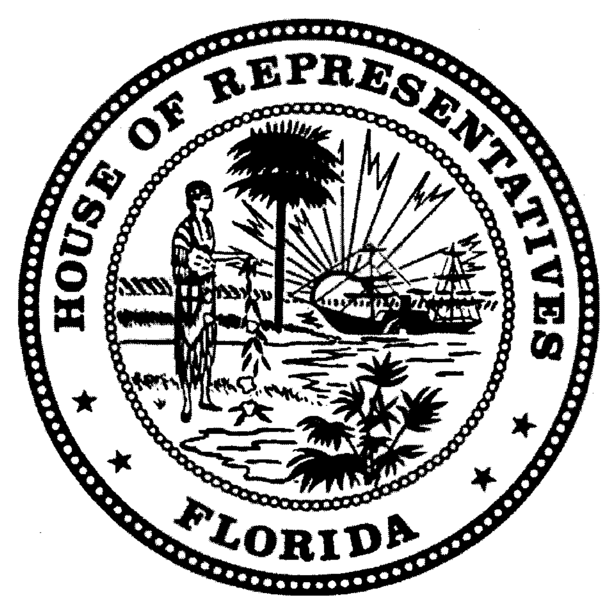


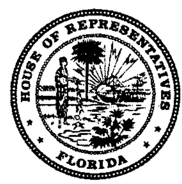
Insurance & Banking Subcommittee

Wednesday, February 4, 2015
1:30 PM
Sumner Hall (404 HOB)

MEETING PACKET

Steve Crisafulli
Speaker

John Wood
Chair



The Florida House of Representatives

Regulatory Affairs Committee

Insurance & Banking Subcommittee

Steve Crisafulli
Speaker

John Wood
Chair

AGENDA

Wednesday, February 4, 2015
404 HOB
1:30 pm – 3:30 pm

I. Call to Order

II. Roll Call

III. Consideration of the following bill(s):

a. HB 53 Florida Catastrophic Storm Risk Management Center by Broxson
b. HB 189 Insurance Guaranty Associations by Cummings
c. HB 221 Long-Term Care Insurance by Drake
d. HB 233 Insurance by Santiago
e. HB 273 Insurance by Perry
f. HB 4011 Motor Vehicle Insurance by Goodson

IV. Adjournment

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Insurance & Banking Subcommittee

Start Date and Time: Wednesday, February 04, 2015 01:30 pm

End Date and Time: Wednesday, February 04, 2015 03:30 pm

Location: Sumner Hall (404 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 53 Florida Catastrophic Storm Risk Management Center by Broxson
HB 189 Insurance Guaranty Associations by Cummings
HB 221 Long-Term Care Insurance by Drake
HB 233 Insurance by Santiago
HB 273 Insurance by Perry
HB 4011 Motor Vehicle Insurance by Goodson

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Tuesday, February 3, 2015.

By request of the Chair, all Insurance & Banking Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, February 3, 2015.

NOTICE FINALIZED on 01/28/2015 15:15 by McCloskey.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 53 Florida Catastrophic Storm Risk Management Center
SPONSOR(S): Broxson
TIED BILLS: **IDEN./SIM. BILLS:** SB 130

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

SUMMARY ANALYSIS

The Florida Hurricane Catastrophe Fund (FHCF or Fund) is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers. For solvency reasons, property insurers are required by the Office of Insurance Regulation (OIR) to purchase a certain amount of reinsurance. The amount of reinsurance purchased varies from insurer to insurer and is based on an insurer's financial situation and exposure.

The FHCF sells reinsurance to property insurance companies significantly cheaper than reinsurance sold by private reinsurance companies. Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must participate in the FHCF. The Fund, which is administered by the State Board of Administration, reimburses insurers for a portion of their hurricane losses to residential property above the insurer's retention (deductible).

The Fund does not receive any state funding (from the General Revenue Fund or other state trust funds) and receives its funding from the reinsurance premium it charges insurers and investment income from investing the reinsurance premium received.

The Florida Catastrophic Storm Risk Management Center (Center) was created by the Florida Legislature in 2007. The Center is housed within the Department of Risk Management/Insurance, Real Estate & Legal Studies in the College of Business located at The Florida State University. The Center's primary focus is to support the state's ability to prepare for, respond to, and recover from catastrophic storms.

The bill provides that the State Board of Administration shall annually transfer a portion of the investment income from the Fund to the Center. The amount of funding to be transferred shall be the lesser amount of $1 million, or 35 percent of the fund's investment income minus $10 million, as determined by using the most recent fiscal year-end audited financial statements of the Fund. The bill specifies that any funds transferred must solely be used for and consistent with the center's statutory purpose of supporting the state's ability to prepare for, respond to, and recover from catastrophic storms.

Other than the transfer of a portion of the investment income from the Fund to the Center, the bill has no fiscal impact on state or local governments.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on the Florida Hurricane Catastrophe Fund
The Florida Hurricane Catastrophe Fund (FHCF or Fund) is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers.[1] The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage of hurricane losses to residential property above the insurer's retention (deductible).[2] The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

The FHCF sells reinsurance to property insurance companies significantly cheaper than reinsurance sold by private reinsurance companies. It is estimated that coverage purchased through the FHCF costs insurers one-fourth to one-third what it would cost in the private reinsurance market.[3] There are several reasons for these cost savings:[4]

1. The FHCF operating cost is less than 1% of the annual premium collected, whereas, the operating costs for private reinsurance can range from 10% to 15% of the premium collected.
2. The FHCF does not pay reinsurance brokerage commissions.
3. The FHCF has no underwriting costs.
4. The FHCF is a tax-exempt entity that does not pay federal income taxes or state taxes.
5. The FHCF has the ability to issue tax-exempt debt which results in lower financing costs should it become necessary to finance losses with revenue bonds.
6. The FHCF does not include a factor for profit for reinsurance sold by the FHCF.
7. The FHCF does not include a risk load for reinsurance sold by the FHCF.

Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must participate in the FHCF[5]. Residential property is defined in s. 627.4025(1), F.S., to include personal lines and commercial lines residential coverage. This coverage includes the following insurance policies: homeowner's, mobile homeowner's, dwelling, tenant's, condominium unit owner's, condominium association, cooperative association, and apartment building.

The State Board of Administration (SBA) invests funds from the FHCF in accordance with s. 215.47, F.S. and the Fund's investment policy statement. The primary objective of the policy statement can be defined by the following goals: liquidity, safety of principal, and competitive return. These goals are intended to enhance the Fund's investment income by investing in securities that are highly liquid, relatively short term, and have a credit quality in accordance with the policy in order to maintain safety of principal.

[1] s. 215.555, F.S. The FHCF was created after Hurricane Andrew in 1992.
[2] Retention is defined to mean the amount of losses below which an insurer is not entitled to reimbursement from the Fund. A retention is calculated for each insurer based on its proportionate share of Fund premiums.
[3] Annual Report of the Florida Hurricane Catastrophe Fund Fiscal Year 2011-2012, p. 16, available at http://www.sbafla.com/fhcf/Home/FHCFReports/tabid/315/Default.aspx (last viewed Febraury 2, 2015).
[4] Annual Report of the Florida Hurricane Catastrophe Fund Fiscal Year 2011-2012, p. 16, available at http://www.sbafla.com/fhcf/Home/FHCFReports/tabid/315/Default.aspx (last viewed February 2, 2015).
[5] s. 215.555(4)(a), F.S. and s. 215.555(2)(c), F.S.

