

SB 250 by Abruzzo (CO-INTRODUCERS) Bullard; (Identical to H 0131) Henry Morrison Flagler Memorial

SB 444 by Galvano; (Similar to CS/CS/1ST ENG/H 0271) Workers' Compensation

188834 A S RCS AGG, Bradley btw L.211 - 212: 02/06 03:58 PM

CS/SB 542 by BI, Brandes (CO-INTRODUCERS) Simpson, Benacquisto, Galvano, Bradley, Latvala, Bean;
(Identical to H 0581) Flood Insurance

314620 A S RCS AGG, Simpson Delete L.98 - 398: 02/06 12:37 PM
748138 AA S RCS AGG, Simpson Delete L.75 - 76: 02/06 12:37 PM
752730 AA S WD AGG, Simpson Delete L.186 - 190: 02/06 12:37 PM
888284 AA S L RCS AGG, Simpson Delete L.223 - 235: 02/06 12:37 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
APPROPRIATIONS SUBCOMMITTEE ON GENERAL
GOVERNMENT
Senator Hays, Chair
Senator Thompson, Vice Chair

MEETING DATE: Thursday, February 6, 2014

TIME: 9:00 —11:00 a.m.

PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Hays, Chair; Senator Thompson, Vice Chair; Senators Bradley, Braynon, Bullard, Dean, Detert, Joyner, Latvala, Legg, Simpson, Soto, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 250 Abruzzo (Identical H 131)	Henry Morrison Flagler Memorial; Establishing the memorial; requiring the Department of Management Services to designate a location for the memorial and consult with the Henry Morrison Flagler Museum regarding the construction, installation, and management of the memorial; providing for the creation of a figurative bronze sculpture to be installed in the memorial area, etc. GO 12/11/2013 Favorable AGG 02/06/2014 Favorable AP RC	Favorable Yeas 12 Nays 0
2	SB 444 Galvano (Similar H 271)	Workers' Compensation; Revising powers of the Department of Financial Services relating to compliance with and enforcement of workers' compensation coverage requirements; revising requirements for the release of stop-work orders; revising rate formulas related to the determination of compensation for disability and death, etc. BI 01/14/2014 Favorable AGG 02/06/2014 Fav/CS AP	Fav/CS Yeas 12 Nays 0
3	CS/SB 542 Banking and Insurance / Brandes (Identical H 581, Compare H 471, H 565)	Flood Insurance; Adding projected flood losses to the factors that must be considered by the Office of Insurance Regulation in reviewing certain rate filings; increasing the membership of the Florida Commission on Hurricane Loss Projection Methodology to include an engineer who is an expert in floodplain management and a meteorologist who specializes in floods; authorizing insurers to offer flood insurance in this state, etc. BI 01/08/2014 Fav/CS AGG 02/06/2014 Fav/CS AP	Fav/CS Yeas 12 Nays 0
4	Presentation on Governor's Fiscal Year 2014-2015 Budget Recommendations		Presented

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on General Government
Thursday, February 6, 2014, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	Status of Florida's Efforts to Address Challenges to Business Establishment and Expansion, Office of Program Policy Analysis and Government Accountability		Not Considered

Other Related Meeting Documents

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 Appropriations Subcommittee on General Government

BILL: SB 250

INTRODUCER: Senator Abruzzo

SUBJECT: Henry Morrison Flagler Memorial

DATE: January 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay/Jones</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	Favorable
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 250 establishes the Henry Morrison Flagler Memorial. The Department of Management Services (DMS) is required to designate an area for the memorial in the Capitol courtyard. The DMS is to consult with the Henry Morrison Flagler Museum regarding the construction, installation, and continuous management of the memorial. The bill permits the commission of a figurative bronze sculpture to be installed in the designated area using funds collected from private donations to the Henry Morrison Flagler Museum. The bill has no fiscal impact.

II. Present Situation:

Henry Morrison Flagler

Henry Morrison Flagler, a co-founder of Standard Oil, began his investment in the development of Florida in 1885¹. Flagler developed luxury resorts throughout Florida, including the Ponce de Leon Hotel, the Royal Poinciana Hotel, the Royal Palm Hotel, and The Breakers. Flagler extended the Florida East Coast Railway from Jacksonville to Key West. The Over-Sea railroad to Key West was considered the most ambitious engineering feat ever undertaken by a private citizen.²

Mr. Flagler is considered an inventor of modern Florida, and is memorialized throughout Florida with a figurative statue at Flagler College and replica statues at the Key West Bight Ferry terminal, Miami-Dade County Courthouse, and Bradley Park in Palm Beach.³ Flagler established

¹Henry Morrison Flagler Museum, *Henry Morrison Flagler Biography*, <http://www.flaglermuseum.us/history/flagler-biography> (last visited Dec. 5, 2013).

²*Id.*

³*Flagler's Florida*, 31, available at http://interactive.sun-sentinel.com/services/newspaper/education/nie/curriculum/Flag_tab.pdf (last visited Dec. 5, 2013).

transportation infrastructure, tourism, and agricultural industries that remain the foundation of Florida's economy today.

Henry Morrison Flagler Museum⁴

The Henry Morrison Flagler Museum is a non-profit corporation established in 1959. The museum is located at Whitehall, Flagler's former winter home in Palm Beach, Florida. Whitehall opened to the public in 1960.⁵ The museum offers year-round tours of the mansion as well as exhibits, concerts, and a lecture series on Gilded Age events. Whitehall is a National Historic Landmark and Florida's first museum.⁶

Managing Agency for the Capitol Complex

Section 272.03(1), F.S., provides that the Capitol Center is under the general control of the DMS, which includes the operation and maintenance of both the grounds and buildings. This responsibility has historically included assistance in establishing and maintaining public memorials throughout the Capitol Complex, including project management oversight of the design and construction of memorials.⁷ After an entity is assigned a designated space within the Capitol complex for an exhibit, the entity is the manager of the exhibit's content and display, in consultation with the DMS.⁸

Current Capitol Ground Memorials

Today, the DMS is responsible for three fixed memorials on the Capitol grounds: the Florida Fraternal Order of Police Law Enforcement Memorial in the Capitol courtyard; the Combat Wounded Veterans Memorial adjacent to the Senate Office Building; and a plaque in remembrance of Dr. Martin Luther King, Jr., also in the Capitol courtyard.⁹

III. Effect of Proposed Changes:

The bill creates section 265.004, F.S., which establishes the Henry Morrison Flagler Memorial. The bill provides legislative intent as to the proposed statute to recognize and honor Henry Morrison Flagler for his significant contributions to the development of Florida.

The bill requires the DMS, the managing agency for the Capitol Complex, to designate an area for the memorial in the courtyard between the Capitol Building and the Historic Capitol. After designating the location, the DMS will consult with the Henry Flagler Memorial Museum regarding the construction, installation, and continuous management of the memorial.

⁴Henry Morrison Flagler Museum, *Florida's First Museum*, <http://flaglERMuseum.us/history/floridas-first-museum> (last visited Dec. 5, 2013).

⁵Henry Morrison Flagler Museum, *Whitehall's Grounds and Architecture*, <http://www.flaglERMuseum.us/history/grounds-and-architecture> (last visited Dec. 5, 2013)

⁶National Historic Landmarks Program, *Whitehall (Henry M. Flagler House)*, <http://tps.cr.nps.gov/nhl/detail.cfm?ResourceId=957812452&ResourceType=Building> (last visited Dec. 5, 2013)

⁷Department of Management Services, *Senate Bill 250 Agency Analysis* (October 25, 2013) (on file with the Senate Committee on Governmental Oversight).

⁸*Id.*

⁹My Florida Capitol, *Capitol Grounds and Monuments*, <http://myfloridacapitol.com/grounds.php> (last visited Dec 5, 2013)

The Henry Flagler Memorial Museum will commission a figurative bronze sculpture in the area designated by the DMS for the memorial. The sculpture will be commissioned using funds from private donations to the museum.

The effective date of the bill is July 1, 2014.

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:

The DMS will incur minimal costs associated with the maintenance of the monument area and will handle within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 265.004 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of 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.

By Senator Abruzzo

25-00393-14

2014250__

1 A bill to be entitled
 2 An act relating to the Henry Morrison Flagler
 3 Memorial; creating s. 265.004, F.S.; providing
 4 legislative intent; establishing the memorial;
 5 requiring the Department of Management Services to
 6 designate a location for the memorial and consult with
 7 the Henry Morrison Flagler Museum regarding the
 8 construction, installation, and management of the
 9 memorial; providing for the creation of a figurative
 10 bronze sculpture to be installed in the memorial area;
 11 providing an effective date.

12

13 WHEREAS, Henry Morrison Flagler, a Gilded Age
 14 industrialist, railroad pioneer, and luxury resort developer, is
 15 responsible for establishing the state's tourism and agriculture
 16 industries as well as the state's transportation infrastructure,
 17 and

18 WHEREAS, Henry Morrison Flagler was the founder of what
 19 became known as the Florida East Coast Railway, and

20 WHEREAS, under Henry Morrison Flagler's leadership, the
 21 Florida East Coast Railway was extended from Jacksonville to Key
 22 West, providing for the rise of many Florida communities, and

23 WHEREAS, to accommodate travelers and vacationers, Henry
 24 Morrison Flagler developed a number of luxury resorts, including
 25 the Ponce de Leon Hotel, the Royal Poinciana Hotel, and the
 26 Breakers Hotel, and

27 WHEREAS, Henry Morrison Flagler is known as Florida's
 28 greatest benefactor, the father of Miami, and the founder of
 29 Palm Beach, and

Page 1 of 2

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

25-00393-14

2014250__

30 WHEREAS, few individuals have had a greater or more lasting
 31 impact on a state than Henry Morrison Flagler has had on
 32 Florida, NOW, THEREFORE,
 33

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

35

36 Section 1. Section 265.004, Florida Statutes, is created to
 37 read:

38 265.004 Henry Morrison Flagler Memorial.-
 39 (1) It is the intent of the Legislature to recognize and
 40 honor Henry Morrison Flagler for his significant contributions
 41 to the development of this state.
 42 (2) (a) There is established the Henry Morrison Flagler
 43 Memorial.
 44 (b) The Department of Management Services shall designate
 45 an area for the memorial in the courtyard between the Capitol
 46 Building and the Historic Capitol and shall consult with the
 47 Henry Morrison Flagler Museum regarding the construction,
 48 installation, and continuous management of the memorial.
 49 (c) The Henry Morrison Flagler Museum shall commission a
 50 figurative bronze sculpture in recognition of Flagler's
 51 contributions to this state using funds collected from private
 52 donations to the museum. The sculpture shall be installed in the
 53 area designated for the memorial pursuant to paragraph (b).
 54 Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/14

Meeting Date

Topic _____

Bill Number SB 250
(if applicable)

Name TODD BON LARSON

Amendment Barcode _____
(if applicable)

Job Title LEGISLATIVE AFFAIRS DIRECTOR

Address 301 N. OLEVE AVE
Street

Phone (561) 351-3451

WEST PALM BEACH FL 33405
City State Zip

E-mail _____

Speaking: For Against Information

Representing PAWM BEACH COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/2014

Meeting Date

Topic _____

Bill Number 250
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Vice Chair*
Environmental Preservation and
Conservation, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Finance and Tax
Communications, Energy, and Public Utilities
Military Affairs, Space, and Domestic Security

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO

25th District

January 23rd, 2014

The Honorable Alan Hays
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Hays:

I respectfully request that Senate Bill 250, the Henry Morrison Flagler Memorial, be placed on the Appropriations for General Government committee agenda. This legislation will designate an area for a memorial of Henry Flagler in the courtyard between the Capitol Building and the Historic Capitol. This memorial will honor one of the most influential men in our state's history.

Thank you for your consideration. Please let me know if I can provide further information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph Abruzzo".

Senator Joseph Abruzzo

cc: Jamie DeLoach, Staff Director

REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Appropriations Subcommittee on General Government

BILL: CS/SB 444

INTRODUCER: Appropriations Subcommittee on General Government and Senator Galvano

SUBJECT: Workers' Compensation

DATE: February 6, 2014 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 444 amends provisions related to stop work orders (SWO) and associated penalties relating to Florida's Workers' Compensation Law as follows:

- Extends the number of days for an employer to provide requested records to the Department of Financial Services (DFS) from five to 10 days or be subject to a SWO.
- Authorizes the DFS to issue an order of conditional release from a SWO to an employer that has secured appropriate coverage if the employer pays \$1,000 as a down payment and agrees to pay the remainder of the penalty in periodic installments or to pay the remaining penalty in full.
- Authorizes an immediate reinstatement of the SWO if the employer does not pay the full penalty or enter into a payment agreement within 28 days after service of the SWO upon the employer.
- Repeals a required employer reporting requirement for a probationary period.
- Credits the initial payment of the premium made by the employer to secure coverage against the assessed penalty for not having coverage for an employer that has not previously been issued a SWO. The bill provides a minimum \$1,000 penalty if the calculated penalty, after the credit is applied, is less than \$1,000.
- Revises the penalty for failing to have required coverage. The bill reduces the look-back period for failure to comply with coverage requirements from three to two years and increases the penalty multiplier from 1.5 to two times the amount of unpaid premiums.

The bill codifies a recent court decision regarding the calculation of workers' compensation indemnity benefits to allow the payment of such benefits at either 66.67 percent or the current 66 2/3 percent of the employee's average weekly wage; this change has no fiscal impact because it reflects current procedures used by carriers. The remaining provisions of the bill are expected to have a negligible fiscal impact.

The bill also changes the assessment calculation for the Workers' Compensation Special Disability Trust Fund and requires it be calculated by the DFS based upon the net premiums written by carriers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance and expenses of the trust fund. The assessment rate cap is changed from 4.52 percent to 2.50 percent.

II. Present Situation:

Coverage Requirements

The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S., including the enforcement of coverage requirements. Whether an employer is required to have workers' compensation insurance depends upon the employer's industry and the number of employees. Employers may secure coverage by purchasing a workers' compensation insurance policy or qualifying as a self-insurer.¹

An employer in a non-construction industry employing four or more part- or full-time employees must secure insurance.² An employer engaged in the construction industry must secure workers' compensation insurance if it employs one or more part- or full-time employees.³ No more than three officers of a corporation or members of a limited liability company who are engaged in the construction industry may elect to be exempt from this requirement, if certain conditions are met.⁴ Corporate officers and members of a non-construction LLC can elect to be exempt from workers' compensation coverage requirements.⁵

An employer may secure the workers' compensation coverage for his or her employees by entering into an employee leasing arrangement. In a traditional employee leasing arrangement, an employee leasing company will enter into an arrangement with an employer under which all or most of the client's workforce is employed by the leasing company and leased to the client company.⁶ The employer must notify the employee leasing company of the names of covered employees.

¹ Section 440.38, F.S.

² Section 440.02(17)(b)2, F.S.

³ *Id.*

⁴ Section 440.05, F.S.

⁵ *Id.*

⁶ The Board of Employee Leasing Companies within the Department of Business and Professional Regulation license and regulate employee leasing companies pursuant to Part XI of chapter 468, F.S. Temporary help arrangements are excluded from the definition of employee leasing. (s. 468.520, F.S.)

Enforcement of Coverage Requirements

If an employer fails to comply with workers' compensation coverage requirements, the DFS must issue a stop-work order (SWO) within 72 hours of determining noncompliance.⁷ The SWO requires the employer to cease all business operations. The SWO remains in effect until the employer secures appropriate coverage and the DFS issues an order releasing the SWO (for employers that have paid the assessed penalty); or an order of conditional release (for employers that have agreed to pay the penalty in installments pursuant to a payment agreement schedule with the DFS). Additionally, employers are assessed a penalty equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding three-year period or \$1,000, whichever is greater. Thus, for penalty calculation purposes, the employer must provide three years of business records. Some employers are often unable to quickly provide all records required to calculate the penalty. The SWO remains in effect and the employer cannot conduct business until the DFS has calculated the penalty.

A SWO is issued for the following violations: failure to obtain workers' compensation insurance, materially understating or concealing payroll, materially misrepresenting or concealing employee duties to avoid paying the proper premium, materially concealing information pertinent to the calculation of an experience modification factor, and failure to produce business records within five days of receipt of a written request from the DFS.⁸ As a condition of release from a SWO, the DFS may require an employer to file periodic reports, for up to two years, to document the employer's continued compliance with coverage requirements.

Workers' Compensation Indemnity Benefits

Workers' compensation indemnity (monetary) benefits are payable to employees who miss at least eight days of work due to a covered (compensable) injury. Indemnity benefits are payable retroactively from the first day of disability (to include compensation for the first seven days missed) to employees who miss more than 21 days of work due to a compensable injury.⁹ Such benefits are generally payable at 66 2/3 percent of the employee's average weekly wage (AWW), up to the maximum weekly benefit established by law.¹⁰

In a 2013 case, an employer had calculated the compensation rate for a claimant by multiplying the AWW by .66667 (or \$529.48). The Judge of Compensation Claims (JCC) calculated the compensation rate by multiplying the AWW by .6667 (or \$529.50). On appeal, the First District Court of Appeal held that "[b]ecause the [e]mployer did not pay less than the compensation required by statute, the JCC erred in ordering the employer to pay more []" than 66 2/3 percent of the AWW, namely \$529.47.¹¹

⁷ Section 440.107, F.S.

⁸ *Id.*

⁹ Section 440.12(1), F.S.

¹⁰ Section 440.15, F.S.

¹¹ *Escambia County School District v. Vickery-Orso*, 109 So. 3d 1242, 1244 (Fla 1st DCA 2013).

Workers' Compensation Special Disability Trust Fund

The Florida Special Disability Trust Fund (SDTF) was established to encourage the employment of workers with pre-existing permanent physical impairments. The SDTF reimburses employers (or their carriers) for the excess in workers' compensation benefits provided to an employee with a pre-existing impairment who is subsequently injured in a workers' compensation accident. As part of the reimbursement process, the SDTF determines whether claims are eligible to receive reimbursements, as well as audits and processes reimbursement requests. Reimbursement under the SDTF is not available for injuries occurring on or after January 1, 1998. The SDTF is maintained by annual assessments on insurers providing compensation insurance coverage. Claims with an accident date before 1998 are still eligible to seek reimbursements. After a claim has been accepted, a request for reimbursement of additional expenses may be submitted annually.

The assessment rate is calculated by the DFS using the previous three calendar years of SDTF expenditures. Currently, the assessment rate must produce an amount equal to the average of the sum of disbursements during the immediate past three calendar years and two times the disbursements of the most recent calendar year. The assessment rate is capped at 4.52 percent of net premiums.

