

SB 102 by Detert; (Identical to H 0095) Charitable Contributions

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|--------|---|---|-----|------------|-------------------|----------------|
| 874742 | A | S | RCS | BI, Detert | Delete L.38 - 39: | 03/14 11:39 AM |
| 487838 | A | S | RCS | BI, Detert | Delete L.45 - 54: | 03/14 11:39 AM |
| 906446 | A | S | RCS | BI, Detert | Delete L.138: | 03/14 11:39 AM |

SB 378 by Bean; (Similar to CS/H 0573) Manufactured and Mobile Homes

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|--------|---|---|-----|-------------|---------------------|----------------|
| 783282 | A | S | RCS | BI, Hays | Delete L.489 - 529: | 03/14 11:39 AM |
| 559150 | A | S | RCS | BI, Richter | Delete L.587 - 608: | 03/14 11:39 AM |

CS/SB 398 by HP, Bean; (Similar to CS/H 0625) Physician Assistants

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|--------|---|---|-----|------------|--------------|----------------|
| 542866 | A | S | RCS | BI, Negron | Delete L.72: | 03/14 11:39 AM |
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SB 918 by Garcia; (Identical to H 0251) Public Depositories**SB 706 by Montford;** (Identical to CS/H 0341) Uninsured Motorist Insurance Coverage**SB 936 by Lee (CO-INTRODUCERS) Margolis;** (Identical to H 0913) Holocaust Victims Assistance Act**SB 422 by Benacquisto (CO-INTRODUCERS) Hays, Bradley, Simpson, Bullard, Soto, Gibson, Detert, Ring, Clemens, Negron, Evers, Margolis, Abruzzo, Stargel, Thompson, Flores, Sobel, Hukill, Altman, Smith, Diaz de la Portilla, Braynon, Garcia, Montford;** (Similar to CS/H 0301) Cancer Treatment**SB 1262 by Hays;** (Compare to H 1055) Florida Hurricane Catastrophe Fund

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|--------|-----|---|--|----------|-------------------------|----------------|
| 548468 | D | S | | BI, Ring | Delete everything after | 03/12 01:55 PM |
| 588276 | SA | S | | BI, Hays | Delete L.28 - 1017: | 03/13 03:48 PM |
| 398790 | ASA | S | | BI, Ring | Delete L.5 - 165: | 03/20 03:18 PM |
| 303624 | D | S | | BI, Hays | Delete everything after | 03/13 02:28 PM |

SB 810 by Simmons; (Similar to CS/H 0343) Wrap-up Insurance Policies

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|--------|---|---|-----|-------------|-------------------|----------------|
| 914600 | A | S | RCS | BI, Simmons | Delete L.19 - 26: | 03/14 11:39 AM |
| 266422 | A | S | RCS | BI, Simmons | Delete L.52 - 54: | 03/14 11:39 AM |

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE
Senator Simmons, Chair
Senator Clemens, Vice Chair

MEETING DATE: Thursday, March 14, 2013
TIME: 8:00 —10:30 a.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Simmons, Chair; Senator Clemens, Vice Chair; Senators Benacquisto, Detert, Diaz de la Portilla, Hays, Lee, Margolis, Montford, Negrón, Richter, and Ring