The Fund's investment income varies by year but has accounted for $467,188,000 in income over the last ten years as shown in the following historical income chart:

Florida Hurricane Catastrophe Fund Investment Income 2005-2014	
Fiscal Year Ending	**Investment Income ($ thousands)**
6/30/05	$108,672
6/30/06	$103,105
6/30/07	$36,065
6/30/08	$46,816
6/30/09	$7,803
6/30/10	$54,298
6/30/11	$29,983
6/30/12	$26,634
6/30/13	$34,638
6/30/14	$19,174

Background on The Florida Catastrophic Storm Risk Management Center

The Florida Legislature created the Florida Catastrophic Storm Risk Management Center (Center) in 2007.[6] The Center is housed within the Department of Risk Management/Insurance, Real Estate & Legal Studies in the College of Business located at The Florida State University. The center's primary focus is to support the state's ability to prepare for, respond to, and recover from catastrophic storms. The support the center provides includes:[7]

- Coordinating and disseminating research efforts that are expected to have an immediate impact on policy and practices related to catastrophic storm preparedness.
- Coordinating and disseminating information related to catastrophic storm risk management, including but not limited to research and information that benefits business, consumers and public policy makers.
- Facilitating Florida's preparedness and responsiveness to catastrophic storms and collaborating with other public and private institutions.
- Creating and promoting studies that enhance the educational options available to risk management and insurance students.
- Publishing and disseminating findings primarily related to risk management.
- Organizing and sponsoring conferences, symposiums, and workshops to educate consumers and policymakers.

Effect of Proposed Changes

The bill provides that the State Board of Administration shall annually transfer a portion of the investment income from the Fund to the Center. The amount of funding to be transferred shall be the lesser amount of $1 million, or 35 percent of the funds' investment income minus $10 million, as determined by using the most recent fiscal year-end audited financial statements of the Fund. The bill specifies that any funds transferred must solely be used for and consistent with the center's statutory purpose of supporting the state's ability to prepare for, respond to, and recover from catastrophic

[6] Ch. 2007-90, s.24, L.O.F. (creating s. 1004.647, F.S., effective June 11, 2007).

[7] Information gathered from the Florida Catastrophic Storm Risk Management Center webpage available at: http://www.stormrisk.org/about-the-center (Last accessed February 2, 2015).

storms. In addition, the bill is not intended to limit or supplant any funding otherwise available to the center.

Based on provisions of the bill requiring the transfer of the lesser amount of $1 million, or 35 percent of the FHCF's investment income minus $10 million, the approximate annual average transfer that would have occurred over the previous five years would have been $498,800.

This table shows how the amount to be transferred to the Center would have been calculated over the last five years.

Hypothetical Calculation of Amounts to be Transferred to the Center (Based on FHCF Investment Income 2010-2014)			
Fiscal Year Ending	**Investment Income ($ thousands)**	**Calculation: 35% of Investment Income minus $10 Million ($ thousands)**	**Amount to be Transferred (the lesser of column 3 or $1 million)**
6/30/10	$54,298	19,004 – 10,000 = 9,004	$1,000,000
6/30/11	$29,983	10,494 – 10,000 = 494	$494,000
6/30/12	$26,634	9,322 – 10,000 = 0	0
6/30/13	$34,638	12,123 – 10,000 = 2,123	$1,000,000
6/30/14	$19,174	6,711 – 10,000 = 0	0
Five-Year Average			$498,800
Five-Year Total			$2,494,000

B. SECTION DIRECTORY:

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

Section 2: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   None.

D. FISCAL COMMENTS:

   The bill provides that the State Board of Administration shall annually transfer a portion of the investment income from the Florida Hurricane Catastrophe Fund to the Florida Catastrophic Storm Risk Management Center located at The Florida State University. The amount of funding to be transferred shall be the lesser amount of $1 million, or 35 percent of the fund's investment income minus $10 million, as determined by using the most recent fiscal year-end audited financial statements of the Fund. The bill specifies that any funds transferred must solely be used for and consistent with the center's statutory purpose of supporting the state's ability to prepare for, respond to, and recover from catastrophic storms.

   Other than the transfer of a portion of the investment income from the Fund to the Center, the bill has no fiscal impact on state or local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

   1. Applicability of Municipality/County Mandates Provision:

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

   2. Other:

      None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to the Florida Catastrophic Storm Risk
3 Management Center; amending s. 215.555, F.S.;
4 requiring the State Board of Administration to
5 annually transfer a portion of the investment income
6 from the Florida Hurricane Catastrophe Fund to the
7 Florida Catastrophic Storm Risk Management Center to
8 support the center's ongoing operations; specifying
9 that the transferred income does not affect funding
10 otherwise available to the center; providing an
11 effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Paragraphs (d), (e), and (f) of subsection (7)
16 of section 215.555, Florida Statutes, are redesignated as
17 paragraphs (e), (f), and (g), respectively, and a new paragraph
18 (d) is added to that subsection, to read:
19 215.555 Florida Hurricane Catastrophe Fund.—
20 (7) ADDITIONAL POWERS AND DUTIES.—
21 (d) Beginning with the 2015-2016 fiscal year, the State
22 Board of Administration shall annually transfer a portion of the
23 investment income from the Florida Hurricane Catastrophe Fund to
24 the Florida Catastrophic Storm Risk Management Center created by
25 s. 1004.647 to fund the center's ongoing operations. The amount
26 of the transfer for each fiscal year shall be the lesser of $1

27 million, or 35 percent of the fund's investment income minus $10
28 million as determined by using the most recent fiscal year-end
29 audited financial statements. The amount transferred must be
30 used solely for the center's statutory purposes as specified in
31 s. 1004.647. This paragraph does not limit or supplant any
32 funding otherwise available to the center.
33 Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 189 Insurance Guaranty Associations
SPONSOR(S): Cummings
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

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

The bill makes changes to two of the five guaranty funds – the Florida Insurance Guaranty Association (FIGA), which is the guaranty association for property and casualty insurance, and the Florida Life and Health Insurance Guaranty Fund (FLAHIGA), which is the guaranty association for most health and life insurers.

The bill clarifies the accounting treatment of regular assessments levied by FIGA and mitigates the negative impact to insurers' net worth due to a 2011 change to statutory accounting principles relating to the treatment of assessments. The bill also clarifies FLAHIGA's statutory duty to review policies, contracts, and claims of insolvent life and health insurers following *either* domestic or foreign liquidations or rehabilitations.

The bill has no fiscal impact on state or local government. The bill should have a positive private sector impact due to the bill's clarifications of FLAHIGA's obligations and the statutory accounting treatment of FIGA regular assessments.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Insurance Guaranty Associations – Background

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

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

The bill makes changes to two of the five guaranty funds – the Florida Insurance Guaranty Association (FIGA), which is the guaranty association for property and casualty insurance, and the Florida Life and Health Insurance Guaranty Fund (FLAHIGA), which is the guaranty association for most health and life insurers.

Florida Insurance Guaranty Association (FIGA)

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

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

When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures

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[1] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. §§ 1011- 1012 (McCarran-Ferguson Act).

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

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

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

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

policyholders who have paid premiums for insurance are not left with valid yet unpaid claims. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others. Claims for property insurance are paid out of the all other account in FIGA.

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

In the event the insolvent insurer's assets are insufficient to pay all claims, FIGA can issue two types of post-insolvency assessments against property and casualty insurance companies to raise funds to pay claims. FIGA's assessments are computed and billed based on FIGA's immediate needs to pay claims. Currently, the assessment cap is 2% of net direct-written premium for regular assessments, and an additional 2% for emergency assessments for hurricane-related insolvencies.[6] FIGA has not levied an emergency assessment since 2006. FIGA last levied a regular assessment in November 2012 which was paid by insurers by December 31, 2012. This assessment amount was 0.9% of an insurer's net direct written premiums for 2011, which was levied only on the all other account.[7]

FIGA Assessment Procedure

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

1. FIGA's board determines an assessment is needed.
2. The board certifies the need for an assessment levy to the Office of Insurance Regulation (OIR).
3. If the certification is sufficient, the OIR issues an order to all insurance companies subject to the assessment instructing the companies to pay their share of the assessment to FIGA, based on each company's market share (direct written premium) for the previous calendar year.
4. Regular assessments must be paid by the insurance company within 30 days of the levy. Emergency assessments can be paid either in one payment at the end of the month after the assessment is levied or in 12 monthly installments, at the option of FIGA.
5. For both types of assessments, once an insurance company pays the assessment to FIGA, it may begin to recoup the assessment from its policyholders at the policy issuance or renewal. Insurers make a rate filing with the OIR to recoup the FIGA assessments from policyholders, based on expected future premiums to indicate the assessment percentage that will be added to each policy over the next 12 months.[8]

Current law requires insurers to remit excess assessment amounts collected from policyholders to FIGA if the excess amount is 15 percent or less than the total assessment paid by the insurer. Excess amounts over 15 percent of the total assessment paid are refunded by the insurer to the policyholders who paid the assessment.

