

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE
Senator Richter, Chair
Senator Smith, Vice Chair

MEETING DATE: Wednesday, March 9, 2011

TIME: 1:00 —3:00 p.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Richter, Chair; Senator Smith, Vice Chair; Senators Alexander, Bennett, Bogdanoff, Fasano, Hays, Margolis, Negron, Oelrich, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 534 Wise (Identical H 331)	Firesafety; Revises the rulemaking authority and responsibilities of the State Fire Marshal relating to educational and ancillary plants. Revises requirements and procedures for inspections of buildings and equipment. Abolishes special state firesafety inspector classifications and certifications. Provides criteria, procedures, and requirements for special state firesafety inspectors to be certified as firesafety inspectors. Revises firesafety inspection requirements for educational institution boards to conform to certain codes, etc.	BI 03/09/2011 ED CA HE BC
2	SB 636 Simmons (Similar CS/H 4099, Identical H 4081, Compare H 1187, S 1592)	Repeal of Obsolete Insurance Provisions; Deletes an obsolete requirement for the State Board of Administration to transfer to the Citizens Property Insurance Corporation certain funds of the Insurance Capital Build-Up Incentive Program. Deletes an obsolete presuit notice requirement for the Florida Automobile Joint Underwriting Association. Deletes an obsolete form filing deadline for sinkhole coverage. Deletes an obsolete reporting requirement for activities relating to the sinkhole database, etc.	BI 03/09/2011 GO BC

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Wednesday, March 9, 2011, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 546 Hays (Similar H 367)	Dentists; Prohibits contracts between health insurers and dentists from containing certain fee requirements set by the insurer under certain circumstances. Prohibits contracts between prepaid limited health service organizations and dentists from containing certain fee requirements set by the organization under certain circumstances. Prohibits contracts between HMOs and dentists from containing certain fee requirements set by the organization under certain circumstances, etc.	BI 03/09/2011 HR BC

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 534

INTRODUCER: Senator Wise

SUBJECT: Firesafety

DATE: March 7, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	
2.			ED	
3.			CA	
4.			HE	
5.			BC	
6.				

I. Summary:

- Coordinates state fire marshal law with educational facilities law regarding fire safety inspections on educational property;
- Abolishes the classification of the special state fire safety inspector and leaves intact the classification of full fire safety inspector, and provides for a contingent grandfathering in of existing special state fire safety inspectors;
- Provides that uniform firesafety standards and an alternate system be governed by fire officials certified by the State Fire Marshal;
- Reduces the number of mandatory inspections at educational facilities from two to one annually, and provides for the inspection report to be distributed at the local level only;
- Clarifies the fire safety inspection process for charter schools and for public postsecondary institutions;
- Requires all boards to use only certified fire officials and other inspectors in monitoring compliance with the Florida Building Code, the Florida Fire Prevention Code, and the State Requirements for Educational Facilities; and
- Requires public education boards to submit for approval the site plan for new construction to the local entity providing fire-protection services to the facility and outlines the compliance process.

The provisions in the bill represent a collaborative effort among school districts, public colleges, the Department of Education, and the State Fire Marshal to provide consistency, streamline practices, reduce cost, and ensure safety regarding fire safety inspections.

The bill substantially amends the following sections of the Florida Statutes: 633.01, 633.021, 633.081, 1013.12, 1013.371, and 1013.38.

II. Present Situation:

Division of the State Fire Marshal (State Fire Marshal)

State law on fire prevention and control is provided in Chapter 633, F.S. Section 633.01, F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal.¹ Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College. Additionally, the State Fire Marshal adopts by rule the Florida Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.²

The Division of the State Fire Marshal (Division) consists of the following four bureaus: fire and arson investigations, fire standards and training, forensic fire and explosives analysis, and fire prevention. The Florida State Fire College, part of the Bureau of Fire Standards and Training, trains over 6,000 students per year. The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the State Fire Marshal's annual report.³

Firesafety Inspections of Florida's Educational Facilities

Chapter 1013, F.S., governs the safety requirements for educational facilities. Unless otherwise specified, the term "board" can indicate any public education board, including: a district school board, a community college board of trustees, a university board of trustees, and the Board of Trustees for the Florida School for the Deaf and the Blind.⁴ Section 1013.37, F.S., requires the State Fire Marshal to develop firesafety criteria for educational facilities in conjunction with the Florida Building Commission and the Department of Education.⁵ However, ch. 663, F.S., does not similarly provide for the cooperative development of standards.