III. Effect of Proposed Changes:

Enforcement of Coverage Requirements

The bill allows employers an additional five business days (ten days total) to produce records requested by the DFS before the issuance of a stop-work order.

The bill revises penalty for failure to comply with coverage requirements by increasing the penalty multiplier from 1.5 to two times the unpaid premiums and reducing the penalty period from the preceding three years to the prior two years.

The DFS is authorized to issue a conditional release of a SWO if the employer has obtained coverage, paid a \$1,000 down payment and agreed to either pay the remaining penalty or enter into a periodic payment agreement. The bill authorizes an immediate reinstatement of the SWO if the employer does not pay the full penalty or enters into a payment agreement within 28 days after service of the SWO upon the employer. The bill repeals a required employer reporting requirement for a probationary period.

The bill provides for a credit of the initial payment of workers' compensation insurance premium against the full amount of the penalty for employers who have not been previously issued a SWO. The employer is required to provide the DFS with documentation that the employer has secured the payment of compensation and proof of payment to the carrier. If an employer secures coverage through an employee leasing company, the bill requires the employer to provide the DFS with a written attestation by a representative from the employee leasing company that the employer has entered into an employee leasing contract, the dollar amount attributable to the initial payment of estimated workers' compensation premium for the employer, and proof of payment to the employee leasing company. The bill provides for assessment of a minimum

\$1,000 penalty against an employer if the calculated penalty, after the credit is applied, is less than \$1,000.

Calculation of Compensation

The bill addresses the holdings in *Escambia County School District v. Vickery-Orso, supra*, by authorizing employers/carriers to pay compensation to injured employees of “66 2/3 or 66.67 percent” of the AWW. The latter percentage produces a slightly higher compensation rate for injured employees and removes the need for employers/carriers that have been paying benefits at 66.67 percent of the AWW to incur costs associated with modifying their payment procedures.

Workers’ Compensation Special Disability Trust Fund

The bill changes the assessment calculation for the Workers’ Compensation Special Disability Trust Fund and requires it be calculated by the DFS based upon the net premiums written by carriers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance and expenses of the trust fund. The assessment rate cap is changed from 4.52 percent to 2.50 percent.

The bill is effective July 1, 2014.

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:

The bill allows employers five additional days to produce records requested by the DFS before the issuance of a SWO.

The bill revises the employer penalty for not having coverage by reducing the look-back period from the preceding three years to two years for purposes of calculating the

penalty; however, it increases the penalty multiplier from 1.5 to two times the amount an employer would have paid in premium.

If an employer has not been previously issued a SWO, the bill provides for a credit of the initial payment of premium made to secure coverage against the assessed penalty, thereby decreasing the amount of the penalty to be paid by the employer.

The codification of the 66.67 percent compensation rate reflects current carrier claims payment procedures; so, there is no impact.¹²

The DFS states the changing of the assessment calculation will benefit the private sector by allowing the department to draw down the SDTF fund balance to pay approved older reimbursement requests that are awaiting payment without increasing the SDTF assessment rate. Reducing the cap from 4.52 percent to 2.5 percent lowers the maximum assessment for employers.

C. Government Sector Impact:

According to the DFS, revising the coverage non-compliance penalty will have a negligible impact on the Workers' Compensation Administration Trust Fund.¹³

Since the program is closed and the assessment rate is lower than 2.5 percent, reducing the assessment cap from 4.52 percent to 2.5 percent has no impact to the trust fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 440.107, 440.15, and 440.16.

¹² Department of Financial Services, *Senate Bill 444 Fiscal Analysis* (December 6, 2013) (on file with the Senate Banking and Insurance Committee).

¹³ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on General Government on February 6, 2014:

- Changes the assessment calculation for the Workers' Compensation Special Disability Trust Fund to be calculated by the DFS based upon the net premiums written by carriers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance and expenses of the trust fund.
 - Changes the assessment rate cap is from 4.52 percent to 2.50 percent.
- B. **Amendments:**
- None.

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



188834

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2014	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Bradley)
recommended the following:

Senate Amendment (with title amendment)

Between lines 211 and 212

insert:

Section 4. Paragraphs (b) and (c) of subsection (9) of
section 440.49, Florida Statutes, are amended to read:

440.49 Limitation of liability for subsequent injury
through Special Disability Trust Fund.—

(9) SPECIAL DISABILITY TRUST FUND.—

(b)1. The Special Disability Trust Fund shall be maintained



188834

11 by annual assessments upon the insurance companies writing
12 compensation insurance in the state, the commercial self-
13 insurers under ss. 624.462 and 624.4621, the assessable mutuals
14 as defined in s. 628.6011, and the self-insurers under this
15 chapter, which assessments shall become due and be paid
16 quarterly at the same time and in addition to the assessments
17 provided in s. 440.51. Such payments shall be made by each
18 carrier and self-insurer to the department for the Special
19 Disability Trust Fund pursuant to department rule.

20 2. The department shall estimate annually in advance the
21 amount necessary for the administration of this subsection and
22 the maintenance of this fund pursuant to this paragraph and
23 shall make such assessment in the manner hereinafter provided.
24 By July 1 of each year, the department shall calculate the
25 assessment rate, which shall be based upon the net premiums
26 written by carriers, the amount of premiums calculated by the
27 department for self-insured employers, and the anticipated
28 balance and expenses of the Special Disability Trust Fund for
29 the next calendar year. Such assessment rate shall take effect
30 January 1 of the next calendar year. Such amount shall be
31 prorated among the insurance companies writing compensation
32 insurance in the state and the self-insurers.

33 ~~2. The annual assessment shall be calculated to produce~~
34 ~~during the next calendar year an amount which, when combined~~
35 ~~with that part of the balance anticipated to be in the fund on~~
36 ~~December 31 of the current calendar year which is in excess of~~
37 ~~\$100,000, is equal to the average of:~~

38 ~~a. The sum of disbursements from the fund during the~~
39 ~~immediate past 3 calendar years, and~~



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40 ~~b. Two times the disbursements of the most recent calendar~~
41 ~~year.~~

42 ~~e. Such assessment rate shall first apply on a calendar~~
43 ~~year basis for the period beginning January 1, 2012, and shall~~
44 ~~be included in workers' compensation rate filings approved by~~
45 ~~the office which become effective on or after January 1, 2012.~~
46 ~~The assessment rate effective January 1, 2011, shall also apply~~
47 ~~to the interim period from July 1, 2011, through December 31,~~
48 ~~2011, and shall be included in workers' compensation rate~~
49 ~~filings, whether regular or amended, approved by the office~~
50 ~~which become effective on or after July 1, 2011. Thereafter, the~~
51 ~~annual assessment rate shall take effect January 1 of the next~~
52 ~~calendar year and shall be included in workers' compensation~~
53 ~~rate filings approved by the office which become effective on or~~
54 ~~after January 1 of the next calendar year. Assessments shall~~
55 ~~become due and be paid quarterly.~~

56
57 ~~Such amount shall be prorated among the insurance companies~~
58 ~~writing compensation insurance in the state and the self-~~
59 ~~insurers.~~

60 ~~3. The net premiums written by the companies for workers'~~
61 ~~compensation in this state and the net premium written~~
62 ~~applicable to the self-insurers in this state are the basis for~~
63 ~~computing the amount to be assessed as a percentage of net~~
64 ~~premiums. Such payments shall be made by each carrier and self-~~
65 ~~insurer to the department for the Special Disability Trust Fund~~
66 ~~in accordance with such regulations as the department~~
67 ~~prescribes.~~

68 ~~4. The Chief Financial Officer is authorized to receive and~~



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69 credit to such Special Disability Trust Fund any sum or sums
70 that may at any time be contributed to the state by the United
71 States under any Act of Congress, or otherwise, to which the
72 state may be or become entitled by reason of any payments made
73 out of such fund.

74 (c) Notwithstanding the Special Disability Trust Fund
75 assessment rate calculated pursuant to this section, the rate
76 assessed may ~~shall~~ not exceed 2.5 ~~4.52~~ percent.

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

78 And the title is amended as follows:

79 Delete line 10

80 and insert:

81 disability and death; amending s. 440.49, F.S.;

82 revising provisions relating to the assessment rate of

83 the Special Disability Trust Fund; reducing the

84 assessment rate limitation; providing an effective

85 date.

By Senator Galvano

26-00355A-14

2014444__

1 A bill to be entitled
 2 An act relating to workers' compensation; amending s.
 3 440.107, F.S.; revising powers of the Department of
 4 Financial Services relating to compliance with and
 5 enforcement of workers' compensation coverage
 6 requirements; revising requirements for the release of
 7 stop-work orders; revising penalties; amending ss.
 8 440.15 and 440.16, F.S.; revising rate formulas
 9 related to the determination of compensation for
 10 disability and death; providing an effective date.

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

13
 14 Section 1. Paragraphs (a), (d), and (e) of subsection (7)
 15 of section 440.107, Florida Statutes, are amended to read:

16 440.107 Department powers to enforce employer compliance
 17 with coverage requirements.—

18 (7) (a) Whenever the department determines that an employer
 19 who is required to secure the payment to his or her employees of
 20 the compensation provided for by this chapter has failed to
 21 secure the payment of workers' compensation required by this
 22 chapter or to produce the required business records under
 23 subsection (5) within 10 ~~5~~ business days after receipt of the
 24 written request of the department, such failure shall be deemed
 25 an immediate serious danger to public health, safety, or welfare
 26 sufficient to justify service by the department of a stop-work
 27 order on the employer, requiring the cessation of all business
 28 operations. If the department makes such a determination, the
 29 department shall issue a stop-work order within 72 hours. The

Page 1 of 8

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26-00355A-14

2014444__

30 order shall take effect when served upon the employer or, for a
 31 particular employer worksite, when served at that worksite. In
 32 addition to serving a stop-work order at a particular worksite
 33 which shall be effective immediately, the department shall
 34 immediately proceed with service upon the employer which shall
 35 be effective upon all employer worksites in the state for which
 36 the employer is not in compliance. A stop-work order may be
 37 served with regard to an employer's worksite by posting a copy
 38 of the stop-work order in a conspicuous location at the
 39 worksite. The order shall remain in effect until the department
 40 issues an order releasing the stop-work order upon a finding
 41 that the employer has come into compliance with the coverage
 42 requirements of this chapter and has paid any penalty assessed
 43 under this section. The department may issue an order of
 44 conditional release from a stop-work order to an employer upon a
 45 finding that the employer has complied with the coverage
 46 requirements of this chapter, paid a penalty of \$1,000 as a down
 47 payment, and has agreed to remit periodic payments of the
 48 remaining penalty amount pursuant to a payment agreement
 49 schedule with the department or pay the remaining penalty amount
 50 in full. If an order of conditional release is issued, failure
 51 by the employer to pay the penalty in full or enter into a
 52 payment agreement with the department within 28 days after
 53 service of the stop-work order upon the employer, or to meet any
 54 term or condition of such penalty payment agreement, shall
 55 result in the immediate reinstatement of the stop-work order and
 56 the entire unpaid balance of the penalty shall become
 57 immediately due. ~~The department may require an employer who is~~
 58 ~~found to have failed to comply with the coverage requirements of~~

Page 2 of 8

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26-00355A-14

2014444__

59 ~~s. 440.38 to file with the department, as a condition of release~~
 60 ~~from a stop-work order, periodic reports for a probationary~~
 61 ~~period that shall not exceed 2 years that demonstrate the~~
 62 ~~employer's continued compliance with this chapter. The~~
 63 ~~department shall by rule specify the reports required and the~~
 64 ~~time for filing under this subsection.~~

65 (d)1. In addition to any penalty, stop-work order, or
 66 injunction, the department shall assess against any employer who
 67 has failed to secure the payment of compensation as required by
 68 this chapter a penalty equal to 2 1-5 times the amount the
 69 employer would have paid in premium when applying approved
 70 manual rates to the employer's payroll during periods for which
 71 it failed to secure the payment of workers' compensation
 72 required by this chapter within the preceding 2-year 3-year
 73 period or \$1,000, whichever is greater. For employers who have
 74 not been previously issued a stop-work order, the department
 75 shall allow the employer to receive a credit for the initial
 76 payment of the estimated annual workers' compensation policy
 77 premium, as determined by the carrier, to be applied to the
 78 penalty. Before the department applies the credit to the
 79 penalty, the employer must provide the department with
 80 documentation reflecting that the employer has secured the
 81 payment of compensation pursuant to s. 440.38 and proof of
 82 payment to the carrier. In order for the department to apply a
 83 credit for an employer that has secured the payment of
 84 compensation by entering into an employee leasing contract with
 85 a licensed employee leasing company, the employer must provide
 86 the department with a written attestation by a representative
 87 from the employee leasing company that the employer has entered

Page 3 of 8

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26-00355A-14

2014444__

88 into an employee leasing contract, the dollar amount
 89 attributable to the initial payment of the estimated workers'
 90 compensation premium for the employer, and proof of payment to
 91 the employee leasing company. The \$1,000 penalty shall be
 92 assessed against the employer even if the calculated penalty
 93 after the credit has been applied is less than \$1,000.

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

98 (e) When an employer fails to provide business records
 99 sufficient to enable the department to determine the employer's
 100 payroll for the period requested for the calculation of the
 101 penalty provided in paragraph (d), for penalty calculation
 102 purposes, the imputed weekly payroll for each employee,
 103 corporate officer, sole proprietor, or partner shall be the
 104 statewide average weekly wage as defined in s. 440.12(2)
 105 multiplied by 2 1-5.

106 Section 2. Paragraph (a) of subsection (1), paragraph (a)
 107 of subsection (2), and paragraph (a) of subsection (4) of
 108 section 440.15, Florida Statutes, are amended to read:

109 440.15 Compensation for disability.—Compensation for
 110 disability shall be paid to the employee, subject to the limits
 111 provided in s. 440.12(2), as follows:

112 (1) PERMANENT TOTAL DISABILITY.—

113 (a) In case of total disability adjudged to be permanent,
 114 66 2/3 or 66.67 percent of the average weekly wages shall be
 115 paid to the employee during the continuance of such total
 116 disability. ~~Ne~~ Compensation ~~is not shall be~~ payable under this

Page 4 of 8

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26-00355A-14

2014444__

117 section if the employee is engaged in, or is physically capable
118 of engaging in, at least sedentary employment.

119 (2) TEMPORARY TOTAL DISABILITY.—

120 (a) Subject to subsection (7), in case of disability total
121 in character but temporary in quality, 66 2/3 or 66.67 percent
122 of the average weekly wages shall be paid to the employee during
123 the continuance thereof, not to exceed 104 weeks except as
124 provided in this subsection, s. 440.12(1), and s. 440.14(3).
125 Once the employee reaches the maximum number of weeks allowed,
126 or the employee reaches the date of maximum medical improvement,
127 whichever occurs earlier, temporary disability benefits shall
128 cease and the injured worker's permanent impairment shall be
129 determined.

130 (4) TEMPORARY PARTIAL DISABILITY.—

131 (a) Subject to subsection (7), in case of temporary partial
132 disability, compensation shall be equal to 80 percent of the
133 difference between 80 percent of the employee's average weekly
134 wage and the salary, wages, and other remuneration the employee
135 is able to earn postinjury, as compared weekly; however, weekly
136 temporary partial disability benefits may not exceed an amount
137 equal to 66 2/3 or 66.67 percent of the employee's average
138 weekly wage at the time of accident. In order to simplify the
139 comparison of the preinjury average weekly wage with the salary,
140 wages, and other remuneration the employee is able to earn
141 postinjury, the department may by rule provide for payment of
142 the initial installment of temporary partial disability benefits
143 to be paid as a partial week so that payment for remaining weeks
144 of temporary partial disability can coincide as closely as
145 possible with the postinjury employer's work week. The amount

26-00355A-14

2014444__

146 determined to be the salary, wages, and other remuneration the
147 employee is able to earn shall in no case be less than the sum
148 actually being earned by the employee, including earnings from
149 sheltered employment. Benefits ~~are shall be~~ payable under this
150 subsection only if overall maximum medical improvement has not
151 been reached and the medical conditions resulting from the
152 accident create restrictions on the injured employee's ability
153 to return to work.

154 Section 3. Paragraph (b) of subsection (1) and subsection
155 (3) of section 440.16, Florida Statutes, are amended to read:
156 440.16 Compensation for death.—

157 (1) If death results from the accident within 1 year
158 thereafter or follows continuous disability and results from the
159 accident within 5 years thereafter, the employer shall pay:

160 (b) Compensation, in addition to the above, in the
161 following percentages of the average weekly wages to the
162 following persons entitled thereto on account of dependency upon
163 the deceased, and in the following order of preference, subject
164 to the limitation provided in subparagraph 2., but such
165 compensation shall be subject to the limits provided in s.
166 440.12(2), shall not exceed \$150,000, and may be less than, but
167 shall not exceed, for all dependents or persons entitled to
168 compensation, 66 2/3 or 66.67 percent of the average wage:

169 1. To the spouse, if there is no child, 50 percent of the
170 average weekly wage, such compensation to cease upon the
171 spouse's death.

172 2. To the spouse, if there is a child or children, the
173 compensation payable under subparagraph 1. and, in addition, 16
174 2/3 or 16.67 percent on account of the child or children.

26-00355A-14

2014444__

175 However, when the deceased is survived by a spouse and also a
 176 child or children, whether such child or children are the
 177 product of the union existing at the time of death or of a
 178 former marriage or marriages, the judge of compensation claims
 179 may provide for the payment of compensation in such manner as
 180 may appear to the judge of compensation claims just and proper
 181 and for the best interests of the respective parties and, in so
 182 doing, may provide for the entire compensation to be paid
 183 exclusively to the child or children; and, in the case of death
 184 of such spouse, 33 1/3 or 33.33 percent for each child. However,
 185 upon the surviving spouse's remarriage, the spouse shall be
 186 entitled to a lump-sum payment equal to 26 weeks of compensation
 187 at the rate of 50 percent of the average weekly wage as provided
 188 in s. 440.12(2), unless the \$150,000 limit provided in this
 189 paragraph is exceeded, in which case the surviving spouse shall
 190 receive a lump-sum payment equal to the remaining available
 191 benefits in lieu of any further indemnity benefits. ~~In no case~~
 192 ~~shall~~ A surviving spouse's acceptance of a lump-sum payment does
 193 not affect payment of death benefits to other dependents.

194 3. To the child or children, if there is no spouse, 33 1/3
 195 or 33.33 percent for each child.

196 4. To the parents, 25 percent to each, such compensation to
 197 be paid during the continuance of dependency.