Accounting for FIGA Assessments

Most insurers authorized to do business in the U.S. and its territories are required to prepare statutory financial statements to their state insurance regulators in accordance with statutory accounting

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[6] s. 631.57(3), F.S.

[7] FLORIDA INSURANCE GUARANTY ASSOCIATION, *Assessments*, http://www.figafacts.com/assessments (last visited January 26, 2015).

[8] *See also* Office of Insurance Regulation, *Frequently Asked Questions for FIGA Recoupment Filings*, available at http://www.figafacts.com/media/files/FAQs%20OIR-FIGA%20Assessment.pdf

principles (SAP),[9] which differs from generally acceptable accounting principles (GAAP) in a number of ways. While GAAP provides information useful to investors and other users of financial reporting (such as banks, credit rating agencies, and the U.S. Securities & Exchange Commission), SAP is developed in accordance with the concepts of consistency, recognition and conservatism, and assists state insurance departments with the regulation of the solvency of insurance companies. The ultimate objective of solvency regulation is to ensure that policyholder, contract holder and other legal obligations are met when they come due and that companies maintain capital and surplus at all times and in such forms as required by statute to provide a margin of safety. With the objective of solvency regulation, SAP focuses on the balance sheet, rather than the income statement, and emphasizes insurers' liquidity.[10]

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

- GAAP does not treat the assessments recoverable from future premium writings as an asset, and thus results in an immediate reduction in equity and earnings in the period a FIGA assessment is billed. However, the equity reduction is eliminated the following year as the assessments are recouped from policyholders.
- On the other hand, SAP allows insurers to recognize the assessment amount likely to be recovered from future premium surcharges as an asset, which in turn offsets or eliminates the negative effect on statutory surplus, subject to certain conditions. SAP does not permit an asset to be recognized if the assessment is to be recovered from future rate structures, and limits asset recognition for accrued assessment liabilities to the extent that amount to be recovered is from in-force premiums only.[11]

Effect of the Bill on FIGA

The bill provides that the definition of "asset" for the purposes of determining an insurer's financial condition includes regular FIGA assessments that are levied *before* policy surcharges are collected result in a receivable, which is recognized as an admissible asset[12] under statutory accounting principles, to the extent the receivable is likely to be realized. This reflects and clarifies a practice of the OIR,[13] and eliminates the negative effect on statutory surplus of guaranty fund assessments. The asset must be established and recorded separately from the liability. The insurer must reduce the amount recorded as an asset if it cannot fully recoup the assessment amount because of a reduction in writings or withdrawal from the market.

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

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[9] The OIR requires insurers to file annual SAP statements and independently audited financial reports. Section 624.424, F.S.

[10] NAIC & CENTER FOR INSURANCE POLICY AND RESEARCH , *Statutory Accounting Principles*, http://www.naic.org/cipr_topics/topic_statutory_accounting_principles.htm (last visited on January 12, 2015). Section 625.01115, F.S., provides that "statutory accounting principles" means "accounting principles as defined in the National Association of Insurance Commissioners Accounting Practices and Procedures Manual as of March 2002 and subsequent amendments thereto if the amendments remains substantially consistent."

[11] Statements of Statutory Accounting Principles, No. 35R, Guaranty Fund and Other Assessments (SSAP 35R); *see also* Thomas Howell Ferguson, P.A., *Accounting for Guaranty Fund Assessments Memorandum*, Dec. 3, 2013.

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

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

Florida Life and Health Insurance Guaranty Association (FLAHIGA)

Statutory provisions relating to Florida Life and Health Insurance Guaranty Association (FLAHIGA), which was created in 1979, are contained in part III of chapter 631, F.S. FLAHIGA is governed by a board of directors composed of nine insurance companies and is a nonprofit corporation. All insurance companies (with limited exceptions) licensed to write life and health insurance or annuities in Florida are required, as a condition of doing business in Florida, to be a member of FLAHIGA. By law, FLAHIGA is divided into three accounts:

- the health insurance account;
- the life insurance account; and
- the annuity account.[14]

In the event a member insurer is found to be insolvent and is ordered to be liquidated by a court, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, FLAHIGA automatically becomes liable for the policy obligations that the liquidated insurer owed to its Florida policyholders.[15] FLAHIGA services the policies, collects premiums and pays valid claims under the policies. FLAHIGA's rights under the policies are those that applied to the insurer prior to liquidation. FLAHIGA may cancel the policy if the insurer could have done so, but normally FLAHIGA continues the policies until the association can transfer or substitute the policies to a new, stable insurer with approval of the OIR.

Generally, direct individual or direct group life and health insurance policies, as well as individual and allocated annuity contracts issued by FLAHIGA's member insurers, are covered by FLAHIGA.[16] Current law specifies life and health policies and annuity contracts from non-licensed insurers are not covered by FLAHIGA.[17] In addition, s. 631.713(3), F.S., excludes all of the following from coverage by FLAHIGA:

- any portion or part of a variable life insurance contract or a variable annuity contract that is not guaranteed by a licensed insurer;
- any portion or part of any policy or contract under which the risk is borne by the policyholder;
- any policy or contract or part thereof assumed by the failed insurer under a contract of reinsurance, unless assumption certificates were issued;
- fraternal benefit society products;
- health maintenance insurance;
- dental service plan insurance;
- pharmaceutical service plan insurance;
- optometric service plan insurance;
- ambulance service association insurance;
- preneed funeral merchandise or service contract insurance;
- prepaid health clinic insurance;
- certain federal employees group policies;
- any annuity contract or group annuity contract that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed directly and not through an intermediary to an individual by an insurer under such contract or certificate.

In 2011, legislation[18] was enacted specifying that FLAHIGA's immunity from bad faith lawsuits did not affect the FLAHIGA's obligation to pay valid insurance policy or contract claims if warranted after its

[14] s. 631.715(2)(a), F.S.

[15] Generally, FLAHIGA covers only policyholders and certificate holders that were valid Florida residents on the date that a member insurer is declared insolvent and liquidated. However, non-residents of Florida and beneficiaries of covered persons are covered by FLAHIGA under limited circumstances (s. 631.713(2), F.S.).

[16] Allocated annuity contracts are directly issued to and owned by individuals or annuities that directly guarantee benefits to individuals by the insurer.

[17] s. 631.713, F.S.

[18] Ch. 2011-226, Laws of Fla.

independent de novo review of the policies, contracts, and claims presented to it, whether domestic or foreign, after a Florida *domestic* rehabilitation or liquidation. However, the statute is silent as to FLAHIGA's obligations to pay after a *foreign* rehabilitation or liquidation.

Effect of the Bill on FLAHIGA

The bill transfers the 2011 exception from immunity from FLAHIGA's powers and duties statute, s. 631.717, F.S., to s. 631.737, F.S., which pertains to FLAHIGA's duty to review claims involving covered policies, and clarifies that this duty is not limited solely to policies, contracts, and claims following domestic rehabilitations and liquidations.

B. SECTION DIRECTORY:

Section 1: Amends s. 625.012, F.S., relating to the definition of "assets."

Section 2: Amends s. 631.717, F.S., relating to the powers and duties of the association.