Currently, public schools are required to be inspected by two separate authorities annually, some of which are conducted simultaneously.⁶ Opponents of this practice argue that this is a duplicative effort.⁷ It is stated that these inspections have generated conflicting interpretations of code requirements and jurisdictional authority.

¹ The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of State Fire Marshal is located within the DFS.

² s. 633.0215(1), F.S.

³ State Fire Marshal website: <http://www.myfloridacfo.com/sfm/>; last checked February 22, 2011.

⁴ s. 1013.01(3), F.S.

⁵ s. 1013.37(1)(c), F.S.

⁶ Rule 69A-58.004(1), F.A.C.

⁷ Both the local fire official and the fire inspector for each school board are required to conduct these inspections.

Section 633.01, F.S., requires the State Fire Marshal to adopt and administer rules regarding health and safety standards for educational and ancillary facilities.⁸ In addition, the State Fire Marshal also assumes the duties of the local fire official for counties that do not employ or appoint an official.

Special Fire Instructors

Section 633.021, F.S., defines a “firesafety inspector” to be:

An individual officially assigned the duties of conducting firesafety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district....⁹

A “special state firesafety inspector” is defined as:

An individual officially assigned to the duties of conducting firesafety inspections required by law on behalf of or by an agency of the state having authority for inspections other than the Division of State Fire Marshal.¹⁰

There are a small number of people that are employed as “Special Firesafety Inspectors” across the state. A recent survey by the Florida State College found a total of 44 Special Firesafety Inspectors employed in the 67 school districts and 28 community colleges.¹¹ The current training requirement for this type of inspector is only 120 hours, in contrast to the 200 hours of training required for full firesafety inspector status. For several years the Division has pushed to eliminate the “special firesafety inspector” license and require all firesafety inspectors to have a full “firesafety inspector” license.

Charter Schools

Charter Schools are public schools that operate under a performance contract or charter with the local school board.¹² The charter sets forth unique requirements that the school must comply with in order to maintain charter status.¹³ Subsection (18) of s. 1002.33, F.S., requires Charter Schools to meet the same annual inspection requirements of the Florida Fire Prevention Code, unless the charter adopts the State Requirements for Education Facilities pursuant to s. 1013.37, F.S.¹⁴ “Charter Schools located off school district or community college property follow the requirements of the local jurisdiction.”¹⁵ Because Charter Schools operate somewhat differently than other public schools, there is current confusion as to which governmental agency is charged with conducting firesafety inspections.

⁸ s. 633.01(7), F.S.

⁹ s. 633.021(10), F.S.

¹⁰ s. 633.021(23), F.S.

¹¹ Susan Lehr, Vice President of Government Relations, Florida State College, Jacksonville, *Education Facilities Fire Safety Legislation: Q and A*. Many of these 44 special firesafety inspectors also hold a higher firesafety inspection license.

¹² s. 1002.33, F.S., stating that “all charter schools in Florida are public schools.”

¹³ See subsection (9) of s. 1002.33, F.S., CHARTER SCHOOL REQUIREMENTS.—

¹⁴ Section 1002.33(18)(a)-(b), F.S., *See also* Memorandum to Florida Fire Chiefs from Tom Gallagher, State Fire Marshal, *Charter School Inspections* (Nov. 25, 2003)

¹⁵ Board of Governors, State University System, *Senate Bill 1074 Analysis* (March 12, 2010)

Annual Report on Firesafety

Section 1013.12(8), F.S., requires the State Fire Marshal to produce a statewide annual report on school firesafety inspections of schools.¹⁶ In conducting the annual report, the State Fire Marshal is required to interpret all of the reports that were submitted by the 67 school districts, 28 community colleges, and hundreds of local fire departments for each building at each educational site.¹⁷ Opponents of the annual report requirement assert that diverging local reports formats have complicated the ability to organize them into a singular statewide report. As a result, they argue that the comprehensive statewide report is underutilized and provides minimal information to citizens.