198 5. To the brothers, sisters, and grandchildren, 15 percent
 199 for each brother, sister, or grandchild.

200 (3) ~~If where~~, because of the limitation in paragraph
 201 (1) (b), a person or class of persons cannot receive the
 202 percentage of compensation specified as payable to or on account
 203 of such person or class, there shall be available to such person

Page 7 of 8

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26-00355A-14

2014444__

204 or class that proportion of such percentage as, when added to
 205 the total percentage payable to all persons having priority of
 206 preference, will not exceed a total of said 66 2/3 or 66.67
 207 percent, which proportion shall be paid:

208 (a) To such person; or

209 (b) To such class, share and share alike, unless the judge
 210 of compensation claims determines otherwise in accordance with
 211 the provisions of subsection (4).

212 Section 4. This act shall take effect July 1, 2014.

Page 8 of 8

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.6.14

Meeting Date

Topic SDTF

Bill Number 444

Name Ashley Mayer

Amendment Barcode 188834
(if applicable)

Job Title Lobbyist

Address 101 E Collyer Ave

Phone 322-9075

Street

Tallahassee, FL

City

State

Zip

E-mail amayer@capacity
consulting.com

Speaking: For Against Information

Representing AIF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-6-14

Meeting Date

Topic Worker's Compensation

Bill Number SB 444
(if applicable)

Name JIM BRAINERD

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 2814 Rabbit Hill Road

Phone 850-508-6716

Street
Tallahassee, FL 32308
City State Zip

E-mail BRAINERDLAW@comcast.net

Speaking: For Against Information

Representing Florida Association of Insurance Agents

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/2014
Meeting Date

Topic SB 444 Workers Comp

Bill Number SB 444
(if applicable)

Name Logan McFaddin

Amendment Barcode _____
(if applicable)

Job Title Leg. Affairs Director

Address 400 N. Monroe St
Street
Tallahassee FL 32399
City State Zip

Phone 850-413-2863

E-mail Logan.Mcfaddin@myFlorida
cfo.com

Speaking: For Against Information

Representing CFO Atwater

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO

26th District

January 15, 2014

Senator Alan Hays
201 Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Hays:

I respectfully request that SB 444, Workers' Compensation, be scheduled for a hearing in the Appropriations Subcommittee on General Government at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Bill Galvano

cc: Jamie DeLoach
Lisa Waddell

REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Appropriations Subcommittee on General Government

BILL: CS/CS/SB 542

INTRODUCER: Appropriations Subcommittee on General Government; Banking and Insurance Committee; and Senator Brandes and others

SUBJECT: Flood Insurance

DATE: February 6, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow/Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 542 creates laws governing the sale of private flood insurance policies, contracts, and endorsements by authorized insurers with the exception of commercial lines risks policies that provide coverage in excess of an underlying policy. The bill requires insurers that write flood coverage to provide coverage for “flood” as currently defined by the National Flood Insurance Program (NFIP). The bill also permits insurers to expand flood coverage to include water intrusion originating from outside the structure.

Flood rates may be established using the existing rate review process in section 627.062, Florida Statutes. For flood rate filings made before July 1, 2024, an insurer may utilize three additional options for the development of flood insurance rates (Flood coverage rates developed under the three additional provisions are subject to section 627.062(1), Florida Statutes, which requires that rates shall not be excessive, inadequate, or unfairly discriminatory):

- A rate filing that is exempt from the filing and review requirements of sections 627.062(2)(a) and (f), Florida Statutes;
- Individual risk rating; and
- If the insurer obtains the written, signed consent of the policyholder, it may use a flood coverage rate that has not been approved by the Office of Insurance Regulation (OIR).

The bill also:

- Allows flood deductibles to be a stated dollar amount or a percentage of coverage, however, insurers must offer the standard deductibles offered by the NFIP.
- Allows flood insurance policies to be offered that adjusts flood claims on a replacement cost basis or actual cash value.
- Allows the policy limit for flood coverage to be any agreed upon amount.
- Makes the following coverages optional: (1) additional living expense coverage; (2) personal property or contents; and (3) law and ordinance coverage. The insurer must offer, however, law and ordinance coverage comparable to such coverage contained in a NFIP policy.
- Authorizes the use of flood loss projection models to establish rates for flood insurance.
- Authorizes the Florida Commission on Hurricane Loss Projection Methodology to evaluate flood models and adopt actuarial methods, principles, standards, models, or output ranges for flood loss by July 1, 2016.
- Requires the declarations page of the policy to disclose clearly all limitations on coverage or policy limits.
- Requires each flood policy, endorsement, or contract to provide notice that flood insurance is available from the NFIP.
- Requires the insurer to give 45 days prior written notice of cancellation or nonrenewal to the insured and any regulated lending institution or federal agency that is a mortgagee.
- Allows an insurer or insured to cancel during the term of the policy or upon renewal if the cancellation is for a valid reason under the NFIP.
- Requires an insurer seeking to provide flood coverage to notify the OIR at least 30 days before writing flood insurance in this state. The insurer must file a plan of operation and financial projections with the OIR unless the insurer maintains at least \$35 million in surplus and provides coverage as an endorsement to an existing property insurance form.
- Provides that the provisions of section 627.715, Florida Statutes, supersede any conflicting provisions in the insurance code.
- Requires the insurance commissioner to provide a certification if so required by federal law or federal rule as a condition of qualifying for private flood insurance or disaster relief.

The bill has no fiscal impact to state funds. The Florida Commission on Hurricane Loss projection Methodology estimates a fiscal impact of \$350,000 to develop the standards outlined in the bill. The commission is funded by the Florida Hurricane Catastrophe Fund.

II. Present Situation:

The NFIP was created by the passage of the National Flood Insurance Act of 1968.¹ The NFIP is administered by Federal Emergency Management Agency (FEMA) and provides property owners located in flood-prone areas the ability to purchase flood insurance protection from the federal government. Flood insurance through the NFIP is only available in communities that adopt and enforce federal floodplain management criteria.²

¹ <http://www.fema.gov/media-library/assets/documents/7277?id=2216> (Last accessed by staff on January 2, 2014)

² *National Flood Insurance Program: Program Description*, pgs. 2-4., Federal Emergency Management Agency/Federal Insurance and Mitigation Administration (August 1, 2002) <http://www.fema.gov/media-library/assets/documents/1150?id=1480> (Last accessed by staff on January 7, 2014).

Standard NFIP Flood Insurance

The standard flood insurance policy dwelling form offered by the NFIP³ is a single peril flood policy that pays for direct physical damage to the insured residential property up to the replacement cost⁴ (RCV) or actual cash value (ACV) or the policy limit.⁵ The maximum coverage limit for a NFIP standard flood insurance policy is \$250,000. The NFIP also offers up to \$100,000 in personal property (contents) coverage, which is always valued at ACV.⁶ Most NFIP policies also include Increased Cost of Compliance (ICC) coverage of up to \$30,000 of the cost to comply with state or community floodplain management laws or ordinances after a flood in which a building has been declared substantially damaged or repetitively damaged.⁷ The maximum coverage available to a condominium association is \$250,000 per unit multiplied by the total number of units.⁸ The limits of coverage for NFIP flood insurance on non-residential buildings are \$500,000 in coverage to the building and \$500,000 in contents coverage.⁹

Flood is defined in the standard NFIP policy as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;
- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.¹⁰

³ The standard form insures one-to-four family residential buildings and single-family dwelling units in a condominium building. The NFIP also offers (a) a general property form that is used to insure five-or-more-family residential buildings and non-residential buildings and (b) a residential condominium building association policy form that insures residential condominium association buildings.

⁴ To obtain RCV coverage under the NFIP dwelling form, the building must be a single-family dwelling, be the principal residence of the insured at the time of loss (the insured lives there at least 80 percent of the year), and the building coverage of at least 80 percent of the full replacement cost of the building or its the maximum available for the property under the NFIP.

⁵ *National Flood Insurance Program: Summary of Coverage*, Federal Emergency Management Agency (FEMA F-679/November 2012) http://www.fema.gov/media-library-data/20130726-1620-20490-4648/f_679_summaryofcoverage_11_2012.pdf (Last accessed by staff on January 7, 2014).

⁶ See footnote 4.

⁷ The total amount of a building claim and ICC claim cannot exceed the maximum limit for building property coverage. For a single-family home, this is the \$250,000 maximum limit on coverage to the building. See footnote 4 and footnote 5 at page 26.

⁸ *FDIC Compliance Manual*, V – 6.8. <http://www.fdic.gov/regulations/compliance/manual/index.html> (Last accessed by staff on January 7, 2014).

⁹ *Reducing Damage from Localized Flooding: A Guide for Communities*, 11-2. <http://www.fema.gov/media-library/assets/documents/1012> (Last accessed by staff on January 7, 2014).

¹⁰ <http://www.fema.gov/national-flood-insurance-program/definitions> (Last accessed by staff on January 2, 2014)

The minimum deductibles for NFIP flood coverage are:

- For properties built before the effective date of the first Flood Insurance Rate Map¹¹ (FIRM) for a community, the minimum deductible is:
 - \$1,500 if the property is insured for \$100,000 or less.
 - \$2,000 if the property is insured for over \$100,000.
- For properties built after the effective date of the first Flood Insurance Rate Map (FIRM) for a community, the minimum deductible is:
 - \$1,000 if the property is insured for \$100,000 or less.
 - \$1,250 if the property is insured for over \$100,000.

Federal Requirements to Obtain Flood Insurance

The U.S. Congress passed the Flood Disaster Protection Act in 1973¹². The Act mandated property owners with mortgages issued by federally regulated or insured lenders must purchase flood insurance if their properties are located in Special Flood Hazard Areas. Special Flood Hazard Areas are defined by FEMA as high-risk areas where there is at least a one in four chance of flooding during a 30-year mortgage.¹³

The National Flood Insurance Reform Act of 1994¹⁴ (1994 Reform Act) required federal financial regulatory agencies¹⁵ to revise their flood insurance regulations. The 1994 Reform Act applied flood insurance requirements to loans purchased by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) and to agencies that provide government insurance or guarantees such as the Small Business Administration, the Federal Housing Administration, and the Veterans Administration. Lending institutions regulated by federal agencies are prohibited from offering loans on properties located in a Special Flood Hazard Area (SFHA) of a community participating in the NFIP unless the property is covered by flood insurance.¹⁶ The amount of flood insurance required by lending institutions must be at least equal to the outstanding principal balance of the loan, or the maximum amount available under the NFIP, whichever is less.

The Biggert-Waters Flood Insurance Reform Act

In 2012¹⁷ the United States Congress passed the Biggert-Waters Flood Insurance Reform Act (Biggert-Waters Act). The Biggert-Waters Act reauthorized the National Flood Insurance

¹¹ The effective date of the first FIRM for Florida communities can be found at <http://www.fema.gov/cis/FL.pdf> (Last accessed by staff on January 10, 2014).

¹² http://www.fema.gov/media-library-data/20130726-1545-20490-9247/firm_acts.pdf (Last accessed by staff on January 2, 2014).

¹³ http://www.floodsmart.gov/floodsmart/pages/flooding_flood_risks/defining_flood_risks.jsp (Last accessed by staff on January 2, 2014).

¹⁴ Title V of the Riegle Community Development and Regulatory Improvement Act of 1994. Pub. L. 103-325, Title V, 108 Stat. 2160, 2255-87 (September 23, 1994).

¹⁵ Office of Comptroller of Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Farm Credit Administration and Federal Reserve.

¹⁶ *FDIC Compliance Manual*, V – 6.1. <http://www.fdic.gov/regulations/compliance/manual/index.html> (Last accessed by staff on January 7, 2014).

¹⁷ <http://www.fema.gov/flood-insurance-reform-act-2012> (Last accessed by staff on January 2, 2014).

Program for five years. Key provisions of the legislation require the NFIP to raise rates to reflect true flood risk, make the program more financially stable, and change how Flood Insurance Rate Map updates impact policyholders. These changes by Congress have resulted in premium rate increases for approximately 20 percent of NFIP policyholders nationwide.

The Biggert-Waters Act increases flood insurance premiums purchased through the program for second homes, business properties, severe repetitive loss properties, and substantially improved damaged properties by requiring premium increases of 25 percent per year until premiums meet the full actuarial cost of flood coverage. Most residences immediately lose their subsidized rates if the property is sold, the policy lapses, repeated and severe flood losses occur, or a new policy is purchased. Policyholders whose communities adopt a new, updated Flood Insurance Rate Map (FIRM) that results in higher rates will experience a five-year phase in of rate increases to achieve rates that incorporate the full actuarial cost of coverage.

NFIP Flood Insurance in Florida

Over two million NFIP policies are written on Florida properties, with approximately 268,500 policies receiving subsidized rates.¹⁸ This accounts for approximately 37 percent of the total policies written by the NFIP.

Historically, properties insured in Florida have paid approximately \$3.60 in premium for NFIP flood coverage for every \$1 received in claims payments.¹⁹ The rate impact of the Biggert-Waters Act on subsidized policies in Florida is approximately as follows:

- Approximately 50,000 secondary residences, businesses, and severe repetitive loss properties are subject to immediate, annual 25 percent increases until their premiums are full risk premiums.
- Approximately 103,000 primary residences will lose their subsidy if the property is sold, the policy lapses, the property suffers severe, repeated flood losses, or a new policy is purchased.
- Approximately 115,000 non-primary residences, business properties, and severe repetitive loss properties are subject to the elimination of subsidies once FEMA develops guidance for their removal.

III. Effect of Proposed Changes:

CS/CS/SB 542 creates laws governing the sale of flood insurance policies, contracts, and endorsements by authorized insurers.

¹⁸ Office of Insurance Regulation, *The Biggert-Waters Flood Insurance Reform Act of 2012*, (Presentation to the Florida Senate Banking and Insurance Committee on October 8, 2013). http://flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket_2346.pdf.

¹⁹ Wharton Center for Risk Management and Decision Processes, *Who's Paying and Who's Benefiting Most From Flood Insurance Under the NFIP? A Financial Analysis of the U.S. National Flood Insurance Program (NFIP)*, (Issue Brief, Fall 2011).

Condition Covered by Private Market Flood Coverage [s. 627.715(2) and (3), F.S.]

The bill requires insurers that write flood coverage to provide coverage for “flood” as currently defined by the NFIP. The bill also permits insurers to expand flood coverage to include water intrusion originating from outside the structure which is not otherwise covered within the definition of flood provided in the bill and as also defined by the NFIP. Water intrusion, if offered, is defined by the insurance policy.

The bill defines “flood” in the same way as the NFIP: a general and temporary condition of partial or complete inundation of two acres or more of normally dry land area or of two or more properties, at least one of which is the policyholder’s property. The NFIP definition includes four causes of inundation of normally dry land that constitute flood: (1) overflow of inland or tidal waters; (2) unusual or rapid accumulation or runoff of surface waters from any source; (3) mudflow; or (4) collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels which results in flood.

Deductibles [s. 627.715(4)(a), F.S.]

Flood deductibles may be a stated dollar amount or a percentage of coverage. Insurers, however, must offer deductible amounts for flood losses that equal the standard deductibles offered by the NFIP.

Adjustment of Flood Claims [s. 627.715(4)(b), F.S.]

The bill authorizes the sale of flood insurance that adjusts claims on a replacement cost basis or actual cash value.

Option to Restrict Flood Coverage Principal Building [s. 627.415(4)(c), F.S.]

The bill allows, but does not require, the restriction of flood coverage to the principal building, as defined in the insurance policy.

Policy Limits [s. 627.715(4)(d), F.S.]

The policy limit for flood coverage may be any agreed upon amount. This includes the full replacement cost of the property, a set dollar amount, or the amount of the outstanding mortgages on the property.

Optional Coverage [s. 627.715(4)(e), F.S.]

Flood insurance is not required to include any of the following coverages: (1) additional living expense coverage; (2) personal property or contents; and (3) law and ordinance coverage.

The insurer is required to offer law and ordinance coverage for flood comparable to the law and ordinance coverage contained in the standard NFIP policy. Such coverage is called increased cost of compliance (ICC) coverage under the NFIP and, for the NFIP standard policy, provides up to \$30,000 to elevate, demolish, or relocate the insured dwelling if such action is required

because a floodplain management ordinance finds the structure is substantially damaged or repetitively damaged by flood. Under the NFIP, ICC coverage cannot increase the maximum limit for coverage to the structure (\$250,000 for a dwelling or \$500,000 for a business). The insurer must include the following written disclosure with flood insurance that includes NFIP-type law and ordinance coverage: “Law and ordinance coverage under this policy might have limitations on what is covered in the event of a loss. You should consult with your agent if you have questions about the coverage offered under this policy.”

Notice Provisions [s. 627.715(5), (7) and (9), F.S.]

The declarations page of the policy must disclose prominently, in at least 12-point type, and clearly all limitations on coverage or policy limits on the declarations page. Limitations requiring disclosure include, but are not limited to, deductibles and coverage limited to the amount of outstanding mortgages. The following specific disclosures are required:

- If the dwelling is insured for less than the full replacement cost: “This policy limits flood coverage to less than the full cost of replacement for the property, which may result in high out-of-pocket expenses to you and may put your equity in this property at risk.”
- If the dwelling is insured on an actual cash value basis: “This policy pays you the depreciated value of your property that is damaged by flood, which may result in high out-of-pocket expenses to you if your property needs to be repaired or replaced.”

Each flood policy, endorsement, or contract must provide notice that flood insurance is available from the NFIP.

The insurer must give 45 days prior written notice of cancellation or nonrenewal to the insured and any regulated lending institution or federal agency that is a mortgagee. An insurer or insured may cancel during the term of the policy or upon renewal if the cancellation is for a valid reason under the NFIP.

Rate Standards for Flood Coverage [s. 627.715(6), F.S.]

The bill allows insurers to develop flood insurance rates under the full rate review process provided for in s. 627.062, F.S. Flood insurance rates may be developed using three additional options in any flood insurance rate filing submitted to the OIR before July 1, 2024:

Rate Filing Exempt from the File and Use and Use and File Requirements

A flood insurance rate filing is exempt from the filing and review requirements of s. 627.062(2)(a) and (f), F.S., and instead requires an informational filing by the insurer. The rates are not subject to the “file and use” or “use and file” process under s. 627.062(2)(a), F.S.

An insurer must notify the OIR of any change to its flood insurance rates, including the average statewide percentage change in rates, no later than 30 days after the effective date of the change in rates. Insurers that utilize this option must maintain actual data regarding its flood insurance rates for two years after the effective date of those rates.