Section 3: Amends s. 631.737, F.S., relating to rescission and review generally.

Section 4: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to insurance guaranty associations;
3 amending s. 625.012, F.S.; revising the definition of
4 the term "asset" to include Florida Insurance Guaranty
5 Association assessments, under certain conditions, for
6 purposes of determining the financial condition of an
7 insurer; amending ss. 631.717 and 631.737, F.S.;
8 transferring a provision relating to the obligation of
9 the Florida Life and Health Insurance Guaranty
10 Association to pay valid claims under certain
11 circumstances; providing an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Subsections (15) and (16) of section 625.012,
16 Florida Statutes, are renumbered as subsections (16) and (17),
17 respectively, and a new subsection (15) is added to that
18 section, to read:
19 625.012 "Assets" defined.—In any determination of the
20 financial condition of an insurer, there shall be allowed as
21 "assets" only such assets as are owned by the insurer and which
22 consist of:
23 (15)(a) Assessments levied under s. 631.57(3)(a) and (c)
24 that are paid before policy surcharges are collected and result
25 in a receivable for policy surcharges to be collected in the
26 future. This amount, to the extent it is likely that it will be

27 realized, meets the definition of an admissible asset as
28 specified in the National Association of Insurance
29 Commissioners' Statement of Statutory Accounting Principles No.
30 4. The asset shall be established and recorded separately from
31 the liability regardless of whether it is based on a
32 retrospective or prospective premium-based assessment. If an
33 insurer is unable to fully recoup the amount of the assessment
34 because of a reduction in writings or withdrawal from the
35 market, the amount recorded as an asset shall be reduced to the
36 amount reasonably expected to be recouped.
37 (b) Assessments levied under s. 631.57(3)(c) that are paid
38 after policy surcharges are collected so that the recognition of
39 assets is based on actual premium written offset by the
40 obligation to the Florida Insurance Guaranty Association.
41 Section 2. Subsection (11) of section 631.717, Florida
42 Statutes, is amended to read:
43 631.717 Powers and duties of the association.—
44 (11) The association is ~~shall~~ not ~~be~~ liable for any civil
45 action under s. 624.155 arising from any acts alleged to have
46 been committed by a member insurer before ~~prior to~~ its
47 liquidation. ~~This subsection does not affect the association's~~
48 ~~obligation to pay valid insurance policy or contract claims if~~
49 ~~warranted after its independent de novo review of the policies,~~
50 ~~contracts, and claims presented to it, whether domestic or~~
51 ~~foreign, after a Florida domestic rehabilitation or a~~
52 ~~liquidation.~~

53 Section 3. Section 631.737, Florida Statutes, is amended
54 to read:
55 631.737 Rescission and review generally.—The association
56 shall review claims and matters regarding covered policies based
57 upon the record available to it on and after the date of
58 liquidation. Notwithstanding any other provision of this part,
59 in order to allow for orderly claims administration by the
60 association, entry of a liquidation order by a court of
61 competent jurisdiction tolls ~~shall be deemed to toll~~ for 1 year
62 any rescission or noncontestable period allowed by the contract,
63 the policy, or by law. The association's obligation is to pay
64 any valid insurance policy or contract claims, if warranted,
65 after its independent de novo review of the policies, contracts,
66 and claims presented to it, whether domestic or foreign,
67 following a rehabilitation or a liquidation.
68 Section 4. This act shall take effect July 1, 2015.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 221 Long-Term Care Insurance
SPONSOR(S): Drake
TIED BILLS: **IDEN./SIM. BILLS:** SB 520

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Gonzalez	Cooper
2) Health Innovation Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Long-term care insurance is a type of insurance developed specifically to cover the costs of nursing homes, assisted living, home health care and other long-term care services. All insurance policies sold in Florida must be purchased from an insurance agent licensed by the Department of Financial Services. Insurance agents sell policies from insurance companies regulated by the Office of Insurance Regulation.

Under current law, an insurance company that offers long-term care insurance is required to offer nonforfeiture protection provisions. Current law requires nonforfeiture benefits for long-term care insurance policies in the form of reduced paid-up insurance, extended term, shortened benefit period, or "any other benefits approved" by the Office of Insurance Regulation. This bill also allows nonforfeiture benefits of a long-term care insurance policy, certificate, or rider to be offered in the form of a return of premiums paid in the event of the death of the insured or a complete surrender or cancellation of the policy.

This bill has no fiscal impact on the public sector.

This bill may have an indeterminate positive impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation of Long-term Care, Nonforfeiture Benefits and Long-term Care Insurance

The term "long-term care" encompasses medical, social, and personal care services on a recurring or continuing basis for persons with chronic physical or mental illness, injury, or disability. Long-term care may be provided in environments ranging from institutions, such as nursing homes and assisted living facilities, to private homes. Long-term care services usually include symptomatic treatment, maintenance, and rehabilitation of patients.[1]

"Long-term care insurance policy" means any insurance policy or rider ... designed to provide coverage ... for one or more necessary or medically necessary diagnostic, preventative, therapeutic, curing, treating, mitigating, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, major medical expense coverage, disability protection income coverage, accident only coverage, specified disease or specified accident coverage, or limited health insurance coverage not otherwise defined as long term-care insurance."[2]

All insurance policies sold in Florida must be purchased from an insurance agent licensed by the Department of Financial Services. Insurance agents sell policies from insurance companies regulated by the Office of Insurance Regulation ("OIR").

Generally, nonforfeiture protection provisions are contractual arrangements that are triggered when a policy ends leaving the policy holder with some benefit from paying into the policy but never using it. A nonforfeiture protection provision provides the policyholder with an option, "upon the lapse of premium payments, to continue an insurance policy for a shorter period than the original term, to surrender the policy for its cash value, to continue the policy for a reduced amount, or to take some other action rather than forfeit the policy."[3]

Current law requires insurance companies to offer a nonforfeiture protection provision with long-term care insurance policies. The provision must provide benefit options in the form of reduced paid-up insurance, extended term, shortened benefit period, or any other benefits approved by OIR if all or part of a premium is not paid.[4] These benefit options must be made available by insurance companies, but the consumer is allowed to choose which options they would like to purchase for an additional premium.

Prior to 1997, the law allowed "cash surrender values which may include return of premiums," as a benefit option for a nonforfeiture protection provision.[5] The language was deleted in 1997 as a result of the passage of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). Subsequently, federal law changed. This change allowed "qualified long-term insurance contracts" to provide for a return of premium, but only upon the death of the insured, or on a complete surrender or cancellation of the contract.[6] While current Florida law does not explicitly preclude the return of premiums as a benefit, the OIR interprets the removal of the prior language as a prohibition of the benefit for long-term care insurance.

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[1] *Mosby's Medical Dictionary, 8th edition.* (2009).
http://medical-dictionary.thefreedictionary.com/long-term+care (last visited Jan. 27, 2015)
[2] s. 627.9404(1), F.S.
[3] OPTION, Black's Law Dictionary (9th ed. 2009) Westlawnext.
[4] s. 627.94072(2), F.S.
[5] s. 627.94072(2), F.S. (1996).
[6] 26 U.S.C.A. § 7702B .