III. Effect of Proposed Changes:

Additional Clarification of Duties of the State Fire Marshal

The bill requires the State Fire Marshal to consult with the Department of Education regarding the adoption of rules pertaining to safety and health standards at educational facilities. In the event that a county does not employ or appoint a certified firesafety inspector, the bill provides that the State Fire Marshal shall take the place of the local county, municipality, or independent special fire control district regarding firesafety inspections of educational property.

Elimination of Special Fire Safety Inspector

As of July 1, 2013, the classification of “special state firesafety inspector” is abolished. Special state firesafety inspectors may, however, be grandfathered in as full firesafety inspectors provided that the following conditions are met:

- The inspector has at least five years of experience as of July 1, 2011, and passes the firesafety inspection examination prior to July 1, 2013;
- The inspector does not have five years of experience as a special state firesafety inspector but takes an additional 80 hours of courses and passes the examination; or
- The inspector has at least five years of experience, fails the examination, but takes 80 additional hours of courses, retakes, and passes the examination.

The bill redefines the term “firesafety inspector” as a person who is certified by the State Fire Marshal, pursuant to s. 633.081, F.S.

Streamlining of Process

The bill requires all administration and enforcement of uniform firesafety standards and the alternate evaluation system to be conducted by certified fire officials. Effective July 1, 2013, all firesafety inspectors are subject to the same certification process.

¹⁶ Section 1013.12(8), F.S.

¹⁷ For more information visit MYFLORIDACFO.COM, DEPARTMENT OF FINANCIAL SERVICES, SCHOOL FIRE SAFETY, available online at <http://www.myfloridacfo.com/sfm/sfmschoolsafety.htm> (last visited on February 22, 2011).

The bill also reduces the number of mandatory annual inspections from two to one and the report generated remains at the local level.

The bill deletes the requirement for the State Fire Marshal to compile each local report into one document for submission to the Legislature, the Governor, the Commissioner of Education, the State Board of Education, and the Board of Governors.

School District Fire Safety Inspections (Including Charter and Postsecondary Schools)

The bill establishes parity for firesafety inspections for district schools, other public secondary schools (charter schools), and postsecondary institutions.

Inspection of Property by District School Boards

Boards¹⁸ are responsible for appointing certified firesafety inspectors to conduct annual inspections on educational and ancillary plant property. The bill requires inspections to begin no sooner than one year after a building certificate of occupancy is issued. The applicable board must submit a copy of the report to the county, municipality, or independent special fire control district providing fire protection services within 10 business days after the inspection, unless immediate corrective action is required, due to life-threatening deficiencies. The entity conducting the fire safety inspection is required to certify to the State Fire Marshal that the annual inspection has occurred.

Inspection of Educational Property by Other Public Agencies

Annual firesafety inspections must be conducted on educational and ancillary plant property operated by a school board or public college. The bill requires inspections to begin no sooner than one year after a building certificate of occupancy is issued. Immediate corrective action is required by the county, municipality, or independent special fire control district in conjunction with the appointed fire official where life-threatening deficiencies are noted.

Inspection of Charter Schools Not Located on Board-owned or Leased Property, or Otherwise Operated by a School Board

The bill creates a new subsection five in s. 1013.12, F.S., to require a firesafety inspection to be conducted each fiscal year on educational facilities not owned or leased by the board or a public college, in accordance with State Fire Marshal standards. The bill clarifies that the inspection report is to be submitted to the charter school sponsor. The inspector must include a corrective plan of action in the report, with prompt response for life-threatening deficiencies. If corrective action is not taken, the county, municipality, or independent special fire control district must immediately report the deficiency to the State Fire Marshal and the charter school sponsor. The bill also expressly extends the State Fire Marshal's enforcement authority to charter school educational facilities and property.

¹⁸ Section 1013.01(3), F.S., defines the term *Board* to mean "a district school board, a community college board of trustees, a university board of trustees and the Board of Trustees for the School for the Deaf and Blind," unless otherwise specified.