Individual Risk Rating

Insurers may individually rate a flood risk, under the procedure provided under current law in s. 627.062(3)(a) and (b), F.S. The insurer must maintain documentation on each individually rated risk that specifies the characteristics and classification of the risk supporting the reason for the risk being individually rated and also maintain modifications to existing forms. Modifications to flood insurance forms are subject to the provisions of this section and provisions of the insurance code that do not conflict with CS/CS/SB 542.

Consent to Rate

If the insurer obtains the written, signed consent of the policyholder, the insurer may use a flood coverage rate that has not been approved by the OIR. The signed consent form must notify the insured that the rate is not subject to OIR approval. Upon policy renewal, the insurer must provide notice that the rate is not subject to OIR approval. The insurer must maintain a copy of the signed consent form for three years and make it available for OIR review. The consent to rate provision in current law under s. 627.171, F.S., contains the same requirements to authorize insurers to use rates in excess of the insurer's approved rate but limits the practice to ten percent of the insurer's commercial lines policies and five percent of its personal lines (homeowners, auto; etc.) policies.

For all three of the options, the OIR is authorized to require the insurer to submit to an examination under which the OIR may determine whether the rate is excessive, inadequate, or unfairly discriminatory.

Authorization of Flood Loss Projection Models to Establish Flood Rates [s. 627.062, F.S., and s. 627.0628, F.S.]

The bill authorizes the use of flood models as a factor in rate filings under s. 627.062, F.S. The insurer may project flood losses using a model, method, or an average of models or methods found acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in the statute governing the commission, s. 627.0628, F.S.

To assist the methodology commission in evaluating flood models, the bill expands the membership of the commission to include a licensed professional engineer who is an expert in floodplain management and not regularly retained by a property and casualty insurer and a meteorologist who specializes in flood. The commission is authorized to consider the accuracy and reliability of flood loss projection models. The commission must adopt actuarial methods, principles, standards, models, or output ranges for flood loss by July 1, 2016.

Placement of Flood Insurance with Surplus Lines Insurers [s. 627.715(8), F.S.]

A surplus lines agent may export flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers as generally required by s. 626.916(1)(a), F.S. This provision expires July 1, 2017.

Authorization to Write Flood Insurance [s. 627.715(10), F.S.]

An insurer seeking to provide flood coverage must notify the OIR at least 30 days before writing flood insurance in this state. The insurer must file a plan of operation and financial projections with the OIR unless the insurer maintains at least \$35 million in surplus and provides coverage as an endorsement to an existing property insurance form. The insurer must also comply with all other applicable requirements contained in the insurance code.

Conflict of Laws [s. 627.715(11), F.S.]

The provisions of s. 627.715, F.S., supersede any conflicting provisions in the rest of the insurance code.

Certification That Private Flood Insurance Complies With Federal Law and Requirements

The bill requires the insurance commissioner to provide a certification if so required by federal law or federal rule as a condition of qualifying for private flood insurance or disaster relief. The certification is not subject to review under ch. 120, F.S.

Citizens Property Insurance Corporation

The bill prohibits Citizens Property Insurance Corporation from providing insurance for the peril of flood.

Florida Hurricane Catastrophe Fund

The bill prohibits the Florida Hurricane Catastrophe Fund from providing reimbursement for losses caused by the peril of flood.

Effective Date

The bill is effective upon becoming a law.

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:

It is anticipated that the implementation of the bill will result in additional private insurers offering flood insurance which may increase competition in the marketplace and provide consumers with more coverage options.

C. Government Sector Impact:

The bill requires the Florida Commission on Hurricane Loss Projection Methodology to develop standards for the review of flood models. The commission estimates the fiscal impact of the bill is \$350,000. The commission is funded by the Florida Hurricane Catastrophe Fund. The development of such standards will require the commission to incur costs associated with additional commission meetings, research, workshops, consultants, and possible meetings at the location of each modeler.

According to the OIR, the bill will be implemented within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.062 and 627.0628.

This bill creates section 627.715 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**Recommended CS/CS by Appropriations Subcommittee on General Government on February 6, 2014:**

- Changes the sunset that limits the use of alternative rate filing options for flood insurance to filings submitted to the OIR from July 1, 2017, to July 1, 2024.

- Eliminates the provision restricting surplus lines insurers from providing flood coverage only valued at \$1 million or more.
- Deletes the provision of the bill which added two members to the Florida Commission on Hurricane Loss Projection Methodology thereby keeping the commission membership the same as in current law.
- Changes the date by which the Florida Commission on Hurricane Loss Projection Methodology must adopt actuarial methods, principles, standards, models, or output ranges for flood loss from July 1, 2015, to July 1, 2016.
- Authorizes the OIR to require insurers offering flood insurance coverage submit to an examination under which the OIR may determine whether the rates charged are excessive, inadequate, or unfairly discriminatory when the rates charged are based on an “individual risk rating” or a “written consent rating”.
- Prohibits Citizens Property Insurance Corporation from providing insurance for the peril of flood.
- Prohibits the Florida Hurricane Catastrophe Fund from providing reimbursement for losses caused by the peril of flood.

CS by Banking and Insurance on January 8, 2014:

- Limits the use of alternative rate filing options for flood insurance to filings submitted to the OIR before July 1, 2017.
- Limits the ability of a surplus lines agent to export flood insurance to a surplus lines insurer without making a diligent effort to place coverage with authorized insurers to coverage of \$1 million or more. The provision expires July 1, 2017.
- Requires the insurance commissioner to provide a certification if so required by federal law or federal rule as a condition of qualifying for private flood insurance or disaster relief.
- Requires insurers to offer law and ordinance coverage for flood equivalent to NFIP law and ordinance coverage.

B. Amendments:

None.



314620

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2014	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Simpson)
recommended the following:

Senate Amendment (with title amendment)

Delete lines 98 - 398

and insert:

Section 2. Subsection (3) of section 627.0628, Florida
Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection
Methodology; public records exemption; public meetings
exemption.—



314620

10 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

11 (a) The commission shall consider ~~any~~ actuarial methods,
12 principles, standards, models, or output ranges that have the
13 potential for improving the accuracy ~~of~~ or reliability of the
14 hurricane loss projections and flood loss projections used in
15 residential property insurance rate filings. The commission
16 shall, ~~from time to time~~, adopt and update findings, as needed,
17 as to the accuracy or reliability of particular methods,
18 principles, standards, models, or output ranges.

19 (b) The commission shall consider ~~any~~ actuarial methods,
20 principles, standards, or models that have the potential for
21 improving the accuracy ~~of~~ or reliability of projecting probable
22 maximum loss levels. The commission shall adopt and update
23 findings, as needed, as to the accuracy or reliability of
24 particular methods, principles, standards, or models related to
25 probable maximum loss calculations.

26 (c) In establishing reimbursement premiums for the Florida
27 Hurricane Catastrophe Fund, the State Board of Administration
28 must, to the extent feasible, employ actuarial methods,
29 principles, standards, models, or output ranges found by the
30 commission to be accurate or reliable.

31 (d) With respect to a rate filing under s. 627.062, an
32 insurer shall employ and may not modify or adjust actuarial
33 methods, principles, standards, models, or output ranges found
34 by the commission to be accurate or reliable in determining
35 hurricane loss factors for use in a rate filing under s.
36 627.062. An insurer shall employ and may not modify or adjust
37 models found by the commission to be accurate or reliable in
38 determining probable maximum loss levels pursuant to paragraph



314620

39 (b) with respect to a rate filing under s. 627.062 made more
40 than 60 days after the commission has made such findings. This
41 paragraph does not prohibit an insurer from averaging model
42 results or output ranges or from using an average for the
43 purpose of a flood insurance rate filing under s. 627.062.

44 (e) The commission shall adopt actuarial methods,
45 principles, standards, models, or output ranges for flood loss
46 by July 1, 2016.

47 (f)~~(e)~~ The commission shall revise ~~adopt revisions to~~
48 previously adopted actuarial methods, principles, standards,
49 models, or output ranges every odd-numbered ~~odd~~ year.

50 (g)~~(f)~~ 1. A trade secret, as defined in s. 688.002, which
51 ~~that~~ is used in designing and constructing a hurricane loss
52 model and which ~~that~~ is provided pursuant to this section~~,~~ by a
53 private company~~,~~ to the commission, office, or consumer advocate
54 appointed pursuant to s. 627.0613~~,~~ is confidential and exempt
55 from s. 119.07(1) and s. 24(a), Art. I of the State
56 Constitution.

57 2.a. That portion of a meeting of the commission or of a
58 rate proceeding on an insurer's rate filing at which a trade
59 secret made confidential and exempt by this paragraph is
60 discussed is exempt from s. 286.011 and s. 24(b), Art. I of the
61 State Constitution. The closed meeting must be recorded, and no
62 portion of the closed meeting may be off the record.

63 b. The recording of a closed portion of a meeting is exempt
64 from s. 119.07(1) and s. 24(a), Art. I of the State
65 Constitution.

66 c. This subparagraph is subject to the Open Government
67 Sunset Review Act in accordance with s. 119.15 and shall stand



314620

68 repealed on October 2, 2015, unless reviewed and saved from
69 repeal through reenactment by the Legislature.

70 Section 3. Section 627.715, Florida Statutes, is created to
71 read:

72 627.715 Flood insurance.—Subject to the requirements of
73 this section, an insurer may issue an insurance policy,
74 contract, or endorsement providing coverage for the peril of
75 flood on any structure or on the contents of personal property
76 in this state.

77 (1) The Legislature finds that:

78 (a) The National Flood Insurance Program (NFIP) is a
79 federal program that enables property owners in participating
80 communities to purchase flood insurance. A community
81 participates in the federal program by adopting and enforcing
82 floodplain management regulations that meet or exceed federal
83 floodplain management criteria designed to reduce future flood
84 risk to new construction in floodplains. The program was created
85 by Congress in 1968 because insurance covering the peril of
86 flood was often unavailable in the private insurance market and
87 was intended to reduce the amount of financial aid paid by the
88 Federal Government in the aftermath of flood-related disasters.
89 After the creation of the NFIP, flood insurance coverage
90 continued to be generally unavailable for purchase from private
91 market insurance companies.

92 (b) The Biggert-Waters Flood Insurance Reform Act of 2012
93 reauthorized and revised the NFIP. The act increased flood
94 insurance premiums purchased through the program for second
95 homes, business properties, severe repetitive loss properties,
96 and substantially improved damaged properties by requiring



314620

97 premium increases of 25 percent per year until premiums meet the
98 full actuarial cost. Most residences lose their subsidized rates
99 if the property is sold, the policy lapses, repeated and severe
100 flood losses occur, or a new policy is purchased. Policyholders
101 whose communities adopt a new, updated Flood Insurance Rate Map
102 (FIRM) that results in higher rates will experience a 5-year
103 phase in of rate increases to achieve required rate levels.

104 (c) The Biggert-Waters Flood Insurance Reform Act of 2012
105 also encourages the use and acceptance of private market flood
106 insurance. The Legislature finds, however, that there has been a
107 long-term inadequacy of private market flood insurance available
108 in this state. Such inadequacy suggests that the private market
109 in this state is unlikely to expand unless the Legislature
110 provides multiple options for the regulation of flood insurance.
111 The Legislature also finds that the consumers of this state
112 would benefit from the availability of competitively priced
113 private market flood insurance due to the continued availability
114 of the NFIP flood insurance, the likely availability of
115 alternative private market flood insurance coverage options, and
116 the oversight of the Office of Insurance Regulation.

117 (d) The NFIP, as amended by the Biggert-Waters Flood
118 Insurance Reform Act of 2012, is likely to prevent many property
119 owners from obtaining affordable flood insurance coverage in
120 this state. The absence of affordable flood insurance threatens
121 the public health, safety, and welfare and the economic health
122 of this state. Therefore, the state has a compelling public
123 purpose and interest in providing alternatives to coverage from
124 the NFIP by promoting the availability of flood insurance from
125 private market insurers at potentially lower premium rates in an



314620

126 effort to facilitate the remediation, reconstruction, and
127 replacement of damaged or destroyed property in order to reduce
128 or avoid harm to public health, safety, and welfare, to the
129 economy of this state, and to the revenues of state and local
130 governments which are needed to provide for the public welfare.

131 (2) As used in this section, the term "flood" means a
132 general and temporary condition of partial or complete
133 inundation of 2 acres or more of normally dry land area or of
134 two or more properties, at least one of which is the
135 policyholder's property, from:

136 (a) Overflow of inland or tidal waters;

137 (b) Unusual and rapid accumulation or runoff of surface
138 waters from any source;

139 (c) Mudflow; or

140 (d) Collapse or subsidence of land along the shore of a
141 lake or similar body of water as a result of erosion or
142 undermining caused by waves or currents of water exceeding
143 anticipated cyclical levels.

144 (3) At a minimum, coverage for the peril of flood must
145 cover a flood as defined in subsection (2). Coverage for the
146 peril of flood may also include water intrusion, as defined by
147 the policy, which originates from outside the structure and is
148 not otherwise covered under the definition of flood.

149 (4) An insurer may offer a flood coverage policy, contract,
150 or endorsement that:

151 (a) Has a flood deductible based on a stated dollar amount
152 or a percentage of the coverage amount. The deductible amount
153 must be acceptable to federal mortgage and banking regulators if
154 such policy, contract, or endorsement is intended to satisfy a



314620

155 mortgage requirement;

156 (b) Provides that any flood loss will be adjusted on the
157 basis of:

158 1. The actual cash value of the property; or

159 2. Replacement costs up to the policy limits as provided
160 under s. 627.7011(3);

161 (c) Restricts flood coverage to the principal building, as
162 defined in the applicable policy;

163 (d) Is in an agreed-upon amount, including coverage limited
164 to the amount of all outstanding mortgages applicable to the
165 covered property. However, if a policy, contract, or endorsement
166 does not limit flood coverage to the replacement cost of the
167 covered property, the policy, contract, or endorsement may not
168 include a provision penalizing the policyholder for not insuring
169 the covered property up to replacement cost; or

170 (e) As to the peril of flood, does not cover:

171 1. Additional living expenses;

172 2. Personal property or contents; or

173 3. Law and ordinance coverage. However, an insurer must
174 offer law and ordinance coverage that is comparable to the law
175 and ordinance coverage offered in the standard NFIP policy. A
176 policy, contract, or endorsement that includes the law and
177 ordinance coverage that must be offered under this paragraph
178 must include the following disclosure in at least 12-point
179 uppercase and boldfaced type: "LAW AND ORDINANCE COVERAGE UNDER
180 THIS POLICY MIGHT HAVE LIMITATIONS ON WHAT IS COVERED IN THE
181 EVENT OF A LOSS. YOU SHOULD CONSULT WITH YOUR AGENT IF YOU HAVE
182 QUESTIONS ABOUT THE COVERAGE OFFERED UNDER THIS POLICY."

183 (5) Any limitations on flood coverage or policy limits as



314620

184 to the peril of flood, including, but not limited to, flood
185 deductibles or flood coverage limited to the amount of all
186 outstanding mortgages, must be prominently disclosed on the
187 declarations page or face page of the policy in at least 12-
188 point uppercase and boldfaced type and be sufficiently clear so
189 as to be readily understandable by the agent and the property
190 owner.

191 (a) A policy that limits flood coverage to an amount less
192 than the full replacement cost of the property must include the
193 following statement: "THIS POLICY LIMITS FLOOD COVERAGE TO LESS
194 THAN THE FULL COST OF REPLACEMENT FOR THE PROPERTY, WHICH MAY
195 RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU AND MAY PUT YOUR
196 EQUITY IN THIS PROPERTY AT RISK."

197 (b) A policy that insures a dwelling on the basis of actual
198 cash value must include the following statement: "THIS POLICY
199 PAYS YOU THE DEPRECIATED VALUE OF YOUR PROPERTY THAT IS DAMAGED
200 BY FLOOD, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU
201 IF YOUR PROPERTY NEEDS TO BE REPAIRED OR REPLACED."

202 (6) An insurer may establish and use flood coverage rates
203 in accordance with the rate standards under s. 627.062. For
204 flood coverage rates filed with the office before July 1, 2024,
205 the insurer may also elect one or more of the following options:

206 (a) In accordance with the rates, rating schedules, or
207 rating manuals filed by the insurer with the office which allow
208 the insurer a reasonable rate of return on flood coverage
209 written in this state. Flood coverage rates established under
210 this paragraph are not subject to s. 627.062(2) (a) and (f). An
211 insurer shall notify the office of any change to rates within 30
212 days after the effective date of the change. The notice must



314620

213 include the name of the insurer and the average statewide
214 percentage change in rates. Actuarial data with regard to rates
215 for flood coverage must be maintained by the insurer for 2 years
216 after the effective date of such rate change and is subject to
217 examination by the office. The office may require the insurer to
218 incur the costs associated with an examination. Upon
219 examination, the office, in accordance with generally accepted
220 and reasonable actuarial techniques, shall consider the rate
221 factors and standards specified in s. 627.062 to determine if
222 the rate is excessive, inadequate, or unfairly discriminatory.

223 (b) Through individual risk rating as provided in s.
224 627.062 (3) (a) and (b).

225 (c) With the written consent of the insured signed before
226 the policy inception date and filed with the insurer, using a
227 flood coverage rate that has not been approved by the office.
228 The signed consent form must notify the insured that the rate is
229 not subject to the approval of the office. A copy of the form
230 shall be maintained by the insurer for 3 years and must be
231 available for review by the office. An insurer is not required
232 to obtain subsequent written consents upon renewal, but shall
233 provide notice at each renewal that the rate is not subject to
234 office approval. Section 627.171(2) does not apply to policies
235 issued under this section.

236 (7) A policy, contract, or endorsement providing coverage
237 for the peril of flood must provide notice that flood insurance
238 coverage is available from the NFIP.

239 (8) A surplus lines agent may export a contract or
240 endorsement to an eligible surplus lines insurer without making
241 a diligent effort to seek such coverage from three or more



314620

242 authorized insurers under s. 626.916(1) (a). This subsection
243 expires July 1, 2017.

244 (9) A policy, contract, or endorsement providing coverage
245 for the peril of flood must require the insurer to give 45 days'
246 written notice before cancellation or nonrenewal to the insured
247 and any regulated lending institution or federal agency that is
248 a mortgagee. An insurer or insured may cancel during the term of
249 the policy or upon renewal if the cancellation is for a valid
250 reason under the NFIP.

