, burglary and theft, boiler and machinery, or elevator are deemed to be casualty insurance and is not subject to the provisions of the Insurance Code applicable to life and health insurance. Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the "Florida Insurance Code." s. 624.01, F.S.

[3] Written requests made of a self-insured corporation must be sent by certified mail to the registered agent of the entity that is obligated to make the disclosures required by statute. s. 627.4137(3), F.S.

[4] This includes policies for excess or umbrella insurance applicable to the insured's liability coverages. s. 627.4137(1), F.S.

[5] The oath required for verification of the informational response is governed by s. 92.525, F.S. If perjury is committed in executing the oath, it is punishable as a felony of the third degree under s. 775.082, F.S., (up to 5 years imprisonment), s. 775.083, F.S., (up to a $5,000 fine), or s. 775.084, F.S., (sentencing factors for habitual offenders). Depending upon circumstances of the claim, the claims handling of the insurer, including settlement practices, and the coverages involved, a civil remedy under s. 624.155, F.S., may be available to the claimant for damages related to an alleged failure of the insurer to operate in good faith. This is in addition to a possible civil remedy for bad faith under common-law.

additional material facts, such as additional policies or defenses that were not initially identified. Willful violation of the requirements of s. 627.4137, F.S., is grounds for an administrative penalty against individuals holding one of the various insurance licenses issued by the Department of Financial Services.[6]

In addition to corporate officers, claims managers, and claims superintendents, the bill allows "company employee adjusters" to issue a sworn statement detailing the required coverage information. Section 626.856, F.S., defines a "company employer adjuster" as "a person licensed as an all-lines adjuster who is appointed and employed on an insurer's staff of adjusters or a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage."

B. SECTION DIRECTORY:

Section 1: Amends s. 627.4137, F.S., relating to disclosure of certain information required.

Section 2: Provides an effective date of July 1, 2016.

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:

Liability insurers could experience increased efficiency by allowing the adjuster with direct responsibility for a claim file or policy to perform the required information disclosure consistent with the requirements of the bill, rather than more senior, and possibly remotely located, personnel.

D. FISCAL COMMENTS:

None.

[6] ss. 626.611 and 626.621, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 626.9372, F.S., contains a substantively comparable provision that requires a surplus lines insurer to disclose the same coverage information in the same way as s. 627.4137, F.S. The only substantive difference is that the surplus lines liability insurer must issue its disclosure within 60 days of a written request from the claimant. For purposes of consistency, it may be advisable to amend s. 626.9372, F.S., so that the same information response requirements apply to insurers admitted in the state and surplus lines insurers.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably with a committee substitute. The amendment replaced the term "licensed company adjuster," which is not defined in statute, with the term "company employee adjuster," which is defined in statute.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to liability insurance coverage; amending s. 627.4137, F.S.; adding company employee adjusters to the list of persons who may respond to a claimant's written request for information relating to liability insurance coverage; providing an effective date.

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

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

627.4137 Disclosure of certain information required.—

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

(a) The name of the insurer.

(b) The name of each insured.

(c) The limits of the liability coverage.

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

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

insurer at the time of filing such statement.

(e) A copy of the policy.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as required by this subsection to all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days after ~~of~~ receipt of such request.

Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 695 Title Insurance
SPONSOR(S): Boyd
TIED BILLS: **IDEN./SIM. BILLS:** SB 940

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	9 Y, 0 N	Lloyd	Luczynski
2) Regulatory Affairs Committee		Lloyd	Hamon

SUMMARY ANALYSIS

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

Title insurers are regulated by the Office of Insurance Regulation (OIR) and are subject to the Insurance Code. Among other things, Florida law sets a statutory unearned premium reserve for title insurers to guaranty the interests of policyholders in case of insurer insolvency. The reserve is based on the amount of surplus held by the insurer. Title insurers with surplus under $50 million must put $0.30 for every $1,000 of risk they retain into reserve. Those with $50 million or more in surplus must put 6.5 percent of premium into reserve. Both must supplement their reserve with any additional amount deemed necessary by a qualified actuary. It is notable that the two calculations are based on different factors, the first on risk retained and the second on premiums written. For smaller transactions, there is little difference in the amounts that must be reserved. However, on larger value transactions, there can be significantly lower reserve requirements applicable to the title insurers with $50 million or more in surplus. These larger surplus insurers also benefit from a reserve retention schedule that releases the reserve earlier than for the smaller surplus insurers.