Inspections of Public Postsecondary Education Facilities

The bill requires inspections of public college facilities, including charter schools located on board-owned or board-leased facilities or otherwise operated by public college boards, to comply with the Florida Fire Prevention Code, without exception via local amendment. Both an annual inspection by a certified inspector and a corrective plan of action are required by this bill. The public college must provide a copy of the report to the appropriate county, municipality, or independent special fire control district. Firesafety inspections of state universities must comply with the Florida Fire Prevention Code. If a school board, public college board, or charter school does not take corrective action, the bill requires the inspecting authority to immediately report the deficiency to the State Fire Marshal.

Approval of New Construction/Site Plans

Each board must provide for a periodic inspection of proposed educational or ancillary plants to ensure that the construction complies with the Florida Building Code and the Florida Fire Prevention Code, in addition to the currently mandated State Requirements for Educational Facilities.

The bill requires local boards to submit for approval new facility site plans to the local county, municipality, or independent special fire control district, and outlines the process for compliance and informal appeal. Site plans must also be submitted for new facility additions that exceed 2,500 feet in size. The State Fire Marshal has final administrative authority to resolve disputes pertaining to the requirements or application of the Florida Fire Prevention Code.

This bill provides for an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals that are currently classified as special state fires safety inspectors who do not have five years or fail the firesafety inspection examination will have to undergo the new training requirements provided in the bill to become certified as a general fire safety inspector.

Individuals that fail the course of study or firesafety inspection examination will not be permitted to perform firesafety inspections on or after July 1, 2013.

C. Government Sector Impact:

Deleting the annual state-level report requirement will save the Division of State Fire Marshal's office funds and resources that were formerly used to generate the report. The bill reduces the number of mandatory annual inspections from two to one, which will also save money and resources.

The fiscal costs incurred for preparation and submission of the site plan for new construction are unknown; however, they are expected to be minimal.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁹ Florida Department of Education, *Senate Bill 1074 Analysis* (Jan. 7, 2010)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 636

INTRODUCER: Senator Simmons

SUBJECT: Repeal Obsolete Insurance Provisions

DATE: February 21, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arzillo	Burgess	BI	Pre-meeting
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

Senate Bill 636 repeals outdated or obsolete language relating to the following topics:

- Refund to Citizens Property Insurance Corporation of funds not committed or reserved for insurers in the Insurance Capital Build-Up Incentive Program,
- Requirements of pre-suit notice for suits brought against the Florida Automobile Joint Underwriting Association (FAJUA),
- Form filings for compliance with the mandatory catastrophic ground cover collapse coverage,
- Report on the development of a sinkhole database,
- Feasibility study for Florida sinkhole coverage facility, and
- Effective date of insurers' mandatory windstorm and contents coverage in property insurance policies.

This bill amends the following sections of the Florida Statutes: 215.5595, 627.311, 627.706, 627.7065, and 627.712. The bill repeals the following section of the Florida Statute: 627.7077.

II. Present Situation:

Citizens Property Insurance Refund

In 2006, the Legislature created the Insurance Capital Build-Up Incentive Program (Program) to provide insurance companies low-cost capital to write additional residential property insurance to Florida residents.¹ The Program's goal is to increase the availability of residential property insurance coverage and to restrain increases in property insurance premiums. To accomplish this goal, the State loaned funds, in the form of surplus notes, to new or existing authorized residential property insurers. In order to receive these funds, the participating insurers agreed to write additional residential property insurance in Florida and to contribute new capital to their respective companies.

In order to finance these notes, the Legislature, in 2006, appropriated \$250 million non-recurring funds from the General Revenue Fund to the Program. The Legislature required any unexpended balance to be reverted back to the General Revenue Fund on June 30, 2007. However, by June 28, 2007, the program had exhausted the Legislative appropriation.²

In 2008, the Legislature enacted CS/CS/SB 2860, which required Citizens Property Insurance Corporation (Citizens) to transfer \$250 million to the General Revenue Fund for transfer to the Program.³ The Program was required to return any unexpended balance to the General Revenue Fund on January 15, 2009. However, SB 2860 was vetoed by Governor Crist.⁴

Pre-Suit Notice for Suits Brought against FAJUA

The FAJUA was created to provide low-cost automobile insurance to those Florida residents that cannot procure automobile insurance. FAJUA is governed under s. 627.311(3), and every automobile insurer registered with the State is required to be a member of FAJUA. Subparagraph 627.311(3)(k)2., F.S. required that before a legal action is brought against FAJUA under s. 624.155, F.S., the Department of Financial Services (DFS) and FAJUA must be given 90 days written notice of the violation giving rise to the lawsuit.⁵ However, under s. 624.155, F.S., the notice requirement for a lawsuit against an "authorized insurer" is only 60 days. Therefore, an alleged violation by FAJUA requires an additional 30 days notice. By its own provision,

¹ Section 215.5595, F.S.