251 (10) In addition to any other applicable requirements, an
252 insurer providing flood coverage under this section must:

253 (a) Notify the office at least 30 days before writing flood
254 insurance in this state;

255 (b) File a plan of operation and financial projections or
256 revisions to such plan, as applicable, with the office unless
257 the insurer maintains at least \$35 million in surplus. For
258 purposes of this paragraph, an insurer may demonstrate such
259 surplus if the insurer group surplus is used to support covered
260 flood insurance risks through a pooling arrangement or
261 intercompany reinsurance;

262 (c) Offer flood insurance on a form that has been filed
263 with and approved by the office pursuant to s. 627.410. If an
264 insurer files a form with the office that is substantially
265 similar to a form used by the NFIP, the office may not extend
266 the 30-day period as provided under s. 627.410(2); and

267 (d) File all reinsurance contracts with the office on or
268 before June 30 of each year.

269 (11) For a policy on a structure that was previously
270 insured through the NFIP at a subsidized rate, the policy must



314620

271 include the following statement: "BY ACCEPTING A PRIVATE FLOOD
272 INSURANCE POLICY, YOU MAY LOSE YOUR SUBSIDIZED RATE IN THE
273 NATIONAL FLOOD INSURANCE PROGRAM WHEN RETURN TO THE NATIONAL
274 FLOOD INSURANCE PROGRAM AT A LATER TIME."

275 (12) Citizens Property Insurance Corporation may not
276 provide insurance for the peril of flood.

277 (13) The Florida Hurricane Catastrophe Fund may not provide
278 reimbursement for losses proximately caused by the peril of
279 flood, including losses that occur during a covered event as
280 defined under s. 215.555(2).

281 (14) With respect to the regulation of flood insurance coverage
282 written in this state by private insurers, this section
283 supersedes any other provision in the Florida Insurance Code in
284 the event of a conflict.

285
286 ===== T I T L E A M E N D M E N T =====

287 And the title is amended as follows:

288 Delete lines 6 - 31

289 and insert:

290 filings; amending s. 627.0628, F.S.; requiring the
291 commission to adopt standards and guidelines relating
292 to flood loss by a certain date; creating s. 627.715,
293 F.S.; authorizing insurers to offer flood insurance in
294 this state; providing legislative findings; defining
295 the term "flood"; establishing the minimum coverage
296 requirements for a flood insurance policy; providing
297 coverage limitations that an insurer may include in
298 such policies; requiring that certain limitations be
299 noted on the policy declarations or face page;



314620

300 providing the insurer with rate options; requiring the
301 insurer to provide notice that flood insurance is
302 available from the National Flood Insurance Program;
303 authorizing an insurer to export a contract or
304 endorsement to a surplus lines insurer without meeting
305 certain requirements; requiring prior notice for
306 cancellation or nonrenewal of a policy; providing
307 additional requirements with respect to notifying the
308 Office of Insurance Regulation before writing flood
309 insurance, filing a plan of operation with the office,
310 using forms that have been approved by the office, and
311 filing reinsurance contracts before a certain date;
312 requiring that policies replacing subsidized policies
313 include a statement that the subsidized rate may be
314 lost; prohibiting Citizens Property Insurance
315 Corporation from writing flood insurance; prohibiting
316 the Florida Hurricane Catastrophe Fund from
317 reimbursing losses caused by flooding; preempting any
318 conflicts with other provisions of the Florida
319 Insurance Code;



748138

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2014	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Simpson)
recommended the following:

Senate Amendment to Amendment (314620) (with title amendment)

Delete lines 75 - 76
and insert:
flood on any residential structure or its contents in this state. This section does not apply to commercial lines risks policies that provide coverage in excess of an underlying policy.

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748138

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

12 And the title is amended as follows:

13 Delete line 293

14 and insert:

15 F.S.; authorizing insurers to offer flood insurance on
16 residential property in



752730

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/06/2014	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Simpson)
recommended the following:

Senate Amendment to Amendment (314620)

Delete lines 186 - 190
and insert:
outstanding mortgages, must be prominently disclosed in the
policy.



888284

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2014	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Simpson)
recommended the following:

Senate Amendment to Amendment (314620)

Delete lines 223 - 235
and insert:

(b) Through individual risk rating as provided in 627.062 (3) (a) and (b). Upon examination, the office, in accordance with generally accepted and reasonable actuarial techniques, shall determine if the rate is excessive, inadequate, or unfairly discriminatory.

(c) With the written consent of the insured signed before



888284

11 the policy inception date and filed with the insurer, using a
12 flood coverage rate that has not been approved by the office.
13 The signed consent form must notify the insured that the rate is
14 not subject to the approval of the office. A copy of the form
15 shall be maintained by the insurer for 3 years and must be
16 available for review by the office. An insurer is not required
17 to obtain subsequent written consents upon renewal, but shall
18 provide notice at each renewal that the rate is not subject to
19 office approval. Section 627.171(2) does not apply to policies
20 issued under this section. Upon examination, the office, in
21 accordance with generally accepted and reasonable actuarial
22 techniques, shall determine if the rate is excessive,
23 inadequate, or unfairly discriminatory.

By the Committee on Banking and Insurance; and Senators Brandes, Simpson, and Benacquisto

597-00970-14

2014542c1

1 A bill to be entitled
 2 An act relating to flood insurance; amending s.
 3 627.062, F.S.; adding projected flood losses to the
 4 factors that must be considered by the Office of
 5 Insurance Regulation in reviewing certain rate
 6 filings; amending s. 627.0628, F.S.; increasing the
 7 membership of the Florida Commission on Hurricane Loss
 8 Projection Methodology to include an engineer who is
 9 an expert in floodplain management and a meteorologist
 10 who specializes in floods; requiring the commission to
 11 adopt standards and guidelines relating to flood loss
 12 by a certain date; creating s. 627.715, F.S.;
 13 authorizing insurers to offer flood insurance in this
 14 state; providing legislative findings; defining the
 15 term "flood"; establishing the minimum coverage
 16 requirements for such policies; providing coverage
 17 limitations that an insurer may include in such
 18 policies; requiring that certain limitations be noted
 19 on the policy declarations or face page; providing the
 20 insurer with rate options; requiring the insurer to
 21 provide notice that flood insurance is available from
 22 the National Flood Insurance Program; allowing an
 23 insurer to export a contract or endorsement of a
 24 certain amount to a surplus lines insurer without
 25 meeting certain requirements; providing prior notice
 26 requirements for cancellation or nonrenewal of a
 27 policy; requiring the insurer to notify the office
 28 before writing flood insurance and to file a plan of
 29 operation with the office; providing that any

Page 1 of 14

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597-00970-14

2014542c1

30 conflicts with other provisions of the Florida
 31 Insurance Code are preempted by this section;
 32 requiring the Commissioner of the Office of Insurance
 33 Regulation to provide certification that a condition
 34 qualifies for flood insurance or disaster assistance;
 35 providing an effective date.
 36
 37 Be It Enacted by the Legislature of the State of Florida:
 38
 39 Section 1. Paragraph (b) of subsection (2) of section
 40 627.062, Florida Statutes, is amended to read:
 41 627.062 Rate standards.—
 42 (2) As to all such classes of insurance:
 43 (b) Upon receiving a rate filing, the office shall review
 44 the filing to determine if a rate is excessive, inadequate, or
 45 unfairly discriminatory. In making that determination, the
 46 office shall, in accordance with generally accepted and
 47 reasonable actuarial techniques, consider the following factors:
 48 1. Past and prospective loss experience within and without
 49 this state.
 50 2. Past and prospective expenses.
 51 3. The degree of competition among insurers for the risk
 52 insured.
 53 4. Investment income reasonably expected by the insurer,
 54 consistent with the insurer's investment practices, from
 55 investable premiums anticipated in the filing, plus any other
 56 expected income from currently invested assets representing the
 57 amount expected on unearned premium reserves and loss reserves.
 58 The commission may adopt rules using reasonable techniques of

Page 2 of 14

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597-00970-14

2014542c1

59 actuarial science and economics to specify the manner in which
 60 insurers calculate investment income attributable to classes of
 61 insurance written in this state and the manner in which
 62 investment income is used to calculate insurance rates. Such
 63 manner must contemplate allowances for an underwriting profit
 64 factor and full consideration of investment income that produces
 65 ~~which produce~~ a reasonable rate of return; however, investment
 66 income from invested surplus may not be considered.

67 5. The reasonableness of the judgment reflected in the
 68 filing.

69 6. Dividends, savings, or unabsorbed premium deposits
 70 allowed or returned to ~~Florida~~ policyholders, members, or
 71 subscribers in this state.

72 7. The adequacy of loss reserves.

73 8. The cost of reinsurance. The office may not disapprove a
 74 rate as excessive solely due to the insurer having obtained
 75 catastrophic reinsurance to cover the insurer's estimated 250-
 76 year probable maximum loss or any lower level of loss.

77 9. Trend factors, including trends in actual losses per
 78 insured unit for the insurer making the filing.

79 10. Conflagration and catastrophe hazards, if applicable.

80 11. Projected hurricane losses, if applicable, which must
 81 be estimated using a model or method found to be acceptable or
 82 reliable by the Florida Commission on Hurricane Loss Projection
 83 Methodology, and as further provided in s. 627.0628.

84 12. Projected flood losses, if applicable, which may be
 85 estimated using a model, a method, or an average of models or
 86 methods determined to be acceptable or reliable by the Florida
 87 Commission on Hurricane Loss Projection Methodology, and as

Page 3 of 14

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597-00970-14

2014542c1

88 further provided in s. 627.0628.

89 ~~13.12.~~ A reasonable margin for underwriting profit and
 90 contingencies.

91 ~~14.13.~~ The cost of medical services, if applicable.

92 ~~15.14.~~ Other relevant factors that affect the frequency or
 93 severity of claims or expenses.

94
 95 The provisions of this subsection do not apply to workers'
 96 compensation, employer's liability insurance, and motor vehicle
 97 insurance.

98 Section 2. Paragraph (b) of subsection (2) and subsection
 99 (3) of section 627.0628, Florida Statutes, are amended to read:
 100 627.0628 Florida Commission on Hurricane Loss Projection
 101 Methodology; public records exemption; public meetings
 102 exemption.-

103 (2) COMMISSION CREATED.-

104 (b) The commission shall consist of the following 14 ~~12~~
 105 members:

106 1. The insurance consumer advocate.

107 2. The senior employee of the State Board of Administration
 108 responsible for the operations of the Florida Hurricane
 109 Catastrophe Fund.

110 3. The Executive Director of the Citizens Property
 111 Insurance Corporation.

112 4. The Director of the Division of Emergency Management.

113 5. The actuary member of the Florida Hurricane Catastrophe
 114 Fund Advisory Council.

115 6. An employee of the office who is an actuary responsible
 116 for property insurance rate filings and who is appointed by the

Page 4 of 14

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597-00970-14

2014542c1

117 director of the office.

118 7. ~~Seven~~ Five members appointed by the Chief Financial
119 Officer, as follows:

120 a. An actuary who is employed full time by a property and
121 casualty insurer that was responsible for at least 1 percent of
122 the aggregate statewide direct written premium for homeowner's
123 insurance in the calendar year preceding the member's
124 appointment to the commission.

125 b. An expert in insurance finance who is a full-time member
126 of the faculty of the State University System and who has a
127 background in actuarial science.

128 c. An expert in statistics who is a full-time member of the
129 faculty of the State University System and who has a background
130 in insurance.

131 d. An expert in computer system design who is a full-time
132 member of the faculty of the State University System.

133 e. An expert in meteorology who is a full-time member of
134 the faculty of the State University System and who specializes
135 in hurricanes.

136 f. A licensed professional engineer who is an expert in
137 floodplain management and who is not regularly retained by or on
138 behalf of a property and casualty insurer.

139 g. A meteorologist who specializes in floods.

140 8. A licensed professional structural engineer who is a
141 full-time faculty member in the State University System and who
142 has expertise in wind mitigation techniques. This appointment
143 shall be made by the Governor.

144 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

145 (a) The commission shall consider ~~any~~ actuarial methods,

597-00970-14

2014542c1

146 principles, standards, models, or output ranges that have the
147 potential for improving the accuracy of or reliability of the
148 hurricane loss projections and flood loss projections used in
149 residential property insurance rate filings. The commission
150 shall, ~~from time to time~~, adopt and update findings as to the
151 accuracy or reliability of particular methods, principles,
152 standards, models, or output ranges.

153 (b) The commission shall consider ~~any~~ actuarial methods,
154 principles, standards, or models that have the potential for
155 improving the accuracy of or reliability of projecting probable
156 maximum loss levels. The commission shall adopt and update
157 findings as to the accuracy or reliability of particular
158 methods, principles, standards, or models related to probable
159 maximum loss calculations.

160 (c) In establishing reimbursement premiums for the Florida
161 Hurricane Catastrophe Fund, the State Board of Administration
162 must, to the extent feasible, employ actuarial methods,
163 principles, standards, models, or output ranges found by the
164 commission to be accurate or reliable.

165 (d) With respect to a rate filing under s. 627.062, an
166 insurer shall employ and may not modify or adjust actuarial
167 methods, principles, standards, models, or output ranges found
168 by the commission to be accurate or reliable in determining
169 hurricane loss factors for use in a rate filing under s.
170 627.062. An insurer shall employ and may not modify or adjust
171 models found by the commission to be accurate or reliable in
172 determining probable maximum loss levels pursuant to paragraph
173 (b) with respect to a rate filing under s. 627.062 made more
174 than 60 days after the commission has made such findings. This

597-00970-14

2014542c1

175 paragraph does not prohibit an insurer from averaging model
 176 results or output ranges or using an average for the purpose of
 177 a flood insurance rate filing under s. 627.062.

178 (e) The commission shall adopt actuarial methods,
 179 principles, standards, models, or output ranges for flood loss
 180 by July 1, 2015.

181 (f)(e) The commission shall ~~revise~~ ~~adopt~~ ~~revisions to~~
 182 previously adopted actuarial methods, principles, standards,
 183 models, or output ranges every ~~odd-numbered~~ ~~odd~~ year.

184 (g)(f)1. A trade secret, as defined in s. 688.002, which
 185 that is used in designing and constructing a hurricane loss
 186 model and which that is provided pursuant to this section, by a
 187 private company, to the commission, office, or consumer advocate
 188 appointed pursuant to s. 627.0613, is confidential and exempt
 189 from s. 119.07(1) and s. 24(a), Art. I of the State
 190 Constitution.

191 2.a. That portion of a meeting of the commission or of a
 192 rate proceeding on an insurer's rate filing at which a trade
 193 secret made confidential and exempt by this paragraph is
 194 discussed is exempt from s. 286.011 and s. 24(b), Art. I of the
 195 State Constitution. The closed meeting must be recorded, and no
 196 portion of the closed meeting may be off the record.

197 b. The recording of a closed portion of a meeting is exempt
 198 from s. 119.07(1) and s. 24(a), Art. I of the State
 199 Constitution.

200 c. This subparagraph is subject to the Open Government
 201 Sunset Review Act in accordance with s. 119.15 and shall stand
 202 repealed on October 2, 2015, unless reviewed and saved from
 203 repeal through reenactment by the Legislature.

Page 7 of 14

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597-00970-14

2014542c1

204 Section 3. Section 627.715, Florida Statutes, is created to
 205 read:

206 627.715 Flood insurance.—Subject to the requirements of
 207 this section, an insurer may issue an insurance policy,
 208 contract, or endorsement providing coverage for the peril of
 209 flood on any structure or on the contents of personal property
 210 on a form that has been filed with and approved by the office
 211 pursuant to s. 627.410(2) and that may be substantially similar
 212 to the form used by the National Flood Insurance Program (NFIP).

213 (1) The Legislature finds that:

214 (a) The National Flood Insurance Program is a federal
 215 program that enables property owners in participating
 216 communities to purchase flood insurance. A community
 217 participates in the federal program by adopting and enforcing
 218 floodplain management regulations that meet or exceed federal
 219 floodplain management criteria designed to reduce future flood
 220 risk to new construction in floodplains. The program was created
 221 by Congress in 1968 because insurance covering the peril of
 222 flood was often unavailable in the private insurance market and
 223 was intended to reduce the amount of financial aid paid by the
 224 Federal Government in the aftermath of flood-related disasters.
 225 After the creation of the NFIP, flood insurance coverage
 226 continued to be generally unavailable for purchase from private
 227 market insurance companies.

228 (b) The Biggert-Waters Flood Insurance Reform Act of 2012
 229 reauthorized and revised the NFIP. The act increases flood
 230 insurance premiums purchased through the program for second
 231 homes, business properties, severe repetitive loss properties,
 232 and substantially improved damaged properties by requiring

Page 8 of 14

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597-00970-14

2014542c1

233 premium increases of 25 percent per year until premiums meet the
 234 full actuarial cost. Most residences lose their subsidized rates
 235 if the property is sold, the policy lapses, repeated and severe
 236 flood losses occur, or a new policy is purchased. Policyholders
 237 whose communities adopt a new, updated Flood Insurance Rate Map
 238 (FIRM) that results in higher rates will experience a 5-year
 239 phase-in of rate increases to achieve required rate levels.

240 (c) The Biggert-Waters Flood Insurance Reform Act of 2012
 241 also encourages the use and acceptance of private market flood
 242 insurance. The Legislature finds, however, that there has been a
 243 long-term inadequacy of private market flood insurance available
 244 in this state. Such inadequacy suggests that the private market
 245 in this state is unlikely to expand unless the Legislature
 246 provides multiple options for the regulation of flood insurance.
 247 The Legislature also finds that the consumers of this state
 248 would benefit from the availability of competitively priced
 249 private market flood insurance due to the continued availability
 250 of NFIP flood insurance, the likely availability of alternative
 251 private market flood insurance coverage options, and the
 252 oversight of the Office of Insurance Regulation.

253 (d) The NFIP, as amended by the Biggert-Waters Flood
 254 Insurance Reform Act of 2012, will prevent many property owners
 255 from obtaining affordable flood insurance coverage in this
 256 state. The absence of affordable flood insurance threatens the
 257 public health, safety, and welfare and the economic health of
 258 this state. Therefore, the state has a compelling public purpose
 259 and interest in providing alternatives to coverage from NFIP by
 260 promoting the availability of flood insurance from private
 261 market insurers at potentially lower premium rates so as to

597-00970-14

2014542c1

262 facilitate the remediation, reconstruction, and replacement of
 263 damaged or destroyed property in order to reduce or avoid harm
 264 to the public health, safety, and welfare, to the economy of
 265 this state, and to the revenues of state and local governments
 266 which are needed to provide for the public welfare.