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|--|--------------------------|
| 1 | SB 102 Detert (Identical H 95) | Charitable Contributions; Defining the terms "charitable contribution" and "qualified religious or charitable entity or organization"; providing that a transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer, etc. BI 03/14/2013 Fav/CS CM RC | Fav/CS Yeas 9 Nays 2 |
| 2 | SB 378 Bean (Similar CS/H 573) | Manufactured and Mobile Homes; Requiring the Citizens Property Insurance Corporation to provide coverage for mobile homes and related structures; specifying the procedure for requesting and obtaining funds from the Florida Mobile Home Relocation Trust Fund to pay for the operational costs of the Florida Mobile Home Relocation Corporation and the relocation costs of mobile home owners, etc. BI 03/14/2013 Fav/CS RI AP RC | Fav/CS Yeas 10 Nays 1 |
| 3 | CS/SB 398 Health Policy / Bean (Similar CS/H 625) | Physician Assistants; Authorizing a supervisory physician to delegate to a licensed physician assistant the authority to order medications for the supervisory physician's patient in a facility licensed under provisions relating to Hospital Licensing and Regulation; providing that an order is not a prescription; authorizing a licensed physician assistant to order medication under the direction of the supervisory physician, etc. HP 02/21/2013 Fav/CS BI 03/14/2013 Fav/CS JU | Fav/CS Yeas 10 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Thursday, March 14, 2013, 8:00 —10:30 a.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---|--|-----------------------------|
| 4 | SB 918 Garcia (Identical H 251) | Public Depositories; Revising definitions applicable to the Florida Security for Public Deposits Act; revising credit union reporting requirements; revising evidence of insurance required to be submitted by a public depositor to the Chief Financial Officer, etc. BI 03/14/2013 Temporarily Postponed RC | Temporarily Postponed |
| 5 | SB 706 Montford (Identical H 341) | Uninsured Motorist Insurance Coverage; Providing that, under certain circumstances, specified persons who elect non-stacking limitations on their uninsured motorist insurance coverage are conclusively presumed to have made an informed, knowing acceptance of the limitations on behalf of all insureds, etc. BI 03/14/2013 Favorable JU RC | Favorable Yeas 11 Nays 0 |
| 6 | SB 936 Lee (Identical H 913) | Holocaust Victims Assistance Act; Citing this act as the "Holocaust Victims Assistance Act"; broadening the act to include financial claims and assets and other property, and to address the effect of nonpayment of claims or nonreturn of property on victims; deleting a time limitation on insurers for providing certain information to the Department of Financial Services and requiring insurers to provide a report under certain circumstances; revising the content and timing of the annual report to the Legislature, etc. BI 03/14/2013 Favorable AGG AP | Favorable Yeas 11 Nays 0 |
| 7 | SB 422 Benacquisto (Identical H 301) | Cancer Treatment; Citing this act as the "Cancer Treatment Fairness Act"; requiring that an individual or group insurance policy or contract or a health maintenance contract that provides coverage for cancer treatment medications provide coverage for orally administered cancer treatment medications on a basis no less favorable than that required by the policy or contract for intravenously administered or injected cancer treatment medications; prohibiting insurers, health maintenance organizations, and certain other entities from engaging in specified actions to avoid compliance with this act, etc. HP 03/07/2013 Favorable BI 03/14/2013 Favorable AP | Favorable Yeas 11 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Thursday, March 14, 2013, 8:00 —10:30 a.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|--|--------------------------|
| 8 | SB 1262 Hays (Compare H 1055, H 1107, S 1770) | Florida Hurricane Catastrophe Fund; Revising the definitions for "corporation," "covered policy," and "retention"; providing for calculation of an insurer's reimbursement premium and retention under the reimbursement contract; revising coverage levels available under the reimbursement contract; revising aggregate coverage limits; providing for the phase-in of changes to coverage levels and limits; changing the name of the Florida Hurricane Catastrophe Fund Finance Corporation to the State Board of Administration Finance Corporation, etc. BI 03/14/2013 Temporarily Postponed AP | Temporarily Postponed |
| 9 | SB 810 Simmons (Similar CS/H 343) | Wrap-up Insurance Policies; Providing that wrap-up insurance policies may include workers' compensation claim deductibles equal to or greater than a specified amount if specified standards are met, etc. BI 03/14/2013 Fav/CS CM | Fav/CS Yeas 10 Nays 0 |

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 Committee on Banking and Insurance