² Information obtained from the Final Report of the Insurance Capital Build-Up Incentive Program available at <http://www.sbafla.com/fsb/LinkClick.aspx?fileticket=TYIOUbpBbDM%3d&tabid=975&mid=2692> (last viewed February 1, 2011).

³ Section 16, ch. 2008-66, L.O.F.

⁴ On May 28, 2008, Governor Charlie Crist line-item vetoed section 16 of CS/CS/SB 2860 which required the \$250 million transfer from Citizens to the General Revenue Fund for use in the Capital Build Up Program. CS/HB 5057 also required the \$250 million transfer and this entire bill was vetoed on June 10, 2008. (Letter to Secretary Kurt S. Browning, Secretary of State, from Governor Charlie Crist dated June 10, 2008).

⁵ Section 624.155, F.S., specifies the insurer violations which require pre-suit notice to the DFS and to the insurer. These violations include: unfair claim settlement practices, illegal dealings in premiums, refusal to insure, favored agent or insurer, illegal dealings for life or disability insurance, life or disability insurance discrimination based on policyholder having the sickle cell trait, return of auto insurance premium upon cancellation of the policy by the policyholder, not settling claims in good faith, claims payments made to policyholders without an accompanying statement relating to the coverage, and failure to settle a claim under one portion of an insurance policy in order to influence settlement under other portions of the policy.

s. 627.311(3)(k)2., F.S., was to expire on October 1, 2007, unless reenacted by the Legislature prior to that date. The Legislature has not reenacted that subparagraph.

Form Filings for the Mandatory Catastrophic Ground Cover Collapse Coverage

In the 2007A Special Session, the Legislature required that every insurer authorized to sell property insurance in Florida must provide coverage for catastrophic ground cover collapse and make available, for an appropriate premium, coverage for sinkhole losses.⁶ Catastrophic ground cover collapse coverage pays the homeowner for property damage caused by the abrupt collapse of the ground cover with a visible ground cover depression resulting in structural damage to the building when the structure is condemned and ordered to be vacated. For damages that do not reach this threshold, the homeowner can choose to purchase additional sinkhole coverage, which also requires structural damage, but does not require an abrupt collapse visible to the naked eye, resulting in condemnation by a governmental agency. Insurers were required to make a form filing with the Office of Insurance Regulation by June 1, 2007 to implement these coverage requirements.

Report on the Development of a Sinkhole Database

Section 627.7065, F.S., creates a sinkhole information database for the purpose of tracking current and past sinkhole activity and making the information available for prevention and remediation activities. The Department of Financial Services and the Insurance Consumer Advocate, in consultation with the Florida Geological Survey and the Department of Environmental Protection, was charged with implementing the database. The Florida Geological Survey is responsible for recording reports of sinkhole activity in the database, which is downloadable and available to the public.⁷ In order to create the database, the Department of Environmental Protection, in consultation with the Department of Financial Services, was required to submit a report of database recommendations and other similar matters by December 31, 2005 to the Governor, the Chief Financial officer, and the Legislative presiding officers.

Feasibility Study for Florida Sinkhole Facility

Pursuant to s. 627.7077, F.S., the Florida State University College of Business Department of Risk Management and Insurance was directed by the Legislature to perform a feasibility and cost-benefit study of a Florida Sinkhole Insurance Facility. Specifically, the study was to examine the availability, coverage options, and costs associated with various sinkhole insurance programs.⁸ A draft report was due to the Legislature and the Financial Services Commission by February 1, 2005, and the final report was due by April 1, 2005.

⁶ Section 30, ch. 2007-1, L.O.F.

⁷ Department of Environmental Protection, Florida Geological Survey-Data and Maps. http://www.dep.state.fl.us/geology/gisdatamaps/SIRs_database.htm, (As of February 25, 2011).