Florida insurers are permitted to arrange themselves into insurance holding companies, also known as insurance holding company systems. An insurance holding company system consists of two or more affiliated entities, at least one of which is an insurer.

There are multiple private organizations that engage in the evaluation and rating of insurance companies for the purposes of identifying the financial strength of insurers. These financial strength ratings allow potential investors to make informed decisions regarding possible investment in the rated insurer. The various rating companies use similar terminology, but each has a proprietary method to establish their rating results.

The bill allows a title insurer that is a member of an insurance holding company system that has $1 billion or more in surplus to set its guaranty fund reserve in the same manner as a title insurer that on its own has $50 million or more in surplus. However, this exception will only be available if the insurance holding company system has a financial strength rating of "A-" or better from the A.M. Best Company. This allows a smaller title insurer with access to capital from its holding company to set the reserve in the same way as a larger title insurer. This sets lower guaranty fund reserve amounts on higher value policies and allows the reserve to be released earlier. Also, the bill allows title insurers that move their domicile to Florida to release guaranty fund reserves consistent with Florida law, rather than maintaining and releasing the guaranty fund reserve that they held at the time of domestication pursuant to the law of their former state.

The bill has no impact on state revenues and local government. The bill has an indeterminate impact on state expenditures. It has an indeterminate positive impact on the private sector.

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Title Insurance

Title insurance insures owners of real property or others having an interest in real property, such as lenders, against loss by: encumbrance; defective title; invalidity; or adverse claim to title.[1] Title insurance is a policy issued by a title insurer that, after evaluating a search of title, insures against certain covered risks including: forgery; fraud; liens; and encumbrances on a title. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others 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 by the title insurer to defend against adverse claims on the subject property's title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.[2]

Title insurers[3] are regulated by the Office of Insurance Regulation (OIR) and are subject to the Insurance Code.[4] Among other things, Florida law requires title insurers to report its reserves to the OIR.[5] An insurer's reserve is a fund of capital kept by an insurer to meet its best estimate of known or expected losses for claims on policies it has written or assumed.[6, 7] In addition to reserves for known or expected losses,[8] title insurers are required to maintain a separate unearned premium reserve fund as a guaranty against insolvency.[9] This is because title insurers are excluded from participating in the Florida Insurance Guaranty Association[10] and there is no guaranty association unique to title insurers.

In the event of insolvency, the statutory guaranty fund reserve held by the title insurer is used to fund claims on policies issued by the insolvent title insurer. 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.[11] Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services is responsible for rehabilitating or liquidating insurance

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[1] s. 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.*, AMERICAN LAND TITLE ASSOCIATION (ALTA), http://www.alta.org (last visited Nov. 25, 2015). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies. AMERICAN LAND TITLE ASSOCIATION, *Title Insurance: A Comprehensive Overview*, http://www.alta.org/about/TitleInsuranceOverview.pdf (last visited Nov. 25, 2015).

[3] There are 18 title insurance companies participating in the state according to the OIR web site. FLORIDA OFFICE OF INSURANCE REGULATION, *Active Company Search*, http://www.floir.com/CompanySearch/ (last visited Dec. 3, 2015), "Company Type" search term limited to "Title Insurance."

[4] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the "Florida Insurance Code." s. 624.01, F.S.

[5] s. 624.424, F.S.

[6] INSURANCE INFORMATION INSTITUTE, *Glossary*, http://www.iii.org/services/glossary (last viewed Nov. 25, 2015).

[7] According to financial data published by the ALTA, nationwide aggregate statutory surplus is approximately $3.81 billion and statutory reserve is $3.76 billion. AMERICAN LAND TITLE ASSOCIATION (ALTA), *Industry Financial Data*, http://www.alta.org/industry/financial.cfm (last visited Nov. 25, 2015).

[8] s. 625.041, F.S.

[9] s. 625.111, F.S.

[10] s. 631.52(12), F.S.