BILL: CS/SB 102

INTRODUCER: Banking and Insurance Committee and Senator Detert

SUBJECT: Charitable Contribution

DATE: March 14, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|---------------|
| 1. | Oh | Burgess | BI | Fav/CS |
| 2. | | | CM | |
| 3. | | | RC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 102 amends the Florida Uniform Fraudulent Transfer Act (FUFTA) by providing protection against creditors' clawback actions for charitable contributions received in good faith by a qualified religious or charitable organization. A charitable contribution made by a natural person, however, is subject to clawback actions if received within 2 years of the commencement of an action under FUFTA, a bankruptcy petition, or an insolvency proceeding, unless the transfer was consistent with the debtor's practices in making charitable contributions or the transfer did not exceed 15 percent of the debtor's gross annual income. The bill defines "charitable contribution" and "qualified religious or charitable entity" consistent with how those terms are defined in the Internal Revenue Code.

This bill substantially amends the following sections of the Florida Statutes: 726.102, 726.109, 213.758, 718.704, and 721.05.

II. Present Situation:

Florida Uniform Fraudulent Transfer Act

The Uniform Fraudulent Transfer Act (UFTA) has been adopted by 44 states and the U.S. Virgin Islands, and was adopted by Florida in 1987.¹ The Florida Uniform Fraudulent Transfer Act (FUFTA) provides a creditor with a means to reach assets that a debtor has transferred to another person to keep the assets from being used to satisfy a debt to the creditor, and defines the circumstances for application of the law. Under FUFTA, a transfer made or an obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.²

In the situations described above, FUFTA provides a statutory remedy for creditors, primarily through a “clawback” action, whereby a prevailing creditor may have a debtor’s fraudulent transfer or obligation made to a third party voided and surrendered back to the creditor. This remedy is subject to a 4 year statute of limitations, unless otherwise specified in s. 726.110, F.S.

FUFTA also provides protection for an innocent third party transferee, by specifying that a transfer is not voidable when the transferee is “a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.”³ However, FUFTA does not provide a specific exception for transfers received by charitable organizations, which generally do not give value in exchange for contributions. As a result, a charitable organization can be subject to a clawback action under FUFTA, even when it has already spent the contribution to provide its charitable service. Under an Illinois law that is similar to Florida’s, the U.S. Court of Appeals for the Seventh Circuit ruled in favor of a creditor in a clawback action, even though the charitable organization received the contribution in good faith.⁴

Federal Bankruptcy Code

Like the UFTA, the Bankruptcy Code (11 *U.S.C.* ss.101 *et seq.*) allows certain fraudulent transfers made by a debtor to be voided. However, unlike the FUFTA, which relies on individual creditors to bring actions to void the transfer, the Bankruptcy Code empowers the bankruptcy trustee to bring the action to void the transfers for the benefit of all the debtor's creditors. The

¹ Chapter 87-79, Laws of Florida. The short title for chapter 726, F.S., is the “Uniform Fraudulent Transfer Act.”

² s. 726.105, F.S.

³ s. 726.109, F.S.

⁴ *Scholes v. Lehmann*, 56 F.3d 750, 761 (7th Cir. 1995).

three most important sections of the Bankruptcy Code dealing with fraudulent transactions are ss. 548, 544, and 727.

Section 548

Section 548 of the Bankruptcy Code deals exclusively with fraudulent transfers and allows a bankruptcy trustee to void transactions involving actual or constructive fraud. The elements that must be proved to void a fraudulent transfer under s. 548 are substantially similar to those that are required under the FUFTA. Section 548(c) also parallels the FUFTA by providing a “value” defense which is virtually identical to the defense provided by FUFTA, and is available to a transferee that takes in good faith for a reasonably equivalent value. Unlike the UFTA, however, a bankruptcy trustee may void only fraudulent transfers that occur within 2 years (1 year for cases commenced before April 20, 2006) from the date of the filing of the bankruptcy petition. A bankruptcy trustee seeking to void a transfer that occurred more than 1 year before a debtor's petition must rely on s. 544.