⁸ **Final Report: Insurance Study of Sinkholes**; Submitted to the State of Florida, April 2005. http://www.floir.com/pdf/Sinkhole_Study_042005.pdf, (As of February 25, 2011).

Effective date of insurers' mandatory windstorm and contents coverage

Section 627.712, F.S. requires residential property insurers to offer windstorm coverage for property insurance policies, but allows policyholders to exclude windstorm coverage and contents coverage, if specified requirements are met. The effective date of the statute, as specified in s. 627.712(7), F.S., was June 1, 2007. However, the statute allowed the Office of Insurance Regulation to extend the effective date to October 1, 2007, with the approval of the Financial Services Commission.

III. Effect of Proposed Changes:

Section 1 deletes s. 215.5595(11), F.S., which requires the State Board of Administration to refund to Citizens all uncommitted Insurance Capital Build-Up Incentive Program funds that were to have been transferred from Citizens to the Program through SB 2860. The transfer of funds was never performed due to the Governor's veto of SB 2860; thus, the bill repeals this obsolete language from the statute.

Section 2 deletes s. 627.311(3)(k)2., F.S., which contains the 90 day pre-suit notice requirement for suits brought against FAJUA under s. 624.155, F.S. By its own terms, s. 627.311(3)(k)2., F.S., was to expire on October 1, 2007, unless reenacted by the Legislature prior to that date. Because the Legislature did not reinstate s. 627.311(3)(k)2., F.S., prior to October 1, 2007, that subparagraph expired and is obsolete. Therefore, the bill deletes obsolete language from the statute.

Section 3 deletes s. 627.706(3), F.S., which required insurers to file a form implementing the mandated coverage of catastrophic ground cover collapse and the optional sinkhole coverage with the Office of Insurance Regulation (OIR) by June 1, 2007. Since the time for filing has passed, and all insurers have filed with OIR, the bill deletes the obsolete language from the statute.

Section 4 deletes s. 627.7065(5), F.S., because the report of sinkhole database recommendations was filed by the Department of Environmental Protection before the deadline of December 31, 2005.

Section 5 repeals s. 627.7077, F.S., because the Florida State University College of Business Department of Risk Management and Insurance submitted the report on the feasibility of a Florida Sinkhole Insurance Facility, required by the statute, to the Legislature on April 1, 2005.⁹

Section 6 deletes s. 627.712(7), F.S., which provides an effective date of June 1, 2007, or at the latest, October 1, 2007, of the statute requiring residential property insurers to offer windstorm coverage for property insurance policies. This date has passed, and insurance companies are now required to offer windstorm coverage.

Section 7 provides that this act take effect July 1, 2011.

⁹ See Note 6.

Other Potential Implications:

None.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 546

INTRODUCER: Senator Hays

SUBJECT: Dentists

DATE: March 7, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	Pre-meeting
2.			HR	
3.			BC	
4.				
5.				
6.				

I. Summary:

Senate Bill 546 prohibits an insurer, health maintenance organization, and prepaid limited health service organization from contracting with a licensed dentist to provide services to an insured or subscriber at a specified fee unless such services are “covered services” under the applicable contract. The bill also prohibits an insurer from requiring that a contracted health care provider accept the terms of other practitioner contracts with a prepaid limited health service organization that is under common management and control with the contracting insurer.

This bill substantially amends the following sections of the Florida Statutes: 627.6474, 636.035, and 641.315.

II. Present Situation:

Prohibition Against “All Products” Clauses in Health Care Provider Contracts

Section 627.6474, F.S., prohibits a health insurer from requiring that a contracted health care practitioner accept the terms of other practitioner contracts (including Medicare and Medicaid practitioner contracts) with the insurer or an insurer, HMO, preferred provider organization, or exclusive provider organization that is under common management and control with the contracting insurer. The statute exempts practitioners in group practices who must accept the contract terms negotiated by the group. These contractual provisions are referred to as “all products” clauses, and typically require the health care provider, as a condition of participating in any of the health plan products, to participate in *all* of the health plan’s current or future health plan products. The 2001 Legislature outlawed “all products” clauses after concerns were raised by physicians that the clauses: may force providers to render services at below market rates;

harm consumers through suppressed market competition; may require physicians to accept future contracts with unknown and unpredictable business risk; and may unfairly keep competing health plans out of the marketplace.