Effect of the Bill

This bill amends the law to allow the return of premiums paid as a nonforfeiture benefit for long-term care insurance. Unlike the current benefit options for nonforfeiture protection provisions which are mandatory, this change would permit insurers to offer an additional benefit in the form of the return of premiums paid. Similar to the current process for purchasing nonforfeiture protection benefits with long-term care insurance, consumers will now have the opportunity to purchase this new benefit for an additional premium.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.94072(2), F.S., relating mandatory offers of long-term care insurance.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Uncertain. To the extent that insurance companies will choose to offer the return of premiums paid as a nonforfeiture protection benefit with long-term care insurance policies, the amount of policyholders that would purchase this option and the costs or savings to insurance companies is unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to long-term care insurance; amending
3 s. 627.94072, F.S.; providing additional forms for the
4 mandatory offer of nonforfeiture benefits in long-term
5 care insurance policies; providing an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Subsection (2) of section 627.94072, Florida
10 Statutes, is amended to read:
11 627.94072 Mandatory offers.—
12 (2) An insurer that offers a long-term care insurance
13 policy, certificate, or rider in this state must offer a
14 nonforfeiture protection provision providing reduced paid-up
15 insurance, extended term, shortened benefit period, or any other
16 benefits approved by the office if all or part of a premium is
17 not paid. <u>A nonforfeiture protection provision may be offered in</u>
18 <u>the form of a return of premium upon the death of the insured or</u>
19 <u>upon the complete surrender or cancellation of the policy or</u>
20 <u>contract.</u> Nonforfeiture benefits and any additional premium for
21 such benefits must be computed in an actuarially sound manner,
22 using a methodology that <u>is</u> ~~has been~~ filed with and approved by
23 the office.
24 Section 2. This act shall take effect July 1, 2015.

HB 233

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 233 Insurance
SPONSOR(S): Santiago
TIED BILLS: **IDEN./SIM. BILLS:** SB 252

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

SUMMARY ANALYSIS

Under current law, a property, casualty, or surety insurance policy must contain a countersignature by a Florida-licensed agent. Subject to a few exceptions, the current law provides that insurance companies are not to assume direct liability for any property, casualty, or surety insurance policy unless it contains a proper countersignature.

Prior to 2003, the law required these insurance policies to be countersigned by a Florida-licensed agent who was also a Florida resident. This served the law's intended purpose of protecting the public by ensuring a local agent was present for policyholders who previously encountered difficulties dealing with out-of-state insurance companies. However, the distinction based solely on residency between Florida-licensed resident agents and Florida-licensed non-resident agents for purposes of countersignatures was deemed unconstitutional in 2003 by the United States District Court for the Northern District of Florida in *Council of Insurance Agents and Brokers v. Gallagher*. In response to this ruling, the legislature removed the agent's residency requirement from the countersignature law, maintaining the requirement that the policy be countersigned by a Florida-licensed agent.

Though property, casualty, and surety insurance policies are required by statute to contain countersignatures, this requirement can be waived by insurance companies when they accept payment under the policy. Thus, insurance companies can be bound by a contract of insurance in the absence of a countersignature. However, it is currently unclear whether policyholders can similarly be bound by a contract of insurance in the absence of a countersignature.

House Bill 233 provides that the absence of a countersignature does not affect the validity of the insurance policy. This bill clarifies that an omission from a third party to the contract (the Florida-licensed agent) does not impact the validity of the contract of insurance as between the insurance company and the policyholder. Despite this effect, the bill does not change the statutory requirement that insurance companies seek countersignatures for their property, casualty, and surety insurance policies. As such, insurance companies could still be subject to review and potential penalties from the Office of Insurance Regulation (OIR) for failure to comply with the countersignature requirement.

The bill also makes grammatical changes to the language of the countersignature statute.

This bill has no fiscal impact on the public sector. The bill may have an indeterminate impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background Information on Countersignatures

A countersignature is a "signature attesting to the authenticity of a document already signed."[1] Subject to a few exceptions,[2] Florida law requires a countersignature by a Florida-licensed agent for any property, casualty, or surety insurance policies.[3]

In 2004, following a constitutional ruling on s. 624.425, F.S., the Florida Legislature removed a requirement in the statute that the countersigning agent be a Florida resident. Prior to this change, s. 624.425, F.S., required a countersignature by a Florida-licensed agent who was also a Florida resident. This distinction based solely on residency was overturned on constitutional grounds in *Council of Insurance Agents and Brokers v. Gallagher*.[4] In that decision, the United States District Court for the Northern District of Florida declared that s. 624.425, F.S., "violate[d] the Privileges and Immunities Clause and Equal Protection Clause of the United States Constitution to the extent that [it denied] to Florida-licensed nonresident insurance agents the same rights and privileges [afforded] to Florida-licensed resident agents."[5]

Shortly after the *Gallagher* decision, the Department of Financial Services (DFS) released an informational bulletin advising that as a result of the holding, "[p]roperty, casualty and surety policies written through Florida-licensed nonresident agents are no longer required by law to be countersigned by a Florida resident insurance agent. Policies must be signed by the insurer and by a properly licensed resident or nonresident agent."[6]

In 2004, the legislature amended s. 624.425, F.S., removing the language that required the countersigning agent to be a Florida resident, but maintaining the requirement that the policy be countersigned by a Florida-licensed agent.[7] This amendment marked the most recent change to s. 624.425, F.S.

The original purpose of the countersignature requirement was to "assure the presence of local agents to serve the needs of policyholders who had previously encountered difficulties in dealing with insurance companies headquartered out of state."[8] However, since the countersigning agent is no longer required to be a Florida resident, it is less clear whether this purpose is being served today.[9]

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[1] *See* Countersign, MERRIAM-WEBSTER DICTIONARY (11th ed. 2003), available at http://www.merriam-webster.com.
[2] Excepted from the countersignature requirement are: contracts of reinsurance, policies of insurance on the rolling stock of railroad companies doing a general freight and passenger business; United States Customs surety bonds that are issued by a corporate surety approved by the United States Department of Treasury and that name the United States as the beneficiary; policies of insurance issued by insurers whose agents represent only one company or group of companies under common ownership if a company within one group is transferring policies to another company within the same group and the agent of record remains the same; and policies of insurance issued by insurers whose agents represent, as to property, casualty, and surety insurance, only one company or group of companies under common ownership and for which the application has been lawfully submitted to the insurer. s. 624.426, F.S.
[3] s. 624.425, F.S.
[4] 287 F. Supp. 2d 1302, 1304 (N.D. Fla. 2003).
[5] *Id.* at 1313.
[6] DFS-03-004, "Policy Countersignature – To All Property, Casualty and Surety Insurers and General Lines Insurance Agents" (Nov. 12, 2003), http://www.myfloridacfo.com/Division/Agents/Industry/Bulletins-Memos/default.htm#.VMZuh2xOncs.
[7] *See* SB 2588 (2004).
[8] *Colonial Penn Communities, Inc. v. Crosley*, 443 So. 2d 1030, 1032 (Fla. 5th DCA 1983); *see also Wolfe v. Aetna Ins. Co.*, 463 So. 2d 997, 999 (Fla. 5th DCA 1983) (noting purpose of countersignature requirement was to "protect the public in purchasing insurance policies by requiring such policies to be issued by resident, licensed agents over whom the state can exercise control and thus prevent abuses.").

DFS is responsible for licensing and regulating insurance agents.[10] The agent's countersignature on the policy provides DFS with a responsible party to contact in the event of non-compliance or any other issues that may arise.[11] The countersignatures also establish that someone familiar with Florida insurance law has attested to the specific policy's validity.[12]

The Office of Insurance Regulation (OIR) is responsible for licensing and regulating insurance companies.[13] As often as it deems necessary, OIR conducts Market Conduct Examinations where it determines whether insurance companies are complying with Florida law.[14] One factor surveyed in these Market Conduct Examinations is whether insurance companies are complying with the countersignature requirement.[15]

Current Situation

Currently, Florida law provides that insurers are not to assume direct liability unless the insurance policy contains a proper countersignature.[16] The relevant portion of the statute reads as follows:

> Except as stated in s. 624.426, no authorized property, casualty, or surety insurer shall assume direct liability as to a subject of insurance resident, located, or to be performed in this state unless the policy or contract of insurance is issued by or through, and is countersigned by, an agent who is regularly commissioned and licensed currently as an agent and appointed as an agent for the insurer under this code.[17]

Though the policy is statutorily required to be countersigned by a Florida-licensed agent, the countersignature requirement can be waived.[18] Currently, if an insurer collects payment on a policy that lacks a countersignature, the insurer has waived the countersignature requirement and cannot then raise as a defense to a claim the invalidity of the policy due to the absence of a countersignature.[19] Thus, an insurer can presently be bound by a contract of insurance in the absence of a countersignature.