Section 544

Section 544 is commonly referred to as the “strong-arm clause” of the Bankruptcy Code and generally allows a bankruptcy trustee to set aside pre-bankruptcy transfers that are voidable under applicable state law. Section 544(b)(1) allows the trustee to set aside transfers that could be voided by any one of the debtor's creditors under the applicable state law, but only if there actually exists a creditor that could void the transfer in state court. If an appropriate creditor does exist, however, the action of the bankruptcy trustee is not limited to those of the actual creditor, and the trustee can void the entire transfer for the benefit of all creditors. Whereas s. 548 may be used only to void transfers that occur within 2 years from the date of filing, s. 544 actions would apply the state statute of limitations, which in Florida would allow transfers to be voided up to 4 years after the transfer. Moreover, for actions based on actual fraud, the limitation period is the longer of 4 years or 1 year after the transfer reasonably could have been discovered.⁵

Section 727

Under s. 727, a bankruptcy debtor may be denied a discharge if the debtor transferred property either within 1 year before the bankruptcy petition or during the bankruptcy case with actual intent to hinder, delay, or defraud a creditor. The effect of this penalty is to deny the debtor the benefits of bankruptcy and to allow creditors to continue to pursue the debtor even after bankruptcy. Some courts have interpreted this 1-year period broadly and denied a discharge based on earlier acts if there is proof of continuing concealment by the debtor.⁶

III. Effect of Proposed Changes:

Section 1 amends s. 726.102, F.S., relating to definitions. The bill defines “charitable contribution” consistent with its definition in the Internal Revenue Code (IRC), if the contribution is cash or a financial instrument defined in the IRC. The bill defines “qualified religious or charitable entity or organization” consistent with its definition in the IRC.

⁵ See s. 726.110(1), F.S.

⁶ See, e.g., *In re Hazen*, 37 B.R. 329 (Bankr. M.D. Fla. 1983), denying debtor discharge because it failed to list in its bankruptcy schedules its remaining interest in assets fraudulently transferred to trust, even though fraudulent transfer occurred more than one year before bankruptcy.

Section 2 amends s. 726.109, F.S., relating to the protection of a transferee receiving a contribution in good faith. The bill provides that the transfer of a charitable contribution received by a qualified religious or charitable entity or organization in good faith is not a fraudulent transfer. The bill, however, provides that a contribution from a natural person is a fraudulent transfer if it was received within 2 years of the commencement of an action under FUFTA, the filing of a bankruptcy petition, or the commencement of an insolvency action. The bill then provides an exception that such a transfer from a natural person within the 2 years is not fraudulent if:

- The transfer was consistent with the practices of the debtor; or
- The transfer was received in good faith and the contribution did not exceed 15 percent of the gross income of the debtor.

Sections 3-5 amends ss. 213.758, 718.704, and 721.05, F.S., respectively, to conform and correct cross-references.

Section 6 provides an effective date of July 1, 2013, and specifies that it will apply to all charitable contributions made on or after that date.

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:

Under the bill, creditors would not be able to void certain transfers that they are currently able to void. A creditor would not be able to void a charitable contribution received in good faith by a qualified religious or charitable organization, unless the contribution is from a natural person received within 2 years of the commencement of a FUFTA proceeding, a bankruptcy petition, or insolvency proceeding. Even under those circumstances, the contribution would not be voidable if the transfer was made in good faith and was less than 15 percent of the debtor's gross annual income for the year in

which the transfer was made, or was consistent with the debtor's practices in making charitable contributions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance on March 14, 2013:

The CS makes the following changes:

- The original bill provided that a transfer of a charitable contribution received in good faith by a qualified religious or charitable entity is not a fraudulent transfer under ch. 726, F.S.; the CS specifically identifies s. 726.105(1)(b), F.S., rather than the entire chapter generally.
- The CS provides technical conforming changes, replacing the original bill's use of the term "transferor" with the term "debtor."
- The CS amends the effective date to July 1, 2013, and provides that bill applies prospectively to all charitable contributions made on or after that date.