[11] 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).

companies as the "receiver."[12] Because of the nature of title insurance and the lack of a title insurance guaranty association, the receiver does not liquidate the insurer nor transfer the policy liabilities to another entity; rather, the title insurer remains in rehabilitation under the control of the receiver.

Subsection 625.111(1), F.S., sets the statutory guaranty fund reserve for title insurers based on the amount of surplus[13] held by the insurer. For title insurers with less than $50 million in surplus, the insurer must maintain the following reserve:[14]

- 30 cents for every $1,000 of net retained liability,[15] plus
- Any additional amount deemed necessary by a qualified actuary[16] to meet known and anticipated losses.

For title insurers with $50 million or more in surplus, the insurer must maintain the following reserve:

- At least 6.5 percent of direct written premiums, plus other income and reinsurance assumed, plus
- Any additional amount deemed necessary by a qualified actuary to meet known and anticipated losses.[17]

For title insurers from other states that choose to move their operations to Florida and become domestic title insurers in this state, the reserve requirement for reserves held at the time of the change of state is based upon the law of their prior state.[18]

In the two statutory reserve categories described above, the amount of the reserve is tied to a different base. For the smaller surplus insurers, it is a percent of the face value of the policy. For the larger surplus insurers, it is a percentage of the premium.[19] The following examples highlight the difference in guaranty fund reserve requirements based on the insurer's level of surplus:[20]

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[12] 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 and release them as a going concern. 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.

[13] "Surplus" is the remainder after an insurer's liabilities are subtracted from its assets. It is the financial cushion that protects policyholders in case of unexpectedly high claims. INSURANCE INFORMATION INSTITUTE, *Glossary*, http://www.iii.org/services/glossary (last viewed Nov. 25, 2015).

[14] For unearned premiums on policies written or assumed before July 1, 1999, the amount of reserve established on June 30, 1999, applies. s. 625.111(1)(a), F.S. This is in addition to any additional amount deemed necessary by a qualified actuary. s. 625.111(1)(d), F.S.

[15] "Net retained liability" means the total liability retained by a title insurer for a single risk, after taking into account the deduction for ceded liability, if any. s. 625.111(6)(b), F.S.

[16] "Qualified actuary" means a person who is, as detailed in the National Association of Insurance Commissioners' Annual Statement Instructions: 1. A member in good standing of the Casualty Actuarial Society; 2. A member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries; or 3. A person who otherwise has competency in loss reserve evaluation as demonstrated to the satisfaction of the insurance regulatory official of the domiciliary state. In such case, at least 90 days before filing its annual statement, the insurer must request that the person be deemed qualified and that request must be approved or denied. The request must include the National Association of Insurance Commissioners' Biographical Form and a list of all loss reserve opinions issued in the last 3 years by this person. s. 625.111(6)(c), F.S.

[17] s. 625.111(1), F.S.

[18] s. 625.111(3), F.S.

[19] The amount of premium is established by applying the OIR approved title insurance rate to the amount of liability written. The OIR approved rates are found in Rule 69O-186.003, F.A.C.

[20] These examples are based exclusively on the application of the OIR approved rate to a hypothetical real estate property value, exclusive of any premium discounts, credits, or other factors.

Example A: an owner's title insurance policy on a $750,000 real estate transaction.

Statutory reserve for an insurer with less than $50 million in surplus (based on retained liability):

Net retained liability: $750,000 (if no premium is ceded through reinsurance)

Statutory reserve: ($750,000 / 1,000) x $0.30 = **$225**

Statutory reserve for an insurer with $50 million or more in surplus (based on premium):

Calculated premium: $3,825

Statutory reserve: $3,825 x 6.5% = **$248.63**

Example B: an owner's title insurance policy on a $20,000,000 real estate transaction.

Statutory reserve for an insurer with less than $50 million in surplus (based on retained liability):

Net retained liability: $20,000,000 (if no premium is ceded through reinsurance)

Statutory reserve: ($20,000,000 / 1,000) x $0.30 = **$6,000**

Statutory reserve for an insurer with $50 million or more in surplus (based on premium):

Calculated premium: $46,325

Statutory reserve: $46,325 x 6.5% = **$3,011.03**

As illustrated, in Example A the two reserve amounts are similar. The smaller surplus company's reserve requirement is approximately 90 percent of the amount required of the larger surplus company. In Example B, however, the larger surplus company is only required to reserve about half as much as the smaller surplus company.