However, it is currently unclear whether policyholders can be similarly bound by contracts of insurance in the absence of a countersignature. There are cases currently pending in which a defendant policyholder has raised an invalidity defense to policies that were not countersigned in response to an insurance company's breach of contract claim seeking collection from the policyholder.[20]

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[9] Information obtained through telephone conversation with FCCI Insurance Group, 1/28/2015 (notes on file with Insurance and Banking Subcommittee).
[10] s. 626.013, F.S.
[11] Information confirmed through e-mail communication with DFS, 1/29/2015 (e-mail on file with Insurance and Banking Subcommittee).
[12] Information confirmed through e-mail communication with DFS, 1/29/2015 (e-mail on file with Insurance and Banking Subcommittee).
[13] s. 20.121(3)(a)1., F.S.
[14] s. 624.3161, F.S.
[15] Rule 69O-142.011(11)(a)11, F.A.C.
[16] s. 624.425(1), F.S.
[17] s. 624.425(1), F.S.
[18] *See Wolfe v. Aetna Ins. Co.*, 463 So. 2d 997, 1000 (Fla. 5th DCA 1983) (holding that the absence of a countersignature on a policy of insurance "does not, as a matter of law, invalidate it, because the absence of a countersignature may be waived [by the insurer], and does not, in and of itself, control the effectiveness of the insurance."); *Meltsner v. Aetna Cas. & Sur. Co. of Hartford, Conn.*, 233 So. 2d 849, 850 (Fla. 3d DCA 1969) (noting that there can be a "waiver of the requirement that the insurance policy be countersigned by a local producing agent"); *see also* 30B Fla. Jur. 2d Insurance s. 1546 (2014).
[19] Information confirmed through telephone conversation with FCCI Insurance Group, 1/28/2015 (notes on file with Insurance and Banking Subcommittee).
[20] *See FCCI Ins. Co. v. Gulfwind Companies, LLC*, 2013 CC 003056 NC (Fla. Sarasota Cty. Ct.); *FCCI Ins. Co. v. Zareth Metal Framing, Inc.*, 2013 CA 002540 (Fla. Sarasota Cty. Ct.).

Effect of the Bill on Countersignatures

This bill affects property, casualty, and surety insurance policies that have not been countersigned, adding the following language to s. 624.425(1), F.S.: "However, the absence of a countersignature does not affect the validity of the policy or contract."

The bill would give insurance companies the same rights as policyholders to enforce an otherwise valid policy in the event the policy or contract lacks a countersignature. The contract of insurance is between the insurance company and the policyholder. Thus, the effect of this bill is such that the omission of a countersignature by a licensed agent – a third party to the insurance contract – would not impact the validity of the insurance policy as between the insurer and the policyholder.[21]

Under the proposed law, insurance companies would still be required to obtain countersignatures, despite the fact that the absence of a countersignature would not invalidate the policy.[22] Those insurance companies that do not obtain countersignatures on their policies would still be subject to review and possible penalties from OIR through Market Conduct Examinations.[23] Such penalties range from reprimands to fines to the suspension or revocation of an insurance license.[24]

This bill also does not relieve the agent of their obligation to countersign insurance policies.[25] Though DFS has the statutory authority to sanction agents,[26] it typically does not fine agents for failing to countersign policies.[27] DFS believes that agents have enough incentive to comply with the countersignature law through the possibility of commissions or additional face time with consumers.[28]

This bill also makes grammatical changes to the language of s. 624.425(1), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 624.425(1), F.S., relating to agent countersignature required, property, casualty, surety insurance.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

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[21] Information obtained through telephone conversation with FCCI Insurance Group, 1/28/2015 (notes on file with Insurance and Banking Subcommittee).

[22] Information confirmed through telephone conversation with FCCI Insurance Group, 1/28/15 (notes on file with Insurance and Banking Subcommittee); Information confirmed through e-mail communication with OIR, 1/29/15 (e-mail on file with Insurance and Banking Subcommittee).

[23] Rule 69O-142.011(11)(a)11, F.A.C.; Information confirmed through e-mail communication with OIR, 1/29/15 (e-mail on file with Insurance and Banking Subcommittee).

[24] Rule 69O-142.011, F.A.C.

[25] Information confirmed through e-mail communication with DFS, 1/29/2015 (e-mail on file with Insurance and Banking Subcommittee).

[26] s. 624.307, F.S.

[27] Information confirmed through e-mail communication with DFS, 1/29/2015 (e-mail on file with Insurance and Banking Subcommittee).

[28] Information confirmed through e-mail communication with DFS, 1/29/2015 (e-mail on file with Insurance and Banking Subcommittee).

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Uncertain. To the extent that there may be less of an incentive for an insurance company to seek a countersignature, some Florida-licensed agents may no longer receive the economic or social benefit of being a counter-signatory. However, even though the lack of a countersignature would not affect the validity of the policy, insurers would still have to seek countersignatures in order to comply with the letter of the law.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 29 changes "any insurer" to "the insurer" for purposes of allowing an agent to countersign a policy where multiple insurers are jointly issuing coverage for nuclear energy or radioactive contamination. The Office of Insurance Regulation notes that it is unclear why this change is being made, as there are multiple insurers appearing and "the" is a definite article.[29]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[29] Florida Office of Insurance Regulation, Agency Analysis of 2015 House Bill 233, p. 5 (Jan. 28, 2015).

1 A bill to be entitled
2 An act relating to insurance; amending s. 624.425,
3 F.S.; providing that the absence of a countersignature
4 does not affect the validity of a policy or contract;
5 providing an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Subsection (1) of section 624.425, Florida
10 Statutes, is amended to read:
11 624.425 Agent countersignature required, property,
12 casualty, surety insurance.—
13 (1) Except as stated in s. 624.426, no authorized
14 property, casualty, or surety insurer shall assume direct
15 liability as to a subject of insurance resident, located, or to
16 be performed in this state unless the policy or contract of
17 insurance is issued by or through, and is countersigned by, an
18 agent who is regularly commissioned and licensed currently as an
19 agent and appointed as an agent for the insurer under this code.
20 However, the absence of a countersignature does not affect the
21 validity of the policy or contract. If two or more authorized
22 insurers issue a single policy of insurance against legal
23 liability for loss or damage to person or property caused by a
24 ~~the~~ nuclear energy hazard, or a single policy insuring against
25 loss or damage to property by radioactive contamination, whether
26 or not also insuring against one or more other perils that may

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

27 be insured ~~proper to insure~~ against in this state, such policy
28 if otherwise lawful may be countersigned on behalf of all of the
29 insurers by a licensed and appointed agent of the ~~any~~ insurer
30 appearing thereon. The producing agent shall receive on each
31 policy or contract the full and usual commission allowed and
32 paid by the insurer to its agents on business written or
33 transacted by them for the insurer.
34 Section 2. This act shall take effect July 1, 2015.

Insurance & Banking Subcommittee

HB 233 by Rep. Santiago
Insurance

AMENDMENT SUMMARY
February 4, 2015

Amendment 1 by Rep. Santiago (line 29): The amendment replaces the words "that may be insured" with the words "proper to insure" and the word "the" with the word "any," thereby reinstating current law.

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	______	

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee
3 Representative Santiago offered the following:
4
5 **Amendment**
6 Remove lines 26-29 and insert:
7 or not also insuring against one of more other perils proper to
8 insure against in this state, such policy if otherwise lawful
9 may be countersigned on behalf of all of the insurers by a
10 licensed and appointed agent of any insurer
11

HB 273

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 273 Insurance
SPONSOR(S): Perry
TIED BILLS: **IDEN./SIM. BILLS:** SB 202

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

SUMMARY ANALYSIS

Section 627.421, F.S., requires every insurance policy to be mailed, delivered or electronically transmitted to the insured (policyholder) within 60 days after the insurance takes effect. The law also contains specific electronic delivery parameters for insurance covering commercial risks. Also, subject to certain conditions, property and casualty insurers are allowed to post policies on the insurer's website instead of mailing, delivering or electronically transmitting the policies to insureds.