B. Amendments:

None.

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/14/2013

Meeting Date

Topic CHARITABLE CONTRIBUTIONS

Bill Number 102 (if applicable)

Name MIKE MCCARRON

Amendment Barcode (if applicable)

Job Title EXECUTIVE DIRECTOR

Address 201 W PARK AVE

Phone 850-205-6820

Street

City

TLC

State

Zip

E-mail mccarron@flacatholic.org

Speaking: [X] For [] Against [] Information

Representing FLORIDA CONFERENCE CATHOLIC BISHOPS

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] 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)

statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors³ (board) that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. Citizens is subject to regulation by the Florida Office of Insurance Regulation.

Citizens Accounts

Citizens offers three types of property and casualty insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.⁴ Assets may not be commingled or used to fund losses in another account.⁵ The three Citizens accounts are:

Personal Lines Account (PLA): Statewide account offering multiperil policies covering homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

- Policies in Force: 838,143
- In Force Premium: \$1,379,410,864
- Total Exposure: \$175,864,284,312

Coastal Account (COASTAL): Coastal area account offering personal residential wind-only policies, commercial residential wind-only policies and commercial nonresidential wind-only policies issued in limited eligible coastal areas. In addition, in August of 2007, Citizens began offering personal and commercial residential multiperil policies in the Coastal account.

- Policies in Force: 438,642
- In Force Premium: \$1,144,655,922
- Total Exposure: \$191,101,715,209

Commercial Lines Account (CLA): Statewide account offering multiperil policies covering commercial residential-condominium associations, apartment buildings and homeowners associations; and commercial non-residential policies.

- Policies in Force: 8,016
- In Force Premium: \$200,296,331
- Total Exposure: \$38,748,152,744

³ The Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives appoint two members each.

⁴ The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

⁵ Section 627.351(6)(b)2b., F.S.

Total All Accounts Combined:⁶

- Policies in Force: 1,284,801
- In Force Premium: \$2,724,363,117
- Total Exposure: \$405,714,152,265

Citizens Financial Resources

“Citizens’ financial resources include insurance premiums, investment income, operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. As of December 13, 2013, Citizens will have an accumulated surplus of approximately \$6.34 billion. For the 2013 hurricane season Citizens will have purchased \$1.75 billion in private reinsurance coverage along with the \$5.73 billion in mandatory layer reinsurance from the FHCF. For the 2013 hurricane season Citizens’ probable maximum loss (PML) from a 1-in-100 year event is \$20.42 billion.”

If a deficit occurs in a Citizens account, Citizens is authorized to levy assessments on its policyholders and on each line of property and casualty line of business other than workers’ compensation insurance and medical malpractice insurance.⁷ The assessments Citizens may impose and their sequence is as follows:

Citizens Surcharge: Requires up to 15 percent of premium surcharge for 12 months on all Citizens’ policies, collected upon issuance or renewal. This 15 percent assessment can be levied on each of the three Citizens’ accounts with a maximum assessment of 45 percent of premium.

Regular Assessment: If the Citizens’ surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers (except medical malpractice and workers comp). The assessment may be recouped from policyholders through a rate filing process of up to 2 percent of premium or 2 percent of the deficit, whichever is greater. This assessment is not levied against Citizens’ policyholders.

Emergency Assessment: Requires any remaining deficit for either of Citizens three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers comp), but including Citizens’ policyholders. This assessment is levied up to 10 percent of premium or 10 percent of the deficit per account, whichever is greater. The maximum emergency assessment that can be levied against Florida’s varicose insurance policyholders is 30 percent per policy.

⁶ Citizens weekly report as of 3/1/2013 on file with committee staff.

⁷ Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are.

Citizens Rates

Citizens' rates for coverage are required to be actuarially sound and are subject to the rate standards for property and casualty insurance in s. 627.062, F.S., except as otherwise provided.⁸ From 2007 until 2010, Citizens rates were frozen by statute⁹ at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to a level that is actuarially sound.¹⁰ Citizens must implement an annual rate increase which does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the FHCF coverage, pursuant to s. 215.555(5)(b), F.S.