The title insurer's premium reserve is released over time based on a schedule set by statute.[21] Since title insurance policies cover an exceptionally long period of risk, the conversion of reserve to surplus occurs over a period of 20 years. The amount released from reserve each year is done quarterly in equal amounts. The statutory reserve release schedule for each of the two sizes of insurer is shown below.

For title insurers with less than $50 million in surplus, the portion of the reserve based on retained liability is released as follows:[22]

Year(s)	Percent released
1	30%
2	15%
3, 4	10%, each year
5, 6	5%, each year
7, 8	3%, each year
9 through 15	2%, each year
16 through 20	1%, each year

[21] s. 625.111(2), F.S.

[22] The amount of reserve that is based on the additional amount needed to meet the opinion of the qualified actuary regarding necessary reserves is released on the same schedule as that provided for insurers with $50 million or more in surplus. s. 625.111(2)(d), F.S.

For title insurers with $50 million or more in surplus, the reserve is released as follows:

Year(s)	Percent released
1	35%
2, 3	15%, each year
4	10%
5, 6, 7	3%, each year
8, 9, 10	2%, each year
11 through 20	1%, each year

The release of reserves by title insurers with $50 million or more in surplus is somewhat more frontloaded than the other title insurers. They will have released 75 percent of the reserved amount after the first four years where the insurer with less than $50 million in surplus will have only release 65 percent of the reserve. Following the 15th year of release, the two will have released an equal amount of reserve.

Insurance Holding Companies

Florida insurers are permitted to arrange themselves into insurance holding companies, also known as insurance holding company systems. An insurance holding company system consists of two or more affiliated entities that are subsidiaries of the holding company. One of the members must be an insurer. They are regulated by the OIR under ch. 628, Part IV, F.S. This allows the OIR to have an oversight role in the shared financial risks of the members of the insurance holding company.

Financial Strength Ratings

There are multiple private organizations that engage in the evaluation and rating of insurance companies for the purposes of identifying the financial strength of insurers.[23] These financial strength ratings allow potential investors to make informed decisions regarding possible investment in the rated insurer. The rating companies use similar terminology, but each has a proprietary method to establish their rating results. While the rating results are similar, one should review the rating organization's own explanation of its approach and methods to understand the subtle differences that occur when a particular insurer is rated by multiple rating organizations. A.M. Best's Financial Strength Rating is divided between "Secure," with ratings between A++ and B+, or "Vulnerable," with ratings of B or lower. Among the "Secure" ratings, A++ and A+ are described as "Superior," A and A- are described as "Excellent," and B++ and B+ are described as "Good" in terms of A.M. Best's opinion of the company's ability to meet financial obligations.[24] Additionally, an insurer may not be rated by every rating company as some rating companies may focus on particular markets or entities that are not served by the other rating companies.

Effect of the Bill

The bill allows a title insurer that is a member of an insurance holding company system that has $1 billion or more in surplus to set its guaranty fund reserve in the same manner as a title insurer that on its own has $50 million or more in surplus. This allows smaller title insurers with access to large amounts of capital to set reserves as if it had a higher surplus of its own. This exception will only be available if the insurance holding company system has a financial strength rating of "A-" or better from the A.M. Best Company.

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[23] Financial strength rating organizations include: A.M. Best (www.ambest.com), Fitch (www.fitchratings.com), Moody's Investor Services (www.moodys.com), Standard & Poor's (www.standardandpoors.com), and Demotech (www.demotech.com).

[24] See A.M. BEST COMPANY, *Guide to Best's Financial Strength Ratings*, http://www.ambest.com/ratings/guide.pdf (Last viewed Nov. 25, 2015).

This has two effects. First, it sets a lower amount of reserve on higher value policies and, second, the insurer's reserve is released earlier. Together, this allows the insurer earlier access to capital by placing funds in surplus, rather than reserves.

Also, the bill allows title insurers that move their domicile to Florida from another state to release its guaranty fund reserve consistent with Florida law, rather than requiring release of the predomestication guaranty fund reserve pursuant to the law of their former state.

B. SECTION DIRECTORY:

Section 1: Amends s. 625.111, F.S., relating to title insurance reserve.