267 (2) As used in this section, the term "flood" means a
 268 general and temporary condition of partial or complete
 269 inundation of 2 acres or more of normally dry land area or of
 270 two or more properties, at least one of which is the
 271 policyholder's property, from:

272 (a) Overflow of inland or tidal waters;

273 (b) Unusual and rapid accumulation or runoff of surface
 274 waters from any source;

275 (c) Mudflow; or

276 (d) Collapse or subsidence of land along the shore of a
 277 lake or similar body of water as a result of erosion or
 278 undermining caused by waves or currents of water exceeding
 279 anticipated cyclical levels which result in a flood.

280 (3) At a minimum, coverage for the peril of flood must
 281 cover a flood as defined in subsection (2). Coverage for the
 282 peril of flood may also include water intrusion, as defined by
 283 the policy, which originates from outside the structure and is
 284 not otherwise covered under the definition of flood.

285 (4) An insurer may offer a flood coverage policy, contract,
 286 or endorsement:

287 (a) That has a flood deductible based on a stated dollar
 288 amount or a percentage of the coverage amount. At a minimum, an
 289 insurer must offer deductible amounts applicable to flood losses
 290 that equal the standard deductibles offered under the National

597-00970-14

2014542c1

291 Flood Insurance Program;
 292 (b) That provides that any flood loss will be adjusted on
 293 the basis of:
 294 1. The actual cash value of the property; or
 295 2. Replacement costs up to the policy limits as provided
 296 under s. 627.7011(3);
 297 (c) That restricts flood coverage to the principal
 298 building, as defined in the applicable policy;
 299 (d) In an agreed-upon amount, including coverage limited to
 300 the amount of all outstanding mortgages applicable to the
 301 covered property. However, if a policy, contract, or endorsement
 302 does not limit flood coverage to the replacement cost of the
 303 covered property, the contract or endorsement may not include a
 304 provision penalizing the policyholder for not insuring the
 305 covered property up to replacement cost; or
 306 (e) That, as to the peril of flood, does not cover:
 307 1. Additional living expenses;
 308 2. Personal property or contents; or
 309 3. Law and ordinance coverage. However, an insurer, must
 310 offer law and ordinance coverage that is comparable to the law
 311 and ordinance coverage offered in the standard NFIP policy. A
 312 policy, endorsement, or contract that includes the law and
 313 ordinance coverage that must be offered under this paragraph
 314 must include the following disclosure in uppercase bold
 315 lettering of at least 12-point type: "LAW AND ORDINANCE COVERAGE
 316 UNDER THIS POLICY MIGHT HAVE LIMITATIONS ON WHAT IS COVERED IN
 317 THE EVENT OF A LOSS. YOU SHOULD CONSULT WITH YOUR AGENT IF YOU
 318 HAVE QUESTIONS ABOUT THE COVERAGE OFFERED UNDER THIS POLICY."
 319 (5) Any limitations on flood coverage or policy limits as

Page 11 of 14

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597-00970-14

2014542c1

320 to the peril of flood, including, but not limited to, flood
 321 deductibles or flood coverage limited to the amount of all
 322 outstanding mortgages, must be prominently disclosed on the
 323 declarations page or face page of the policy in uppercase bold
 324 lettering of at least 12-point type and be sufficiently clear so
 325 as to be readily understandable by both the agent and the
 326 property owner.
 327 (a) A policy that limits flood coverage to an amount less
 328 than the full replacement cost of the property must include the
 329 statement: "THIS POLICY LIMITS FLOOD COVERAGE TO LESS THAN THE
 330 FULL COST OF REPLACEMENT FOR THE PROPERTY, WHICH MAY RESULT IN
 331 HIGH OUT-OF-POCKET EXPENSES TO YOU AND MAY PUT YOUR EQUITY IN
 332 THIS PROPERTY AT RISK."
 333 (b) A policy that insures a dwelling on the basis of actual
 334 cash value must include the statement: "THIS POLICY PAYS YOU THE
 335 DEPRECIATED VALUE OF YOUR PROPERTY THAT IS DAMAGED BY FLOOD,
 336 WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU IF YOUR
 337 PROPERTY NEEDS TO BE REPAIRED OR REPLACED."
 338 (6) An insurer may establish and use flood coverage rates
 339 in accordance with the rate standards under s. 627.062. For
 340 flood coverage rates filed with the office before July 1, 2017,
 341 the insurer may also elect one or more of the following options:
 342 (a) In accordance with the rates, rating schedules, or
 343 rating manuals filed by the insurer with the office which allow
 344 the insurer a reasonable rate of return on flood coverage
 345 written in this state. Flood coverage rates established under
 346 this paragraph are not subject to s. 627.062(2)(a) and (f). An
 347 insurer shall notify the office of any change to rates within 30
 348 days after the effective date of the change. The notice must

Page 12 of 14

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597-00970-14

2014542c1

349 include the name of the insurer and the average statewide
 350 percentage change in rates. Actuarial data with regard to rates
 351 for flood coverage must be maintained by the insurer for 2 years
 352 after the effective date of such rate change and is subject to
 353 examination by the office. The office may require the insurer to
 354 incur the costs associated with an examination. Upon
 355 examination, the office, in accordance with generally accepted
 356 and reasonable actuarial techniques, shall consider the rate
 357 factors and standards specified in s. 627.062 to determine if
 358 the rate is excessive, inadequate, or unfairly discriminatory.
 359 (b) Through individual risk rating as provided in s.
 360 627.062(3) (a) and (b).
 361 (c) With the written consent of the insured signed before
 362 the policy inception date and filed with the insurer, using a
 363 flood coverage rate that has not been approved by the office.
 364 The signed consent form must notify the insured that the rate is
 365 not subject to the approval of the office. A copy of the form
 366 shall be maintained by the insurer for 3 years and must be
 367 available for review by the office. An insurer is not required
 368 to obtain subsequent written consents upon renewal, but shall
 369 provide notice at each renewal that the rate is not subject to
 370 office approval.
 371 (7) A policy, endorsement, or contract providing coverage
 372 for the peril of flood must provide notice that flood insurance
 373 coverage is available from the NFIP.
 374 (8) A surplus lines agent may export a contract or
 375 endorsement providing flood coverage of \$1 million or more to an
 376 eligible surplus lines insurer without making a diligent effort
 377 to seek such coverage from three or more authorized insurers

Page 13 of 14

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597-00970-14

2014542c1

378 under s. 626.916(1)(a). This subsection expires July 1, 2017.
 379 (9) A policy, endorsement, or contract providing coverage
 380 for the peril of flood must require the insurer to give 45 days'
 381 prior written notice of cancellation or nonrenewal to the
 382 insured and any regulated lending institution or federal agency
 383 that is a mortgagee. An insurer or insured may cancel during the
 384 term of the policy or upon renewal if the cancellation is for a
 385 valid reason under the NFIP.
 386 (10) In addition to any other applicable requirements, an
 387 insurer providing flood coverage in this state must:
 388 (a) Notify the office at least 30 days before writing flood
 389 insurance in this state; and
 390 (b) File a plan of operation and financial projections or
 391 revisions to such plan, as applicable, with the office, unless
 392 the insurer maintains at least \$35 million in surplus and
 393 provides coverage as an endorsement to an existing property
 394 insurance form.
 395 (11) With respect to the regulation of flood insurance
 396 coverage written in this state by private insurers, this section
 397 supersedes any other provision in the Florida Insurance Code in
 398 the event of a conflict.
 399 Section 4. If federal law or rule requires a certification
 400 by a state insurance regulatory official as a condition of
 401 qualifying for private flood insurance or disaster assistance,
 402 the Commissioner of the Office of Insurance Regulation shall
 403 provide such certification, and such certification is not
 404 subject to review under chapter 120.
 405 Section 5. This act shall take effect upon becoming a law.

Page 14 of 14

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.6.14

Meeting Date

Topic Food ins

Bill Number 542

Name GERAL WESTER

Amendment Barcode 748138
(if applicable)

Job Title lobbyist

(if applicable)

Address 101 E Collyer Suite #02

Phone 222.9075

Street

Tallahassee FL

City

State

Zip

E-mail amayer@capcity.com
west@capcity.com

Speaking: For Against Information

Representing AIA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/14

Meeting Date

Flood

Topic

Bill Number 542

Name Reggie Garcia

(if applicable)

Amendment Barcode 752730 (if applicable)

Job Title

Address P.O. Box 11069

Phone 933-7150

Street

Tallahassee, Fla.

E-mail reggie.garcia@law.com

City

State

Zip

Speaking: For Against Information

Representing Fla. Justice Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

752730

2/6/2014
Meeting Date

Topic _____

Bill Number Am #2
SB 542
(if applicable)

Name Mark Delegal

Amendment Barcode _____
(if applicable)

Job Title Retained Counsel

Address _____

Phone _____

Street

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Universal North America

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/14

Meeting Date

Topic Flood Insurance

Bill Number SB 542
(if applicable)

Name Carolyn Johnson

Amendment Barcode 314620
(if applicable)

Job Title Policy Director

Address 136 S Bronough St
Street

Phone 850-521-1235

Tallahassee FL 32311
City State Zip

E-mail cjohnson@flchamber.com

Speaking: For Against Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-6-14

Meeting Date

Topic _____

Bill Number SB 542

Name DONG MANG

Amendment Barcode 314620
(if applicable)

Job Title _____

Address 660 JEFFERSON ST.

Phone _____

Street

TALLY FL 32301

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing FLA. SUPPLIES ASSOC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

Has Handouts!

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/14

Meeting Date

Topic "Flood" Insurance

Bill Number CS/SB 542
(if applicable)

Name Reggie Garcia

Amendment Barcode —
(if applicable)

Job Title —

Address PO BOX 11069

Phone 933-7150

Street
Tallahassee, Fla. 32302
City State Zip

E-mail reggiegarcialaw@icloud.com

Speaking: For Against Information

Representing Florida Justice Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-6-14
Meeting Date

Topic 542 Flood insurance

Bill Number 542
(if applicable)

Name Lisa Miller

Amendment Barcode _____
(if applicable)

Job Title CEO

Address _____
Street

Phone _____

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Amendment

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.6.14

Meeting Date

Topic Hood

Bill Number 542
(if applicable)

Name Gerald Wester

Amendment Barcode _____
(if applicable)

Job Title 101 E. College

Address lobbyist

Phone 222.9075

City Tally State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing ATA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-6-14

Meeting Date

Topic Flood Bill Number 542
(if applicable)

Name Jay Neal Amendment Barcode _____
(if applicable)

Job Title CEO / Pres

Address 515 E Las Olas Blvd Ste 120 Phone (954) 366-2922

Street

FTL FL 33301 E-mail jneal@floridainsurance
City State Zip reform.org

Speaking: For Against Information

Representing FAIR

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

KIRSTEN E. GILLIBRAND
NEW YORK
SENATOR

RUSSELL SENATE OFFICE BUILDING
SUITE 478
WASHINGTON, DC 20510-3205
202-224-4451

FAB 3
Garcia

COMMITTEES:
ARMED SERVICES
ENVIRONMENT AND PUBLIC WORKS
AGRICULTURE
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-3205

June 27, 2013

The Honorable W. Craig Fugate
Administrator
Federal Emergency Management Agency
500 C Street, SW
Washington, DC 20472

Dear Administrator Fugate,

I am writing to express my complete dismay at recent reports that potentially thousands of homeowners in New York and New Jersey are being denied claims by FEMA for damage to the foundations of their homes as a result of flooding caused by Superstorm Sandy. I understand that these denials are based on a provision in FEMA's standard flood insurance policy, which is found in the U.S. Code of Federal Regulations (44 CFR, Part 61, Appendix A), that states that FEMA does not insure for loss of property caused directly by earth movement even if the earth movement is caused by flood.

It is unacceptable for the Federal government to use such loopholes to deny responsible homeowners the benefits that they have paid for through their insurance premiums. To deny these claims pulls the rug out from underneath homeowners who are relying on their flood insurance policies to repair and rebuild their homes, now nearly eight months after Sandy hit our shores.

While I understand that flood insurance policies cannot cover every single loss that was incurred as a result of Superstorm Sandy, damages that were a result of storm surge and encroaching flood waters should not be excluded from flood insurance policies. To address this issue, I request that you immediately review the regulatory requirements for FEMA's standard flood insurance policy and reconsider the denials that have been issued to homeowners based on the "earth movement" exclusion. I also request that you keep my office informed of the status of this request, and the actions that FEMA plans to take to address these concerns.

Thank you for your attention to this urgent request.

Sincerely,

Kirsten E. Gillibrand

Kirsten E. Gillibrand
United States Senator

When the earth moves, insurance is denied

Aug. 23, 2013 |
3 Comments



Written by
Ken Serrano
@KenSerranoAPP

It is perhaps the two most dreaded words Sandy victims will ever hear from their flood insurance company: "earth movement."

Both are technical terms buried within insurance agreements that can cut tens of thousands of dollars from a homeowner's insurance offer — and be the difference between salvaging a damaged home or forcing the owner to simply walk away.

There's an exclusion in flood insurance policies for a loss of property caused "directly by earth movement even if the earth movement is caused by flood," according to the standard policy. In layman's terms, that means if water moves the soil and that movement of soil cracks a house's foundation, that damage is not covered by insurance.

The National Flood Insurance Program does not keep records on the number of claims that have been denied because of damaged foundations.

But denials for flood insurance have become a cause with growing support in New York.

U.S. Sen. Kirsten Gillibrand, D-N.Y., has urged the [National Flood Insurance Program](#), which is overseen by the [Federal Emergency Management Agency](#), to back off on their denial of claims on the basis of the earth movement exclusion.

The exclusion is the focus of a Facebook group called [Sandy Victims Fighting FEMA](#). The group plans to hold a rally on Aug. 29 in Mineola, N.Y., hit hard by Sandy.

Robert Trautmann, a Red Bank attorney representing Sandy victims battling insurance companies, said he has reviewed about 30 to 40 earth movement cases.

Trautman said that adjusters for insurance companies are following FEMA's directions on claims "to a fault," fearful of the repercussions if they get something wrong. Trautmann maintains that FEMA has told those adjusters that the agency will be looking to the adjusters to reimburse the federal government, not the homeowners, if a mistake is made.

"They're really looking for any reason to deny in case FEMA comes back to them," Trautmann said.

Dan Watson, spokesman for FEMA, countered Trautmann's remarks, saying adjusters have an incentive to make sure the correct amount of damage is properly reflected. The bigger the claim, the more they are paid.

The flood waters from Sandy wreaked havoc on the foundation of a client from Seaside Heights in a way that had nothing to do with earth movement, Trautmann said.

His experts are prepared to argue that it was "liquefaction erosion" that damaged that clients' foundation, which he says is covered by flood insurance. The ocean water eroded the soil — mostly sand — around the foundation, compromising it, he said.

The dispute boils down to definitions under the policy, the basis of many insurance arguments.

"There's a long history of litigation over definitions," said Mark Browne, a professor of insurance with St. John's University's School of Risk Management, New York.

Watson, who also serves as spokesman for the National Flood Insurance Program, declined to address the dispute over definitions.

He said that policyholders who have concerns with their insurance companies can call FEMA at 1-800-427-4661. When a claim or any part of a claim is denied by the insurer, the policyholder may also appeal that denial directly to FEMA.

**Ken Serrano: 732-643-4029; kserrano
@njpressmedia.com**

Flood insurance law hurting Sandy victims

July 21, 2013 by BART JONES / bart.jones@newsday.com



A little-known provision in some Long Island homeowners' flood insurance policies could stymie their claims to collect for superstorm Sandy damage.

Advocates and lawyers for property owners say it's a loophole for insurance companies and the Federal Emergency Management Agency that is based on semantics. But federal officials and the companies say they're following the letter of the law and that there is ample precedent for the denials.

At issue is the "earth movement" exclusion in standard flood policies. The exclusion denies

payment for loss of property caused directly by earth movement, even if the movement was caused by a flood.

No one knows exactly how many homeowners are affected, but Sen. Kirsten Gillibrand (D-N.Y.) said it could be in the thousands. She wrote a letter of protest late last month to FEMA administrator Craig Fugate.

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"It is unacceptable for the federal government to use such loopholes to deny responsible homeowners the benefits that they have paid for through their insurance premiums," Gillibrand wrote. "To deny these claims pulls the rug out from underneath homeowners who are relying on their flood insurance policies to repair and rebuild their homes" post-Sandy.

FEMA spokesman Dan Watson said the agency is following the law. In addition, some homes may have had pre-existing problems, meaning not all the damage was directly caused by Sandy, he said. The agency also said it encourages people to appeal the insurance claims decisions if they are not satisfied.

Erosion vs. 'scouring'

Some experts said the issue involves the difference between what FEMA and insurance adjusters determine is "erosion" and what is determined to be "scouring" of the soil beneath the foundation and its supports, if any. Scouring generally is defined as having occurred when there was flooding with enough water movement to carry subsoil away from the slab or foundation walls; this usually leaves visible signs.

"It's affecting a lot of people," said Robert Trautmann, an attorney in Red Bank, N.J., who said he is handling dozens of such cases for New Jersey homeowners.

If FEMA -- or private insurance companies that administer the flood insurance program on FEMA's behalf -- determines that foundation damage was caused by erosion, the homeowner will not be paid. If, on the other hand, the damage is caused by scouring, then a claim will be paid, Trautmann said.

For Stephen Parke, a schoolteacher whose house in Freeport was devastated by Sandy, the debate is absurd.

He said he has a FEMA-backed flood insurance policy through Fidelity that calls for \$180,000 in flood coverage. But Fidelity and FEMA are paying only \$94,000 -- mainly for Parke's damaged garage, which was detached from the house.

Parke figures it will take at least \$230,000 to rebuild his house, which was condemned by the Village of Freeport as unsafe. It is set to be demolished any day.

He and his longtime companion, Michele Mittleman, are temporarily living in a rented apartment in Westbury, which FEMA helps pay for. Mittleman's 11-year-old son is sleeping in a walk-in closet there, she said.

Earlier this month, Parke got a letter from FEMA stating that a large portion of his claim was being denied.

"It was a shell shock," Parke said. "I was flabbergasted."

A FEMA official who did not want to be identified said that by law, the Standard Flood Insurance Policy (SFIP) "only covers direct physical loss to buildings by flooding. For instance, damage caused by the surge or flow of flood water can scour around foundations or undermine a slab, directly damaging the foundation."

"By law, the SFIP does not cover earth movement, including destabilization caused by nearby flooding," the official added.

Ruling: Not flood-related

James A. Sadler, director of claims for FEMA's National Flood Insurance Program, wrote in a July 11 letter to Parke that much of the damage to Parke's home, according to an engineer's report, was due to "long-term differential movement of the supporting soils at the site, and long-term deterioration, deflection and distortion of the building components."

Sadler added that the problems "were unrelated to the subject flood event."