Mobile Home Coverage

Current law limits Citizen's coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.¹¹

Coverage B (Other Structures)

Effective¹² February 1, 2012, Citizens ceased providing Coverage B for the following structures whether attached to the dwelling or not:

- Screened enclosures that are aluminum framed or not covered by the same or substantially the same materials as that of the primary dwelling.
- Carports that are aluminum or not covered by the same or substantially the same materials as that of the primary dwelling.
- Patios that have a roof covering not constructed of the same or substantially the same materials as that of the primary dwelling.
- Awnings.
- Structures with a roof or wall covering that are thatch, lattice, slats or a similar material.
- Slat houses, chickees, tiki huts, gazebos, cabanas, canopies, pergolas or similar structures constructed to be open to the weather.

Florida Mobile Home Relocation Corporation

Section 723.061(1)(d), F.S., provides that a mobile home owner and/or tenant can be evicted from his or her mobile home due to a change in the use of the land comprising the mobile home park. The park owner must give the affected mobile home owners and tenants at least 6 months'

⁸ Section 627.351(6)(n)1., F.S.

⁹ Section 627.351(6)(n)4., F.S.

¹⁰ Ch. 2009-87; s.10, L.O.F.

¹¹ Section 627.351(6)(c)16., F.S.

¹² http://www.myfloridacfo.com/division/consumers/insurancelibrary/insurance/residual_markets/citizens/citizens_-_coverage_reduced_or_eliminated_in_2012.htm

notice of the eviction due to the projected change in use, and of their need to secure other accommodations.¹³

In 2001, the Florida Mobile Home Relocation Corporation (corporation) was created to provide payments to mobile home owners who are required to move due to a change in the use of the land comprising their mobile home park, pursuant to s. 723.061(1)(d), F.S.¹⁴ The corporation is administered by a volunteer-based, six-member board.¹⁵ The board also employs or retains attorneys, accountants, and administrative personnel to perform its duties.¹⁶

The corporation receives funding from three sources:

- An annual one dollar surcharge on mobile home lots located in a mobile home park, collected by the Department of Business and Professional Regulation (department) pursuant to s. 723.007(2), F.S.;
- An annual one dollar surcharge on registration payments by mobile home owners collected by the Department of Highway Safety and Motor Vehicles; and
- Funds collected from mobile home park owners when the mobile home owner applies for payment of moving expenses or mobile home abandonment allowance.¹⁷

All funds are deposited into the Florida Mobile Home Relocation Trust Fund (Trust Fund), established by s. 723.06115, F.S. Chapter 723, F.S., does not specify how the funds are to be disbursed to the corporation. Instead, the transfer of funds is conducted pursuant to a Memorandum of Understanding, entered into by the department and the corporation.

Currently, funds are disbursed to the corporation on a monthly basis, less any amounts withheld for the required 8 percent contribution to the general revenue fund. According to the department, during fiscal year 2011-2012, \$759,376.86 was deposited into the Trust Fund while \$698,945.71 of that amount was transferred to the corporation.

Florida Qualified Public Depository

The Florida Security for Public Deposits Act (act)¹⁸ delineates the powers and duties of the CFO and the requirements that must be met by QPDs and public depositors.¹⁹ To provide protection of public deposits, each QPD is required to pledge collateral at a level commensurate with the amount of public deposits²⁰ held and a measure of its financial stability, as determined by the

¹³ Section 723.061(1)(d)2., Florida Statutes.

¹⁴ See generally: ss. 723.0611, 723.0612, and 723.06116, Florida Statutes.

¹⁵ Department of Business and Professional Regulation Internal Audit Report A-1112-BPR-032, page 2, dated October 4, 2012.

¹⁶ Id.