Prepaid Limited Health Service Organizations Contracts

Prepaid limited health service organizations (PLHSO) provide limited health service to enrollees through an exclusive panel of providers in exchange for a prepayment, and are authorized in s. 636.003, F.S. Limited health services are: ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, and pharmaceutical services.

Provider arrangements for prepaid limited health service organizations are authorized in s. 636.035, F.S., and are subject to the following statutory requirements:

- The provider contract must be in writing.
- The subscriber is not liable to providers for services rendered except for deductibles and co-payments.
- If the PLHSO cannot meet its obligations to a provider, the subscriber is not liable for providing payment.
- The provider or PLHSO cancelling the provider contract must provide notice as detailed in statute.
- Prohibition against limiting the provider's ability to inform patients about medical treatment options.
- Prohibition against limiting the provider from contracting with other PLHSOs.
- Prohibition against "all products" clauses.

Health Maintenance Organization Provider Contracts

An HMO is an organization that provides a wide range of health care services, including emergency care, inpatient hospital care, physician care, ambulatory diagnostic treatment and preventive health care pursuant to contractual arrangements with preferred providers in a designated service area. Traditionally, an HMO member must use the HMO's network of health care providers. The use of a health care provider outside the HMO's network generally will result in the HMO limiting or denying benefits to the member.

Section 641.315, F.S., specifies requirements for the health maintenance organization (HMO) provider contracts with "health care practitioners" as defined in s. 456.001(4), F.S. The requirements include provisions related to:

- Notice of the insurer or provider cancelling the provider contract.
- Procedures for billing and reimbursement.
- Prohibition against limiting the provider's ability to inform patients about medical treatment options.
- Prohibitions against limiting the provider or HMO from contracting with other parties.
- Procedures for authorizing the utilization of health care services.
- Prohibition against preventing providers from rendering services that are medically necessary and covered in a contracting hospital.

- Prohibition against “all products” clauses.

III. **Effect of Proposed Changes:**

Sections 1-3.

Inclusion of PLHSOs In Prohibition Against “All Products” Health Care Provider Contracts –

Under current law, a health insurer cannot require that a contracted health care practitioner accept the terms of other practitioner contracts (including Medicare and Medicaid practitioner contracts) with the insurer or an insurer, HMO, preferred provider organization, or exclusive provider organization that is under common management and control with the contracting insurer. The bill also prohibits the insurer from requiring that a contracted health care provider accept the terms of other practitioner contracts with a prepaid limited health service organization that is under common management and control with the contracting insurer.

Dentist Provider Contracts: Prohibition Against Specifying Fees for Non-Covered Services –

The bill prohibits insurers, health maintenance organizations, and prepaid limited health service organizations from executing a contract with a licensed dentist that requires the dentist to provide services to an insured or subscriber at a specified fee unless such services are “covered services” under the applicable contract. A “covered service” is defined as a reimbursable service under the contract between the dentist and insurer, HMO, or prepaid limited health service organization that is subject to deductibles, coinsurance, and copayments. A “covered service” does not include services rendered to an insured or subscriber who has reached the periodic payment maximum established by the contract or dental services that are not listed as benefits under the contract.

Section 4. The act is effective July 1, 2011, and applies to contracts entered into on or after that date.

Other Potential Implications:

IV. **Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Representatives of health insurers, HMOs, and PLHSOs assert that their policyholders and subscribers will pay higher costs for dental care if the Legislature prohibits these entities from contracting with dentists to provide services that are not covered at a negotiated fee. These representatives assert that the legislation unduly interferes with their freedom to contract with dentists.

Representatives of dentists assert that the Legislature should prohibit health insurers, HMOs and PLHSOs from negotiating fees with dentists for services that are not covered because these provisions unfairly shift health care costs to dentists and potentially imperil the financial stability of dental practices. These representatives note that sixteen other states have passed similar legislation.

C. Government Sector Impact:

This bill does not appear to have a direct impact on the cost that the State incurs for the State Employees' PPO Plan or the HMO plans. Members of the State dental coverage plans, however, would be affected if providers are allowed the ability to bill and charge amounts above contracted rates when members are financially responsible for the service in question.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.