The FEMA official "is out of his mind," Parke said. "How does a wall of water come 14 feet high and hit the house and then you say the house wasn't rocked by the water?"

Jeff Moore, senior vice president of claims for Wright Flood, the company that has handled Parke's case on behalf of FEMA, said the company was following federal mandates.

"Wright Flood adjusts flood claims under the guidance of FEMA and the flood policy contract," Moore said in a statement. "Related to earth movement, there has been a long-standing exclusion in the flood policy which is very specific and cannot really be considered a 'loophole.' If FEMA revises their interpretation of the exclusion related to earth movement, we will, of course, follow their direction."

Trautmann said he is planning to challenge FEMA in federal court, saying the National Flood Insurance Program gives homeowners the false impression they are covered in the event of a devastating flood, when they often are not.

Minimizing payouts?

Amy Bach of United Policy Holders, a nonprofit in San Francisco that assists insurance policyholders, said the case of Parke and others in a similar situation appears to represent a pattern of insurance companies that work with FEMA seeking to minimize payouts.

"We can't have people thinking they have protection and then they find out they don't," she said.

Watson, the FEMA spokesman, said that according to estimates reported by private insurance companies that work with the agency, "99 percent of the more than 143,000 Sandy-related claims are closed, and approximately \$7.7 billion has been paid out to survivors."

[< back to article](#)

<<

HOME > NEWS > LOCAL

Sandy-Affected Homeowners Battle Insurance "Earth Movement" Loophole

The so-called "earth movement" clause in national flood insurance policies has prevented homeowners from getting back on their feet, they say

By Greg Cergol | Wednesday, Jul 24, 2013 | Updated 9:34 PM EST



NBC 4 New York

A New York senator is urging the Federal Emergency Management Agency to eliminate a federal flood insurance loophole affecting thousands of Sandy victims in New York and New Jersey. Greg Cergol reports.

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A New York senator is urging the Federal Emergency Management Agency to eliminate a federal flood insurance loophole affecting thousands of Sandy victims in New York and New Jersey.

The so-called "earth movement" clause in national flood insurance policies reads, "We do not insure for loss of property caused directly by earth movement even if the earth movement is caused by flood."

Sen. Kirsten Gillibrand blasted the clause as "bureaucratic fine print" that was preventing Sandy-affected homeowners from getting back on their feet.

Freeport homeowner Stephen Parke said it was "like getting punched in the stomach from Sandy, then getting hit in the face when they deny you."

Parke's home was condemned after Sandy floodwaters damaged its foundation. Then his insurance carrier in the FEMA-managed flood program refused to pay the full value of his \$180,000 policy.

Instead, Parke has received only \$85,000 on his claim. It's not enough to rebuild, he said. So nine months after Sandy, the damaged home remains vacant, with Parke, his partner and son living in a rental apartment.

The home is scheduled for demolition Wednesday.

"I had a policy. Why shouldn't our policy cover us?" asked Parke.

According to Parke, he will have to take a loan to replace the home Sandy destroyed.

"It's immoral," said Garden City lawyer Jerry Reisman, who represents about six homeowners fighting the earth movement clause.

"If you're buying flood insurance, you should be covered for a flood."

FEMA did not respond to requests for comment.

In the past, FEMA has reportedly said it is "following the law." Homeowners whose full claims are denied can appeal, but in Parke's case, his appeal was also denied last week.

"We thought we were protected," Parke said. "So did a lot of other people."

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Find this article at:

<http://www.nbcnewyork.com/news/local/Sandy-Flood-Insurance-Loophole-Earth-Movement-Homeowners-Denied-216663431.html>

Check the box to include the list of links referenced in the article.

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Local News

DENIED! Outrage after feds reject Sandy flood claims

<http://pix11.com/2013/06/21/denied-outrage-after-feds-reject-sandy-flood-claims/#axzz2WqeotCEE>

MANASQUAN, N.J. (PIX11) – Eight months later and many Sandy damaged homes are practically untouched since the storm because people are still waiting to get their insurance money to rebuild.

Now, PIX11 News has learned, thousands of people are being blindsided with denials even though they have foundation damage that is clearly caused by flood waters from Sandy.

And it is not their private for-profit insurance companies doing this to them. It is the federal government.

"This is a section of the foundation where it broke apart and cracked all the way down through the footings and shifted," explained Dina Sass, a homeowner in Manasquan, N.J.

Like most homeowners who live near the water, Sass gets her flood insurance through the federal government's National Flood Insurance Program.

"When you buy into a policy that is backed by the government, you think it's solid," said Sass.

That is why she was shocked when her claim on the foundation damage was denied. The reason, said the insurance program, was that the damage was directly caused by earth movement. The denial went on to say "we do not insure loss of property caused directly by earth movement even if the movement is caused by flood."

Sass said: "A flood policy, hmmm, and they exclude something that is caused by a flood? It is incredible."

The same government program is also requiring elevation in order to insure properties in the future.

"We are required to raise our house another four feet, whole new foundation, how pay for that? It's an incredible amount of cost," said Sass.

A cost that could be more than \$100,000 — and it would all be out of pocket.

"It's so wrong in every way," said longtime public adjuster Dave Charles, who says the Sass' house is undeniably damaged. He adds that thousands of people like the Sass family are dealing with denials on their foundation damage from the federal government.

"Every aspect of that policy is written by Congress," said Charles who thinks Congress made a mistake in recent years when they rewrote the policy and now it's having unintended consequences on those slammed by Sandy.

"I can't allow myself to believe that they are heinous enough to do this on purpose to so many people" he said.

The federal insurance program says every homeowner can appeal a denial.

This claim denial problem may well take an act of Congress to fix.

"You're talking about years and years from now and meanwhile I have three little kids, a sick husband and no house," said Sass, shaking her head.

PIX 11 reached out to the National Flood Insurance Program through FEMA's regional office in New York.

They told us they know about this concern but they are "not in a position to comment," and said to get in touch with the D.C. office.

PIX11 hasn't heard back from them.



The Florida Senate

Committee Agenda Request

To: Senator Alan Hays, Chair
Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: January 17, 2014

I respectfully request that **Senate Bill #542**, relating to Flood Insurance, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 22

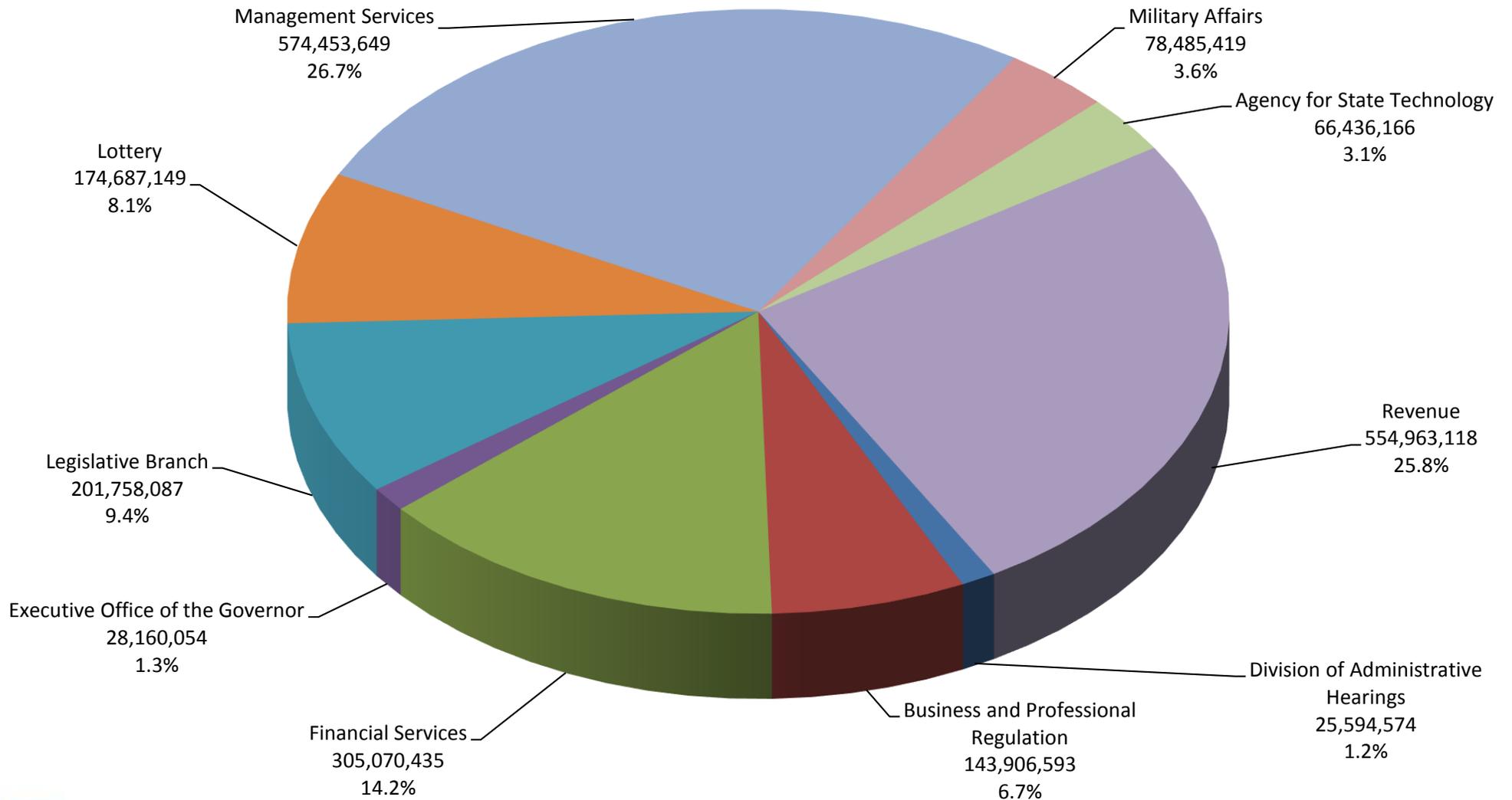
GOVERNOR RICK SCOTT

Fiscal Year 2014-2015

General Government Recommendations



Governor's Recommended Budget Fiscal Year 2014-15 General Government - \$2.2 billion



Foundation for Governor Scott's 2014-15 Priorities

Reducing Taxes and Fees

- Supporting Florida families and businesses by reducing the amount of money paid to the government.

Reducing State Debt

- Reducing the tax burden on our children and grandchildren.

Eliminating Government Waste

- Requiring state agencies to recommend reductions in spending each year to eliminate government waste.



Budget Recommendation Guidelines

- Fund new issues based on return on investment and/or critical need
- Streamline agencies through process efficiencies
- Contract and lease renegotiation initiatives
- Eliminate targeted vacant positions
- Establish the Agency for State Technology



Making Government More Efficient – General Government Detail

Agency	Reductions	
	Amount	Positions
Division of Administrative Hearings	(\$105,836)	-
Business and Professional Regulation	(1,254,504)	(5)
Financial Services (including OIR and OFR)	(5,520,381)	(50)
Lottery	(295,990)	(2)
Management Services	(6,756,372)	(54)
Military Affairs	(2,657,756)	(5)
Agency for State Technology, NSRC, SSRC	(6,697,539)	(12)
Revenue	(5,049,036)	(20)
Grand Total	(\$28,337,414)	(148)



HIGHLIGHTS

Department of Business and Professional Regulation

- Florida Homeowners' Construction Recovery Fund – \$3 million
- Florida State Boxing Commission deficit – \$158 thousand
- Real Estate regional office support – \$87 thousand
- Law Enforcement training and equipment – \$205 thousand
- Division of Alcoholic Beverages and Tobacco reduction due to Civilianization Initiative – (\$243 thousand)



HIGHLIGHTS

Department of Financial Services

- Insurance fraud analytics software, training and expenses – \$461 thousand
- Document Management System migration – \$135 thousand
- State Fire Marshal fixed capital outlay – \$3.2 million
- Arson Lab Information Management System – \$275 thousand
- Florida Clerks of Court Operations Corporation contract – \$1.8 million



HIGHLIGHTS

Lottery

- Full Service Vending Machines – \$4.9 million
- New draw machines for Fantasy 5 – \$119 thousand
- Motor vehicle replacement – \$391 thousand
- Information technology equipment replacement – \$352 thousand
- Scratch-off ticket contract increase – \$10.7 million
- Terminal games contract increase – \$1.8 million



HIGHLIGHTS

Department of Management Services

- Florida Interoperability Network and Mutual Aid – \$3.5 million
- Statewide Law Enforcement Radio System enhancement – \$2.2 million
- Florida Facilities Pool repair and renovation – \$8 million
- Historic Capitol repairs – \$805 thousand
- Real Estate Optimization plan staffing and resources – \$4.3 million
- Facilities Management System – \$4 million
- People First procurement assistance – \$234 thousand
- Energy efficiency reductions – (\$3.5 million)
- MyFloridaMarketPlace transaction fee reduction – (\$5 million)



HIGHLIGHTS

Department of Revenue

- One-Stop Business Registration Portal operations and maintenance – \$1.4 million
- Clerks of Court deficit transfer – \$29.6 million
- Fiscally constrained counties – \$25.1 million



HIGHLIGHTS

Agency for State Technology

- Staffing and additional resources – \$3.4 million/23 Full Time Positions
- Transfer of Southwood Shared Resource Center and Northwood Shared Resource Center
- Information technology security management plan – \$2 million



GOVERNOR RICK SCOTT

Fiscal Year 2014-2015

Policy and Budget Recommendations



Foundation for Governor Scott's 2014-15 Priorities

Reducing Taxes and Fees

- Supporting Florida families and businesses by reducing the amount of money paid to the government.

Reducing State Debt

- Reducing the tax burden on our children and grandchildren.

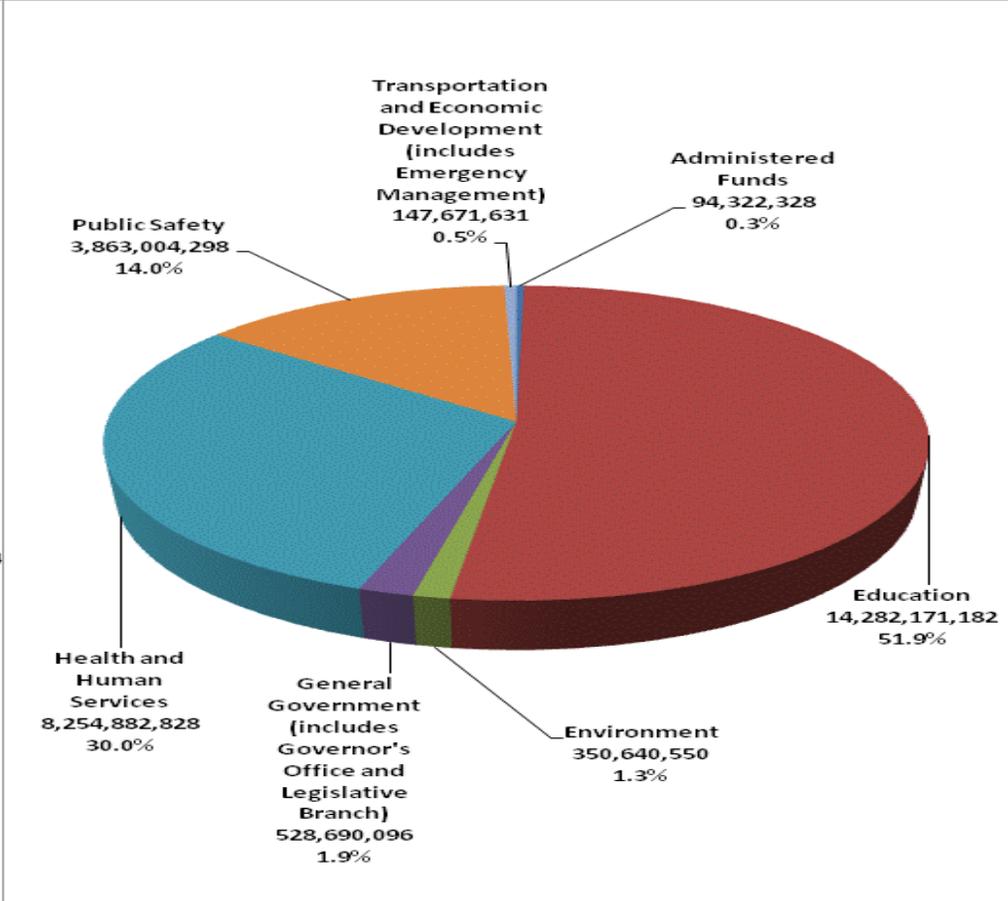
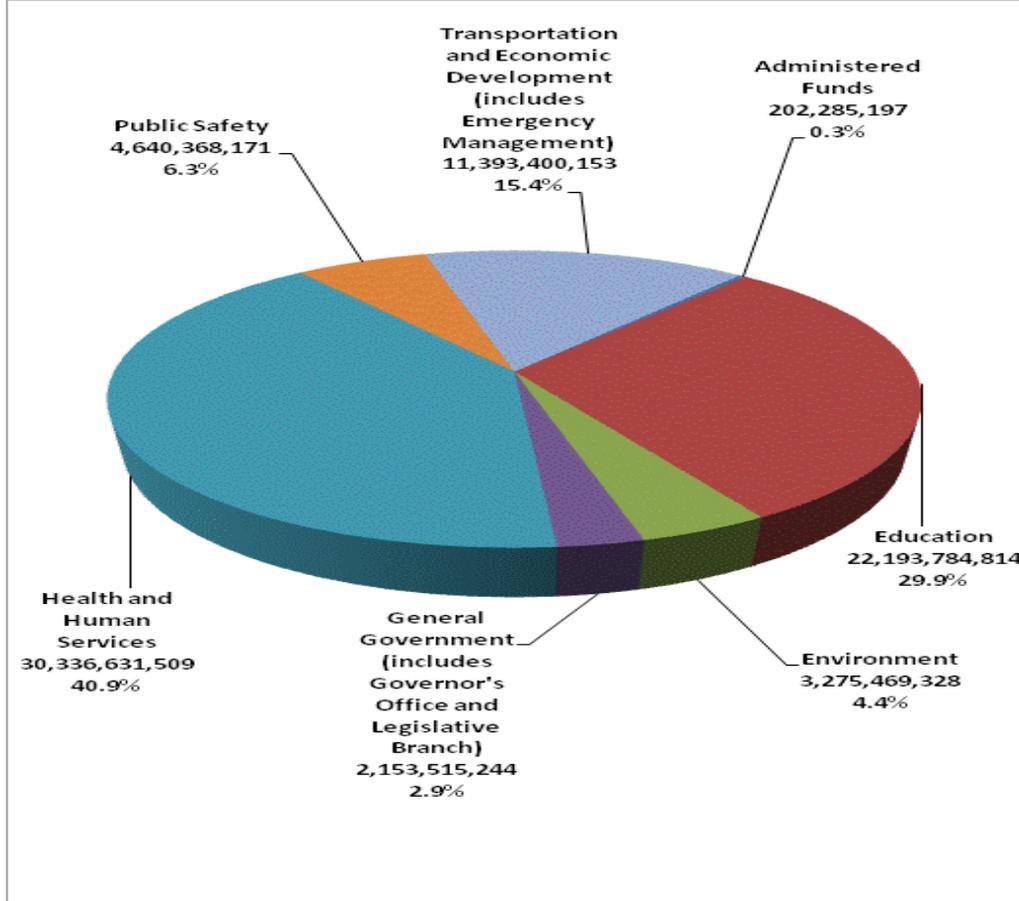
Eliminating Government Waste

- Requiring state agencies to recommend reductions in spending each year to eliminate government waste.