Section 2: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The OIR is not currently required to monitor the financial strength rating of a title insurer's holding company. The bill sets reserve requirements for certain title insurers based on the financial strength and surplus size of its insurance holding company. The fiscal impact section of the OIR bill analysis was not completed. Accordingly, the impact on state resources is indeterminate, but it could be negative.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a positive impact on the private sector. It frees up capital that title insurers can use to write additional coverage or make new investments.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The portion of the bill related to title insurers who redomesticate to Florida (lines 106-114) that allows the release of the statutory premium reserve pursuant to Florida law, rather than the law of the title insurer's former state, may be subject to multiple interpretations or yield unintended results. On lines 111-114 of the bill, the reserve is authorized to be released "over the subsequent 20 years at an amortization rate not to exceed the formula in paragraph (2)(c)" of s. 625.111, F.S. The bill requirement that the statutory premium reserve be released over the subsequent 20 years may not be possible under the requirements of s. 625.111(2)(c), F.S.

The OIR states in their bill analysis[25] that the bill requires the reserve to be "re-amortized" and that the first release after domestication to the state will be at the first-year value in s. 625.111(2)(c), F.S., which is 35 percent of the initial sum reserved. The practical result of this interpretation is that for any title insurers whose former state follows the National Association of Insurance Commissioners Title Insurers Model Act,[26] the title insurer will have released 65 percent of the reserve associated with a particular policy after the third-year release. If the title insurer were then to release an additional 35 percent of the initial sum reserved, the amount of the reserve associated with any policy that was issued more than three years before the first release authorized by the bill will be fully released. In other words, the reserve held on policies over three years old would be reduced to zero following the first release under the bill, thus preventing compliance with the 20-year amortization requirement of the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[25] Florida Office of Insurance Regulation, Agency Analysis of 2016 House Bill 695, p. 2 (Nov. 30, 2015).

[26] NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, *Products & Services*, http://www.naic.org/store/free/MDL-628.pdf, p. 8 (last visited Jan. 10, 2016).

A bill to be entitled

An act relating to title insurance; amending s. 625.111, F.S.; revising the reserves that certain title insurers must set aside after a certain date; revising the manner in which reserves must be released; revising reserve requirements for a title insurer who transfers domicile to this state; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 625.111, Florida Statutes, are amended to read:

625.111 Title insurance reserve.—In addition to an adequate reserve as to outstanding losses relating to known claims as required under s. 625.041, a domestic title insurer shall establish, segregate, and maintain a guaranty fund or unearned premium reserve as provided in this section. The sums to be reserved for unearned premiums on title guarantees and policies shall be considered and constitute unearned portions of the original premiums and shall be charged as a reserve liability of the insurer in determining its financial condition. Such reserved funds shall be withdrawn from the use of the insurer for its general purposes, impressed with a trust in favor of the holders of title guarantees and policies, and held available for reinsurance of the title guarantees and policies

in the event of the insolvency of the insurer. This section does not preclude the insurer from investing such reserve in investments authorized by law, and the income from such investments shall be included in the general income of the insurer and may be used by such insurer for any lawful purpose.

(1) For an unearned premium reserve established on or after July 1, 1999, such reserve must be in an amount at least equal to the sum of paragraphs (a), (b), and (d) for title insurers holding less than $50 million in surplus as to policyholders as of the previous year end and the sum of paragraphs (c) and (d) for title insurers holding $50 million or more in surplus as to policyholders as of the previous year end or title insurers that are members of an insurance holding company system having $1 billion or more in surplus as to policyholders and rated "A-" or higher by A.M. Best Company:

(a) A reserve with respect to unearned premiums for policies written or title liability assumed in reinsurance before July 1, 1999, equal to the reserve established on June 30, 1999, for those unearned premiums with such reserve being subsequently released as provided in subsection (2). For domestic title insurers subject to this section, such amounts shall be calculated in accordance with state law in effect at the time the associated premiums were written or assumed and as amended before July 1, 1999.

(b) A total amount equal to 30 cents for each $1,000 of net retained liability for policies written or title liability

assumed in reinsurance on or after July 1, 1999, with such reserve being subsequently released as provided in subsection (2). For the purpose of calculating this reserve, the total of the net retained liability for all simultaneous issue policies covering a single risk shall be equal to the liability for the policy with the highest limit covering that single risk, net of any liability ceded in reinsurance.