For personal lines insurance, the bill allows insurers to deliver policy documents, including policies, endorsements, notices, or other documents, by electronic means in lieu of delivery by mail if the policyholder affirmatively elects electronic delivery.

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

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

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

The bill has no fiscal impact on state or local government. Property and casualty insurers who choose to provide a Notice of Change of Policy Terms separate from the renewal notice may incur additional costs associated with printing and mailing this Notice. Additionally, the insurers will incur costs associated with providing a copy of the Notice to the policyholder's insurance agent. On the other hand, insurers who utilize the electronic delivery option should experience cost savings.

The bill is effective on July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Electronic Delivery of Insurance Policies

Section 627.421, F.S., requires every insurance policy[1] to be mailed, delivered, or electronically transmitted to the insured (policyholder) within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed. Regarding electronic transmission, the law also contains specific delivery parameters for insurance covering commercial risks. Also, subject to certain conditions, property and casualty insurers are allowed to post policies on the insurer's website instead of mailing, delivering or electronically transmitting the policies to insureds.

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.[2] Insurance is specifically included in E-SIGN.[3] E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

In addition, s. 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), is similar to the federal E-SIGN law. UETA specifically applies to insurance and provides a requirement in statute that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

For personal lines insurance,[4] the bill allows insurers to deliver policy documents by electronic means in lieu of delivery by mail if the policyholder affirmatively elects electronic delivery. The bill does not likely implicate E-SIGN or UETA because it requires the affirmative consent of the policyholder before the electronic delivery of insurance policy documents.

Change of Policy Terms In Insurance Policies

Under current law, to make a change in the terms of a property and casualty insurance contract, the insurer must give the policyholder a written Notice of Change in Policy Terms[5] with the policy renewal notice and the policy renewal notice must be provided to the policyholder in accordance with current law, which requires insurers to give notice of renewal 45 days prior to the renewal date.[6] A policyholder

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[1] s. 627.402, F.S., defines policy to include endorsements, riders, clauses, and papers that are part of such policy. Reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered. (see s. 627.401, F.S.). See also s. 627.43141(1) (b), F.S., where the definition for "policy" for property and casualty insurance is the same.

[2] Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effect October 1, 2000.

[3] *Id.*

[4] Personal lines insurance is property and casualty insurance sold to individuals and families for non-commercial purposes. S. 626.015(15), F.S.

[5] s. 627.43141(1) (a), F.S., defines change in policy terms to mean "the modification, addition, or deletion of any term , coverage, duty, or condition from the previous policy. The correction of typographical or scrivener's errors or the application of mandated legislative changes is not a change in policy terms."

[6] s. 627.43141, F.S.

is deemed to accept the policy term change if the renewal premium is paid. If the insurer does not provide the Notice of Change in Policy Terms to the policyholder, the terms of the insurance policy are not changed.

The bill allows an insurer to send a Notice of Change of Policy Terms separate from the renewal notice as long as the notice is sent within the policy nonrenewal time limits in current law. Generally, the nonrenewal time limits are notice at least 100 days prior to the effective date of the nonrenewal.[7] And, for any nonrenewal that takes effect between June 1st and November 30th, at least 100 days written notice, or notice by June 1st, whichever is earlier, is required. Furthermore, policyholders with property insured by the same insurer for five years or more receive 120 days' notice of nonrenewal instead of 100 days' notice. Thus, the bill requires a Notice of Change of Policy Terms to be given sooner when it is not included with the renewal notice.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 627.421, F.S., relating to delivery of policy.

Section 2: Amends s. 627.43141, F.S., relating to notice of change in policy terms.

Section 3: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

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

policyholder's insurance agent. On the other hand, insurers who utilize the electronic delivery option should experience cost savings.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to insurance; amending s. 627.421,
3 F.S.; authorizing a policyholder of personal lines
4 insurance to affirmatively elect delivery of policy
5 documents by electronic means; amending s. 627.43141,
6 F.S.; authorizing a notice of change in policy terms
7 to be sent in a separate mailing to an insured under
8 certain circumstances; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Subsection (1) of section 627.421, Florida
13 Statutes, is amended to read:
14 627.421 Delivery of policy.—
15 (1) Subject to the insurer's requirement as to payment of
16 premium, every policy shall be mailed, delivered, or
17 electronically transmitted to the insured or to the person
18 entitled thereto within ~~not later than~~ 60 days after the
19 effectuation of coverage. Notwithstanding any other provision of
20 law, an insurer may allow a policyholder of personal lines
21 insurance to affirmatively elect delivery of the policy
22 documents, including policies, endorsements, notices, or other
23 documents, by electronic means in lieu of delivery by mail.
24 Electronic transmission of a policy for commercial risks,
25 including, but not limited to, workers' compensation and
26 employers' liability, commercial automobile liability,

commercial automobile physical damage, commercial lines residential property, commercial nonresidential property, farmowners insurance, and the types of commercial lines risks set forth in s. 627.062(3)(d), constitutes ~~shall constitute~~ delivery to the insured or to the person entitled to delivery, unless the insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. Electronic transmission must ~~shall~~ include a notice to the insured or to the person entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to the insured or to the person entitled to delivery at his or her request.

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

627.43141 Notice of change in policy terms.—

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

53 is provided to the insured. Such notice shall be entitled
54 "Notice of Change in Policy Terms."
55 Section 3. This act shall take effect July 1, 2015.

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

hb0273-00

Insurance & Banking Subcommittee

HB 273 by Rep. Perry
Insurance

AMENDMENT SUMMARY
February 4, 2015

Amendment 1 by Rep. Perry (Line 41): Defines optional coverage and prohibits the use of "notice of change in policy terms" for that coverage unless certain conditions are met.

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	______	

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1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee
3 Representative Perry offered the following:
4
5 **Amendment (with title amendment)**
6 Remove lines 41-54 and insert:
7 Section 2. Present paragraphs (b) and (c) of subsection (1) of
8 section 627.43141, Florida Statutes, are redesignated as
9 paragraphs (c) and (d), respectively, a new paragraph (b) is
10 added to that subsection, subsection (2) of that section is
11 amended, present subsections (3) through (6) of that section are
12 redesignated as subsections (4) through (7), respectively, and a
13 new subsection (3) is added to that section, to read:
14 627.43141 Notice of change in policy terms.—
15 (1) As used in this section, the term:
16 (b) "Optional coverage" means the addition of new
17 insurance coverage that has not previously been requested or

18 approved by the policyholder but that does not include any
19 change to the base policy or a deductible or an insurance limit.
20 (2) A renewal policy may contain a change in policy terms.
21 If ~~a renewal policy does contain~~ such change occurs, the insurer
22 shall ~~must~~ give the named insured advance written notice of the
23 change, which may ~~must~~ be enclosed ~~along~~ with the written notice
24 of renewal premium required under ~~by~~ ss. 627.4133 and 627.728 or
25 sent separately within the timeframe required under the Florida
26 Insurance Code for the provision of a notice of nonrenewal to
27 the named insured for that line of insurance. The insurer must
28 also provide a sample copy of the notice to the named insured's
29 insurance agent before or at the same time that notice is
30 provided to the named insured. Such notice shall be entitled
31 "Notice of Change in Policy Terms."
32 (3) A renewal policy that includes the addition of
33 optional coverage that increases the premium to a policyholder
34 may not use the "Notice of Change in Policy Terms" under this
35 section to add the optional coverage to the policy unless the
36 policyholder affirmatively indicates to the insurer or agent
37 that the policyholder approves the addition of the optional
38 coverage.
39
40 ---
41 T I T L E A M E N D M E N T
42 Remove lines 2-8 and insert:

43 An act relating to insurer notifications; amending s.
44 627.421, F.S.; authorizing a policyholder of personal
45 lines insurance to elect delivery of policy documents
46 by electronic means; amending s. 627.43141, F.S.;
47 defining the term "optional coverage"; revising the
48 requirements applicable to insurers when providing a
49 notice of change in policy terms for a renewal policy
50 to include the requirement that the notice be an
51 advance notice and to allow such notice to be sent
52 separately from the notice of renewal premium within a
53 specified timeframe; requiring the insurer to provide
54 a sample copy of the notice of change in policy terms
55 to the insurance agent at a specified time;
56 prohibiting the use of such notice to add optional
57 coverage that increases the policy's premium unless
58 the policyholder approves the optional coverage;
59 providing an effective date.
60
61

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4011 Motor Vehicle Insurance
SPONSOR(S): Goodson
TIED BILLS: **IDEN./SIM. BILLS:** SB 234

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

SUMMARY ANALYSIS

Private passenger motor vehicle insurance is written to individuals, and family members in the same household, for coverage of automobiles that are not used for commercial purposes. Statute limits private passenger motor vehicles policies to no more than four vehicles per policy. If there are more than four such vehicles in the household, the consumer must purchase and the insurer must underwrite multiple policies. An estimated 144,865 households in the state have five or more vehicles.

The bill removes the four vehicle maximum from the definition of "motor vehicle insurance" in s. 627.041(8), F.S., to allow vehicle owners to purchase and insurers to issue single policies that cover any number of private passenger motor vehicles, rather than just four or less vehicles per policy.

The bill has no fiscal impact on state or local government expenditures. The bill should have a positive impact on the private sector. The bill would become effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Private passenger motor vehicle insurance is casualty coverage[1] within the personal lines[2] segment of insurance business. It is issued to individuals, or related individuals in the same household, and covers private passenger automobiles that are not used as public conveyances, for rental to others, or in the occupation, profession, or business of the insured (excluding farm business use).[3] Commercial motor vehicles are those that are not private passenger motor vehicles.[4]

Currently, there is a limitation on the number of motor vehicles that may be insured on a single private passenger motor vehicle insurance policy. Among other things, s. 627.041(8), F.S., provides that a "motor vehicle insurance" policy is one that does not insure more than four automobiles.[5] This results in consumers having to purchase and insurers to underwrite multiple policies whenever the consumer seeks to insure more than four private passenger automobiles. The prevalence of this occurrence is unknown and some insurers may choose to issue multiple policies even when the total number of vehicles insured falls below the statutory limit. The United States Census Bureau estimates that as of 2013 there are 144,865 households in the state with five or more vehicles.[6]

The bill removes the four vehicle limitation from the definition of "motor vehicle insurance" in s. 627.041(8), F.S. This allows vehicle owners to purchase and insurers to issue single policies that cover any number of private passenger motor vehicles, rather than just four or less vehicles per policy.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.041(8), F.S., relating to the definition of "motor vehicle insurance".

Section 2: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

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[1] Section 627.021(3), F.S.
[2] Personal lines insurance is property and casualty insurance sold to individuals and families for non-commercial purposes. S. 626.015(15), F.S.
[3] Sections 627.041(8) and 627.728(1)(a), F.S.
[4] Section 627.732(3)(a), F.S.
[5] The four vehicle maximum is also present in s. 627.728(1)(a), F.S., regarding the cancellation or nonrenewal of motor vehicle private passenger motor vehicle insurance policies.
[6] U.S. Census Bureau, 2009-2013 5-Year American Community Survey. http://factfinder.census.gov

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Consumers and insurers should benefit from the efficiency created by procuring, underwriting, and issuing a single motor vehicle insurance policy, rather than multiple insurance policies, whenever the consumer seeks to insure more than four vehicles. Insurers may still utilize a business practice that limits the number of vehicles per policy, which would limit the impact. The extent of this benefit has not been calculated. However, any savings realized by insurers should be passed through to policyholders.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The limitation on the number of vehicles insurable on a single private passenger motor vehicle policy occurs in two places in Chapter 627, F.S. Only the first occurrence is addressed by the bill. To avoid conflict and assure that the proposed revision is understood and fully effective, s. 627.728(1)(a), F.S., also needs to be revised. That statute defines the term "policy" for the purposes of motor vehicle insurance cancellation or nonrenewal. It limits the number of automobiles to four or less per policy. Conforming that term to the changes proposed in this bill will remove a possible conflict.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to motor vehicle insurance; amending
3 s. 627.041, F.S.; removing an exclusion from the
4 definition of the term "motor vehicle insurance" for
5 policies that insure more than four automobiles;
6 providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (8) of section 627.041, Florida
11 Statutes, is amended to read:
12 627.041 Definitions.—As used in this part:
13 (8) "Motor vehicle insurance" means a policy of motor
14 vehicle insurance delivered or issued for delivery in the state
15 by an authorized insurer:
16 (a) Insuring a natural person as the named insured or one
17 or more related individuals resident of the same household, or
18 both; and
19 (b) Insuring a motor vehicle of the private passenger type
20 or station wagon type, which motor vehicle is not used as public
21 or livery conveyance for passengers or rented to others, or
22 insuring any other four-wheeled motor vehicle having a capacity
23 of 1,500 pounds or less which is not used in the occupation,
24 profession, or business of the insured, other than farming;
25
26 other than any policy issued under an automobile insurance risk

27 apportionment plan; ~~or other than any policy insuring more than~~
28 ~~four automobiles;~~ or other than any policy covering garage,
29 automobile sales agency, repair shop, service station, or public
30 parking place operation hazards.
31 Section 2. This act shall take effect July 1, 2015.

Insurance & Banking Subcommittee

HB 4011 by Rep. Goodson
Motor Vehicle Insurance

AMENDMENT SUMMARY
February 4, 2015

Amendment 1 by Rep. Goodson (Between lines 30-31): Two separate definitions contain the four vehicle limitation on private passenger motor vehicle policies. To avoid a conflict in statute, the amendment removes the second occurrence of the four vehicle limitation.

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	____	

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1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee
3 Representative Goodson offered the following:
4
5 **Amendment (with title amendment)**
6 Between lines 30 and 31, insert:
7 Section 2. Paragraph (a) of subsection (1) of section
8 627.728, Florida Statutes, is amended to read:
9 627.728 Cancellations; nonrenewals.—
10 (1) As used in this section, the term:
11 (a) "Policy" means the bodily injury and property damage
12 liability, personal injury protection, medical payments,
13 comprehensive, collision, and uninsured motorist coverage
14 portions of a policy of motor vehicle insurance delivered or
15 issued for delivery in this state:
16 1. Insuring a natural person as named insured or one or
17 more related individuals resident of the same household; and

18 2. Insuring only a motor vehicle of the private passenger
19 type or station wagon type which is not used as a public or
20 livery conveyance for passengers or rented to others; or
21 insuring any other four-wheel motor vehicle having a load
22 capacity of 1,500 pounds or less which is not used in the
23 occupation, profession, or business of the insured other than
24 farming; other than any policy issued under an automobile
25 insurance assigned risk plan; ~~insuring more than four~~
26 ~~automobiles;~~ or covering garage, automobile sales agency, repair
27 shop, service station, or public parking place operation
28 hazards.
29
30 The term "policy" does not include a binder as defined in s.
31 627.420 unless the duration of the binder period exceeds 60
32 days.
33
34
35
36 ---
37 **T I T L E A M E N D M E N T**
38 Between lines 5 and 6, insert:
39 amending s. 627.728, F.S.; removing an exclusion from the
40 definition of the term "policy" for policies that insure more
41 than four automobiles;