Governor's Budget Recommendations Fiscal Year 2014-15 by Policy Area

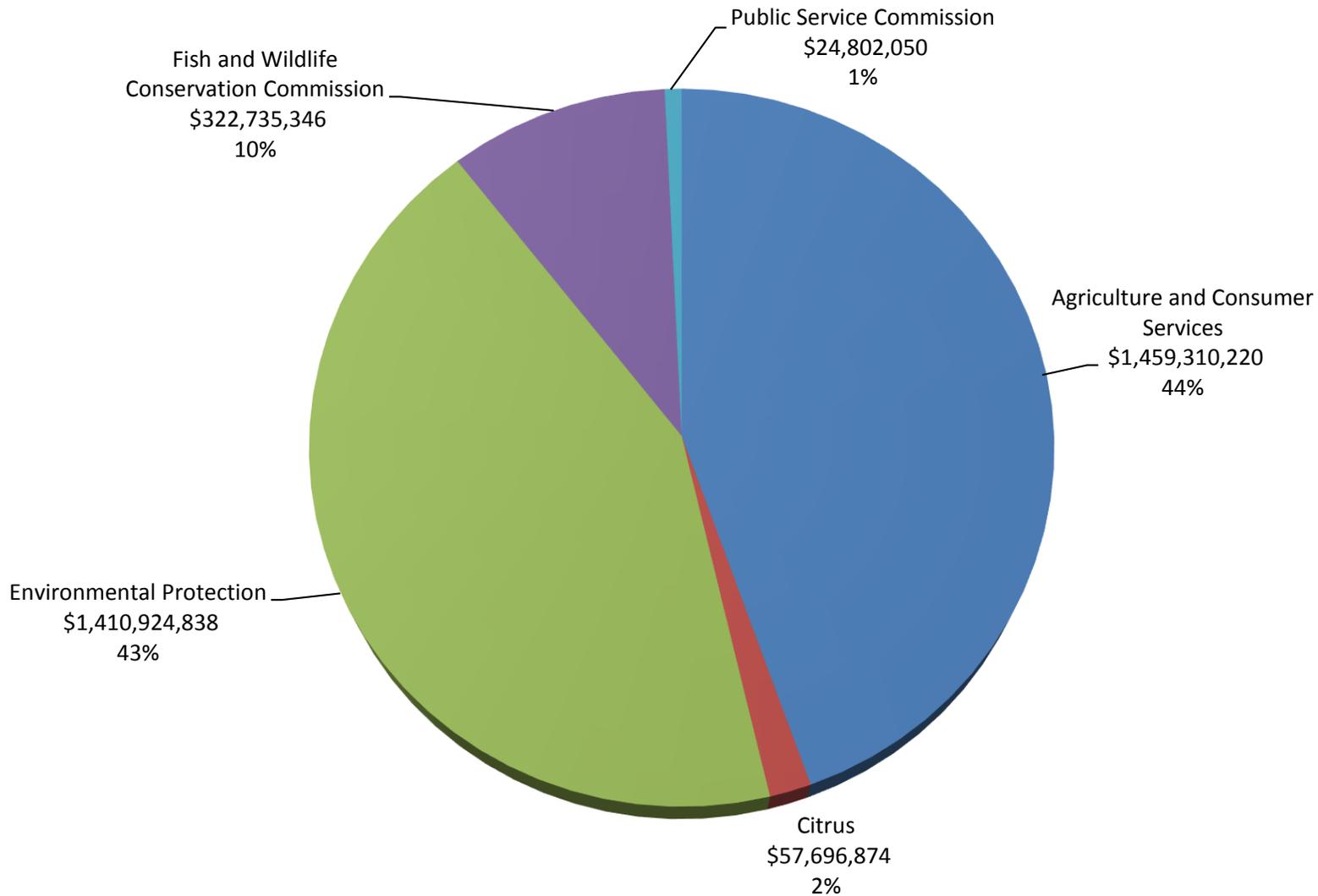
- Total Budget - \$74.2 billion

- General Revenue - \$27.5 billion

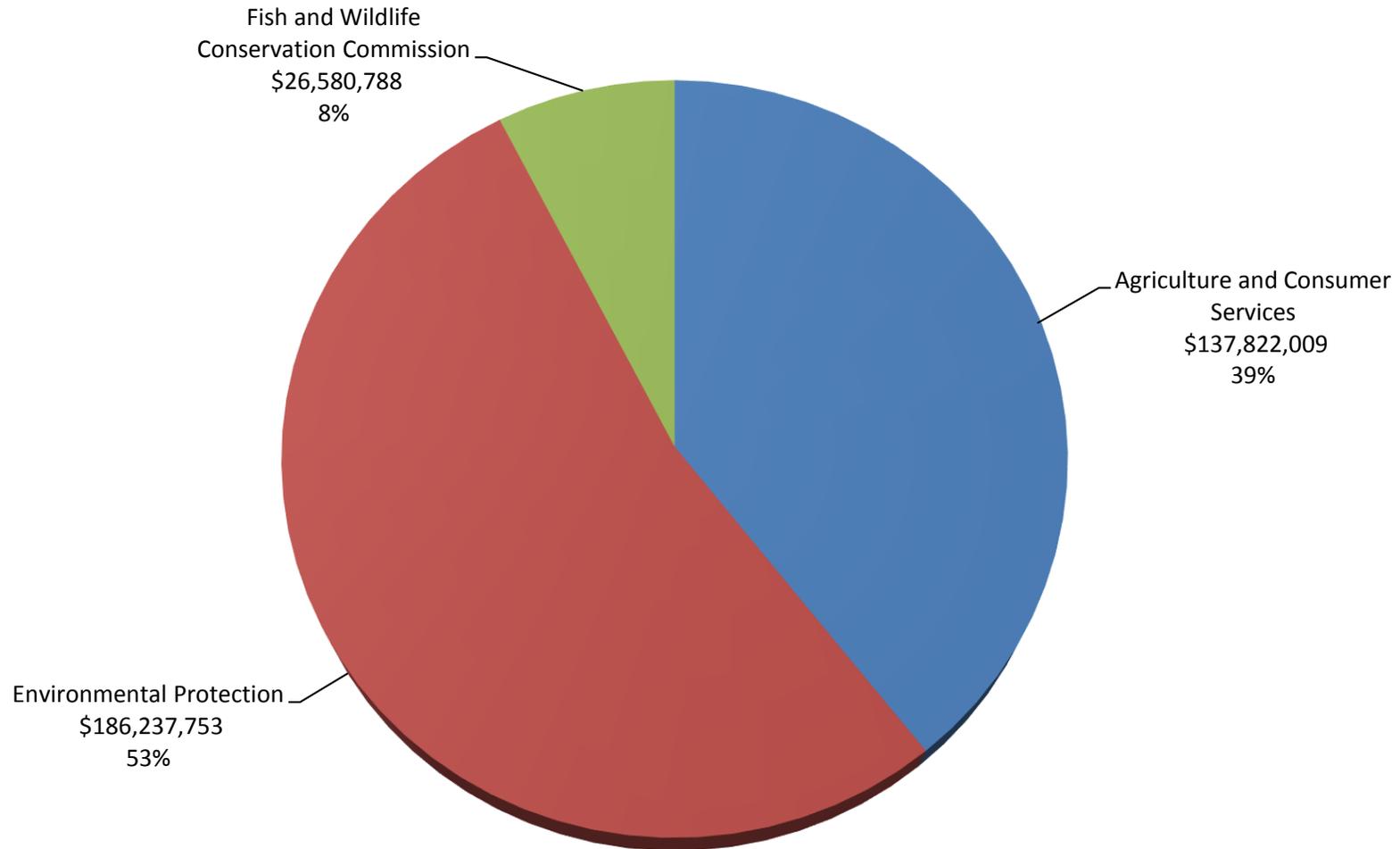


*Education Local Funding not included in above total: K-12 Local Funding \$8.2 billion; Florida College System Tuition \$851 million; K-12 Workforce Tuition \$47.8million (total \$ 9.1 billion).

Governor's Recommended Budget Fiscal Year 2014-15 Environment - \$3.3 Billion



Governor's Recommended Budget Fiscal Year 2014-15 General Revenue - \$350.6 Million



Environmental Protection

\$1.4 Billion

Investing in Florida's water and unique ecosystems.

- **\$286 million** for Restoring Waterways and Water Supply
- **\$130 million** for Everglades Restoration
- **\$55 million** for Springs Restoration
- **\$50 million** for Keys Wastewater Treatment Plan

Environmental Protection

\$1.4 Billion

Investing in Florida's natural lands and improving recreational opportunities for Florida families and tourists.

- **\$70 million** for Florida Forever
- **\$25 million** for Beaches
- **\$19 million** for State Park Repairs and Enhancements
- **\$750,000** for the Partnership in Parks Program
- **\$250,000** for Ecotourism

Environmental Protection

\$1.4 Billion

Investing in the clean up of contaminated sites throughout Florida.

- **\$125 million** for Petroleum Tank Cleanup Projects
- **\$6 million** for Dry Cleaning Site Cleanup
- **\$4 million** for Hazardous Waste Cleanup
- **\$2.3 million** for Landfill Closures

Environmental Protection

Reductions

- Reduction of \$8.6 million
 - Vacant Positions (\$1.9M), (52.5) FTE
 - Real Estate Initiative Savings (\$1.1 M)
 - Reduce OPS (\$1.3M)
 - Reduce Recurring Monitoring Networks (\$3.3M)

Agriculture & Consumer Services

\$1.5 Billion

Investing in Florida's Citrus Industry to fight Citrus Greening.

- **\$4 million** for Citrus Research
- **\$6.1 million** for Citrus Health Response Program
- **\$2 million** for Expansion of Budwood Facility

Agriculture & Consumer Services

\$1.5 Billion

Investing in Agricultural Resources and Best Management Practices.

- **\$4 million** for Statewide Agricultural BMP's
- **\$3 million** for Northern Everglades and Estuaries Protections Area BMP's
- **\$5 million** for Springs Protection BMP's
- **\$6.9 million** for Oyster Reseeding and Rehabilitation
- **\$2 million** for Replacement of Wildfire Suppression Equipment

Agriculture & Consumer Services

Reductions

- Reduction of \$3.9 million
 - Vacant Positions (\$1.5M), (69) FTE
 - Soil-Based Monitoring Project (\$2M)
 - Excess Unfunded Federal Budget Authority (\$413,000)

Citrus

\$57.7 Million

No Additional Funding Issues for FY 14-15

Reductions

- Reduction of \$3.7 million
 - Unfunded Budget Due to Reduced Revenues (\$3.1M)
 - Vacant Positions (\$610,963), (9) FTE

Public Service Commission

\$24.8 Million

No Additional Funding Issues for FY 14-15

Reductions

- Reduction of \$1.3 million
 - Statewide Real Estate Initiative (\$181,454)
 - Completion of Federal Training Funding (\$350,000)
 - Vacant Positions (\$779,663), (21) FTE

Fish and Wildlife Conservation Commission

\$322.7 million

Investing in managing our natural resources.

- **Additional \$3.4 million** for Lake Restoration
- **Additional \$3 million** Invasive Plant Management
- **Additional \$2.8 million** for Wildlife Management Area Land Improvements

Fish and Wildlife Conservation Commission

\$322.7 million

Increases in protecting Florida's wildlife.

- **\$200,000** for Manatee Rehabilitation
- **\$200,000** to Marine Habitat Restoration Projects
- **\$160,000** to Control Invasive Lionfish

Fish and Wildlife Conservation Commission

\$322.7 million

Building economic infrastructure and increasing recreational opportunities.

- **\$5.1 million** for Boating Safety and Improvement Programs
- **\$200,000** for Youth Hunting and Fishing Programs
- **\$3.2 million** for Palm Beach County Shooting Park
- **\$800,000** for Artificial Reef Construction

Fish and Wildlife Conservation Commission

Reductions

- Reduction of \$437,109
 - Vacant Positions (\$374,951), (7) FTE

Environment Highlights

Major Issues Funded	Amount
Everglades Restoration	\$130 million
Florida Forever/Land Management	\$70 million
Springs Restoration	\$55 million
Keys Wastewater Treatment Plan	\$50 million
Beach Projects	\$25 million
Drinking Water/Waste Water Facility Construction	\$259.8 million
State Park Facilities Improvements	\$19 million
Citrus Research, Management and Production	\$12 million
Major Decreases	Amount
Various Program Savings	(\$18.1) million



Environmental Policy Unit Office of Policy & Budget

Noah Valenstein,
Policy Coordinator

Noah.Valenstein@laspbs.state.fl.us

(850) 717-9508

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-6-13

Meeting Date

General Government

Topic Governor's Recommended Budget

Agencies

Bill Number

TAB 4

(if applicable)

Name Laurie Grasel

Amendment Barcode

(if applicable)

Job Title Policy Coordinator

Address 1802 The Capitol

Street

Phone 717-9396

City

State

Zip

E-mail lauriegrasel@lasplb.state.fl.us

Speaking: For Against Information

Representing Governor's Office of Policy + Budget

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/6/2014

Meeting Date

Topic

Agency for State Technology

Bill Number

TAB 4

(if applicable)

Name

Jason M. Allison

Amendment Barcode

(if applicable)

Job Title

Policy Coordinator

Address

400 S. Monroe Street

Phone

717-9372

Street

LH

FL

32399

E-mail

jason.allison@laspbs.state.fl.us

City

State

Zip

Speaking:

For

Against

Information

Representing

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)



Status of Florida's Efforts to Address Challenges to Business Establishment and Expansion

A Presentation to the Senate Appropriations Subcommittee on General Government

Emily Leventhal, Ph.D.
Senior Legislative Analyst

February 6, 2014

Background: State of Business

- Florida's business climate and the ease of establishing new businesses have long been topics of interest
- Numerous studies have addressed these issues, yielding varied results
 - Associations conduct surveys to obtain information about businesses' concerns
 - Legislature has solicited business input
- The Legislature recently took action to reduce workforce and other barriers

Project Scope

- Primary barriers to business expansion and establishment
- Case study: Residential construction industry
- Florida state agency efforts to address business barriers
- Other states' efforts to address business barriers
- Additional options to minimize barriers

Florida Businesses Identified Several Major Business Barriers

- Access to capital – financing a problem for small businesses
- Workforce supply and quality – in some specialty areas
- Regulatory issues – environmental permitting, local variation

Residential Contractors' Views Varied on Regulatory Issues

- State and local licensing requirements
 - Necessity of local licenses for activities not licensed by the state
 - Local reciprocity
- Permitting and Zoning processes
 - Limited online document submission
 - No concurrent review
- Inspection procedures
 - Variation across counties

Florida Agencies Have Implemented Initiatives to Reduce Business Barriers

DACS	<ul style="list-style-type: none">• Developed online licensure and fee payment for regulated entities
DBPR	<ul style="list-style-type: none">• Reviewed and streamlined license application processes
DEP	<ul style="list-style-type: none">• Developed a portal for online permit application and payment• Providing pre-application workshops for permit seekers
DOR	<ul style="list-style-type: none">• Continuing to develop the one-stop business registration portal

Other States Have Also Taken Steps to Address Business Barriers

- Established taskforces that examined regulatory reform and/or improving competitiveness
- Reviewed state agency rules that were considered barriers to job creation
- Developed legislative or policy initiatives

Recent Legislative Efforts

- Beginning an initiative to better prepare Floridians for the workforce
- Expanding access to capital
- Reducing tax burdens
- Improving the effectiveness of economic incentives

Legislative Considerations

- Monitoring the impact of state agency initiatives
- Improving electronic access to local regulatory and business information

Questions?

The image shows the top portion of the Florida State Capitol building, featuring its iconic dome and classical architectural elements. The building is set against a clear blue sky with scattered white clouds. The image is positioned on the left side of the slide, partially overlapping a vertical blue bar.

oppaga

THE FLORIDA LEGISLATURE'S OFFICE OF PROGRAM POLICY ANALYSIS & GOVERNMENT ACCOUNTABILITY

OPPAGA supports the Florida Legislature by providing data, evaluative research, and objective analyses that assist legislative budget and policy deliberations.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and Conservation, Chair
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

SENATOR CHARLES S. DEAN, SR.
5th District

January 31, 2014

The Honorable Alan Hays
320 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399-1100

SENATE APPROPRIATION RECEIVED
JAN 31 PM 1:00
STAFF DIR. STAFF

Dear Chairman Hays,

The purpose of this letter is to seek your permission to be excused from the scheduled Appropriations Subcommittee on General Government Committee meeting on February 6, 2014. Due to unforeseen circumstances, I will not be able to attend.

Should you have any questions concerning this matter, please do not hesitate to contact me personally.

Sincerely,

Handwritten signature of Charles S. Dean

Charles S. Dean
State Senator District 5

Handwritten initials 'OK' and a signature

cc: Jamie DeLoach, Staff Director
Chris Clark, President's Office

- REPLY TO:
405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: EL 110

Case:

Type:

Caption: Senate Appropriations Subcommittee on General Government Appropriations

Judge:

Started: 2/6/2014 9:02:18 AM

Ends: 2/6/2014 10:55:52 AM

Length: 01:53:35

9:02:20 AM Meeting called to order

9:02:59 AM Chmn. Hays

9:03:09 AM Tab 2 SB 444 Workers' Compensation by Senator Galvano

9:05:00 AM Amendment barcode 188834

9:09:38 AM Tab 3 SB 542 Flood Insurance by Senator Brandes

9:16:53 AM

10:27:34 AM Tab 1 SB 250 Henry Morrison Flagler Memorial by Senator Abruzzo

10:33:34 AM Tab 4 Governor's FY 2014-15 budget recommendations by Laurie Grasel