(c) On or after January 1, 2014, for title insurers that are members of an insurance holding company system having $1 billion or more in surplus as to policyholders and rated "A-" or higher by A.M. Best Company or title insurers holding $50 million or more in surplus as to policyholders as of the previous year end, a minimum of 6.5 percent of the total of the following:

1. Direct premiums written; and

2. Premiums for reinsurance assumed, plus other income, less premiums for reinsurance ceded as displayed in Schedule P of the title insurer's most recent annual statement filed with the office with such reserve being subsequently released as provided in subsection (2). Title insurers with less than $50 million in surplus as to policyholders that are not members of an insurance holding company system holding $1 billion or more in surplus as to policyholders and rated "A-" or higher by A.M. Best Company must continue to record unearned premium reserve in accordance with paragraph (b).

(d) An additional amount, if deemed necessary by a

qualified actuary, to be subsequently released as provided in subsection (2). Using financial results as of December 31 of each year, all domestic title insurers shall obtain a Statement of Actuarial Opinion from a qualified actuary regarding the insurer's loss and loss adjustment expense reserves, including reserves for known claims, incurred but not reported claims, and unallocated loss adjustment expenses. The actuarial opinion must conform to the annual statement instructions for title insurers adopted by the National Association of Insurance Commissioners and include the actuary's professional opinion of the insurer's reserves as of the date of the annual statement. If the amount of the reserve stated in the opinion and displayed in Schedule P of the annual statement for that reporting date is greater than the sum of the known claim reserve and unearned premium reserve as calculated under this section, as of the same reporting date and including any previous actuarial provisions added at earlier dates, the insurer shall add to the insurer's unearned premium reserve an actuarial amount equal to the reserve shown in the actuarial opinion, minus the known claim reserve and the unearned premium reserve, as of the current reporting date and calculated in accordance with this section, but not calculated as of any date before December 31, 1999. The comparison shall be made using that line on Schedule P displaying the Total Net Loss and Loss Adjustment Expense which is comprised of the Known Claim Reserve, and any associated Adverse Development Reserve, the reserve for Incurred But Not Reported Losses, and

Unallocated Loss Adjustment Expenses.

(3) If a title insurer that is organized under the laws of another state transfers its domicile to this state, the statutory or unearned premium reserve shall be the amount required by the laws of the state of the title insurer's former state of domicile as of the date of transfer of domicile and shall be released from reserve over the subsequent 20 years at an amortization rate not to exceed the formula in paragraph (2)(c) ~~according to the requirements of law in effect in the former state at the time of domicile~~. On or after January 1, 2014, for new business written after the effective date of the transfer of domicile to this state, the domestic title insurer shall add to and set aside in the statutory or unearned premium reserve such amount as provided in subsection (1).

Section 2. This act shall take effect July 1, 2016.

Regulatory Affairs Committee

HB 695 by Rep. Boyd
Title Insurance

AMENDMENT SUMMARY
January 14, 2016

Amendment 1 by Rep. Raburn (Line 41): The amendment allows title insurers that are members of a holding company system with a Demotech financial strength rating of "A'" (A Prime) to qualify for the premium reserve provision created by the bill.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 695 (2016)

Amendment No. 1

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Raburn offered the following:

Amendment

Remove lines 41-76 and insert:

policyholders and are either rated "A-" or higher, by A.M. Best Company, or "A'" or higher, by Demotech:

(a) A reserve with respect to unearned premiums for policies written or title liability assumed in reinsurance before July 1, 1999, equal to the reserve established on June 30, 1999, for those unearned premiums with such reserve being subsequently released as provided in subsection (2). For domestic title insurers subject to this section, such amounts shall be calculated in accordance with state law in effect at the time the associated premiums were written or assumed and as amended before July 1, 1999.

(b) A total amount equal to 30 cents for each $1,000 of net retained liability for policies written or title liability assumed in reinsurance on or after July 1, 1999, with such reserve being subsequently released as provided in subsection (2). For the purpose of calculating this reserve, the total of the net retained liability for all simultaneous issue policies covering a single risk shall be equal to the liability for the policy with the highest limit covering that single risk, net of any liability ceded in reinsurance.

(c) On or after January 1, 2014, for title insurers that are members of an insurance holding company system having $1 billion or more in surplus as to policyholders and are either rated "A-" or higher, by A.M. Best Company, or "A'" or higher, by Demotech; or for title insurers holding $50 million or more in surplus as to policyholders as of the previous year end, a minimum of 6.5 percent of the total of the following:

1. Direct premiums written; and

2. Premiums for reinsurance assumed, plus other income, less premiums for reinsurance ceded as displayed in Schedule P of the title insurer's most recent annual statement filed with the office with such reserve being subsequently released as provided in subsection (2). Title insurers with less than $50 million in surplus as to policyholders that are not members of an insurance holding company system holding $1 billion or more in surplus as to policyholders and are either rated "A-" or

higher, by A.M. Best Company, or "A'" or higher, by Demotech, must continue to record unearned premium reserve in

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 699 Reciprocal Insurers
SPONSOR(S): Grant
TIED BILLS: **IDEN./SIM. BILLS:** SB 812

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	9 Y, 0 N	Peterson	Luczynski
2) Regulatory Affairs Committee		Peterson KP	Hamon K.W.H.

SUMMARY ANALYSIS

A reciprocal insurance company is an unincorporated group of participants, known as subscribers, who share risk equally through a person who is authorized to perform transactions on behalf of the subscribers. In effect, subscribers serve as both the insurer and the insured. Reciprocal insurers can transact any kind of insurance other than life or title.

Under current law, a reciprocal insurer can return to its subscribers any unused premiums, savings, or credits accruing to their accounts. Such distributions cannot unfairly discriminate between classes of risks, or policies, or between subscribers, but may vary as to classes of subscribers based on the experience of such classes. Currently, if a reciprocal insurer wants to make a distribution of surplus to its subscribers, it must establish and maintain subscriber savings accounts.

Under current Florida law, a domestic reciprocal insurer who does not maintain subscriber savings accounts does not have explicit authority to make distributions of surplus to its subscribers.

The bill provides a domestic reciprocal insurer with an additional method by which it can return surplus funds to its subscribers without the requirement to maintain subscriber savings accounts. The bill gives a domestic reciprocal insurer the option of paying to its subscribers up to ten percent of its unassigned funds (surplus), capping distribution at fifty percent of its net income from the previous calendar year. The bill requires the Office of Insurance Regulation (OIR) to approve in writing such distributions. Further, the distributions cannot unfairly discriminate between classes of risks, or policies, or between subscribers, but may vary as to classes of subscribers based on the experience of such classes. The bill gives a domestic reciprocal insurer the option to return surplus funds to its subscribers without the administrative costs associated with subscriber savings accounts.

The bill does not appear to have a fiscal impact on state government or local governments. The bill may have a positive economic impact on the private sector.

This bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background Information on Reciprocal Insurance

Reciprocal insurance is a risk-pooling alternative to stock or mutual insurance.[1] Reciprocal insurance involves an exchange of reciprocal agreements of indemnity among participants who are known as "subscribers."[2] The subscribers generally have something in common; for example, USAA is a well-known reciprocal insurer for U.S. military service members and their families.[3]

The agreements of indemnity are exchanged through an attorney-in-fact, whose powers are set forth by the subscribers.[4] "In general, the attorney in fact manages the reciprocal's finances and handles underwriting, claims administration and investments."[5]

Twenty-five or more persons domiciled in Florida may organize a domestic reciprocal insurer and apply to the OIR for authority to transact insurance.[6] Reciprocal insurers may transact any kind of insurance other than life or title.[7]

Current Situation

Under Florida law, reciprocal insurers must have and maintain surplus funds of at least $250,000 and an expendable surplus of at least $750,000.[8] Currently, a reciprocal insurer can return to its subscribers any unused premiums, savings, or credits accruing to the subscribers' accounts.[9] Any such distribution cannot unfairly discriminate between classes of risks, or policies, or between subscribers, but such distribution may vary as to classes of subscribers based on the experience of such classes.[10] If a reciprocal insurer wants to make a distribution to its subscribers, it must establish and maintain subscriber savings accounts.[11,12]

In practice, not all domestic reciprocal insurers[13] maintain subscriber savings accounts; these accounts can be expensive for smaller-sized reciprocal insurers to maintain.[14] However, current Florida law does not provide a domestic reciprocal insurer who does not maintain subscriber savings accounts with explicit authority to return surplus to its subscribers.

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[1] *See* Kevin Moriarty, *Twenty Things You'd Always Wanted to Know about Reciprocals (But May Not Have Thought to Ask)*, THE RISK RETENTION REPORTER, July 2003.
[2] ss. 629.011 and 629.021, F.S.
[3] *See* USAA, https://www.usaa.com (last visited Nov. 25, 2015).
[4] ss. 629.011 and 629.101, F.S.
[5] *See* Kevin Moriarty, *Twenty Things You'd Always Wanted to Know about Reciprocals (But May Not Have Thought to Ask)*, THE RISK RETENTION REPORTER, July 2003.
[6] s. 629.081(1), F.S.
[7] s. 629.041(1), F.S.
[8] s. 629.071, F.S.
[9] s. 629.271, F.S.
[10] s. 629.271, F.S.
[11] E-mail from Caitlin Murray, Director of Government Affairs, Florida Office of Insurance Regulation, 699 (Nov. 30, 2015) (on file with the House Insurance & Banking Subcommittee).
[12] "Subscriber savings account" as used in this context refers to an accounting methodology and not to an account at a financial institution. Conversation with Lee Roddenberry, Brennan Law Office PA (Nov. 30, 2015).
[13] A domestic reciprocal insurer is a reciprocal insurer formed under Florida law. s. 624.06(1), F.S.
[14] Information obtained from Star & Shield Insurance Exchange, 11/24/15 (e-mail communication on file with the House Insurance & Banking Subcommittee).

Effect of Bill

The bill adds a subsection to s. 629.271, F.S., providing a domestic reciprocal insurer with another method by which it can make distributions to its subscribers without the requirement to maintain subscriber savings accounts. The proposed language allows a domestic reciprocal insurer to pay to its subscribers up to ten percent of its unassigned funds (surplus), capping distribution at fifty percent of its net income from the previous calendar year. Such distribution would require written approval from the OIR and may not unfairly discriminate between classes of risks, or policies, or between subscribers, but may vary as to classes of subscribers based on the experience of such classes.

The alternate method for distribution provided by this bill gives a domestic reciprocal insurer the option to return surplus funds to the subscribers without the administrative costs associated with subscriber savings accounts.[15]

This bill also makes technical changes to the language of s. 629.271, F.S.

B. SECTION DIRECTORY:

Section 1: amends s. 629.271, F.S., relating to distribution of savings.

Section 2: provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that domestic reciprocal insurers who do not maintain subscriber savings accounts would now have the option to make distributions of surplus to its subscribers, there may be a positive economic impact on those subscribers.

D. FISCAL COMMENTS:

None.

[15] Information obtained from Star & Shield Insurance Exchange, 11/24/15 (e-mail communication on file with House Insurance & Banking Subcommittee).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to reciprocal insurers; amending s. 629.271, F.S.; authorizing domestic reciprocal insurers to pay a portion of unassigned funds to their subscribers; providing limitations; providing an effective date.

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

Section 1. Section 629.271, Florida Statutes, is amended to read:

629.271 Distribution of savings.—

(1) A reciprocal insurer may ~~from time to time~~ return to its subscribers any unused premiums, savings, or credits accruing to their accounts. ~~Any~~ Such distribution may ~~shall~~ not unfairly discriminate between classes of risks~~,~~ or policies, or between subscribers, but ~~such distribution~~ may vary as to classes of subscribers based on ~~upon~~ the experience of the ~~such~~ classes.

(2) In addition to the option provided in subsection (1), a domestic reciprocal insurer may, upon the prior written approval of the office, pay to its subscribers a portion of unassigned funds of up to 10 percent of surplus, with distribution limited to 50 percent of net income from the previous calendar year. Such distribution may not unfairly discriminate between classes of risks or policies, or between

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

subscribers, but may vary as to classes of subscribers based on the experience of the classes.

Section 2. This act shall take effect July 1, 2016.