¹⁷ Department of Business and Professional Regulation Internal Audit Report A-1112-BPR-032, page 1, dated October 4, 2012.

¹⁸ Chapter 280, F.S.

¹⁹ A public depository is the official custodian of funds for a governmental unit who is responsible for handling public deposits.

²⁰ A public deposit is defined as the moneys of the State or of any State university, county, school district, community college, special district, metropolitan governments, or municipality, including agencies, boards, bureaus, commissions, and institutions of any of the foregoing, or of any court, and includes the moneys of all county officers, including constitutional

CFO. The CFO may demand payment under a letter of credit or direct a custodian to deposit or transfer collateral and proceeds of securities not previously credited upon the occurrence of one or more triggering events as provided for in law.²¹ The act provides that when the CFO determines that a QPD default or insolvency has occurred, the loss to public depositors is to be satisfied, insofar as possible, first through any applicable deposit insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD.²² The CFO is to provide coverage of any remaining loss by use of amounts assessed and collected from the other QPDs.

III. Effect of Proposed Changes:

Section 1. The CS amends s. 627.351, F.S., to require Citizens Property Insurance Corporation provide coverage for manufactured or mobile home dwellings for a minimum insured value of at least \$3,000. Such coverage must also include the following attached structures:

- Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as that of the primary dwelling.
- Carports that are aluminum or carports not covered by the same or substantially the same materials as that of the primary dwelling.
- Patios that have a roof covering constructed of materials that are not the same or substantially the same materials as that of the primary dwelling.

Section 2. The CS amends s. 723.06115, F.S., to specify the manner in which funds from the Florida Mobile Home Relocation Trust Fund (trust fund) are to be disbursed by the Department of Business and Professional Regulation (department) to the Florida Mobile Home Relocation Corporation (corporation). All funds transferred from the trust fund to the corporation shall be transferred electronically and maintained in a qualified public depository (QPD) specified by the corporation.

The CS requires before the beginning of each fiscal year, the corporation shall submit its annual operating budget, as approved by the corporation board, for the fiscal year and set forth that amount to the department in writing. The department shall electronically transfer one-fourth of the operating budget to the corporation each quarter. The department shall make the first one-fourth quarter transfer on the first business day of the fiscal year and make the remaining one-fourth quarter transfers before the second business day of the second, third, and fourth quarters. The corporation board may approve changes to the operational budget for a fiscal year by providing written notification of such changes to the department. The written notification must indicate the changes to the operational budget and the conditions that were unforeseen at the time the corporation developed the operational budget and why the changes are essential in order to continue operation of the corporation.

officers, that are placed on deposit in a bank, savings bank, or saving association and for which the bank, savings bank, or savings association is required to maintain reserves.

²¹ Examples of triggering events include those instances in which the CFO determines that an immediate danger to the public health, safety, or welfare exists; the QPD defaults or becomes insolvent; the QPD fails to pay an administrative penalty; the QPD fails to meet financial condition standards; and the QPD pledges, deposits, or has issued insufficient or unacceptable collateral to meet required collateral within the required time. [Section 280.041(6), F.S.]

²² Section 280.08, F.S.

The CS requires the corporation to periodically submit requests to the department for the electronic transfer of funds to the corporation needed to make payments to mobile home owners whose applications have been approved under the corporation's relocation program. The corporation's requests to the department for the additional transfer of such funds must include documentation sent to the department indicating the amount of funds needed, the name and location of the mobile home park, the number of approved applications for moving expenses or abandonment allowance, and summary information specifying the number and type, single-section or multisection, of homes moved or abandoned. The department shall process requests that include such documentation, subject to the availability of sufficient funds within the trust fund within 5 business days after receipt of the request.

Additionally, the CS allows the department to inspect the corporation's records 5 business days after the corporation receives written notice from the department.

Section 3. This bill takes effect 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:

Manufactured or mobile home owners will be able to purchase Citizens Property Insurance coverage for their screen enclosures, carports and patios.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Banking and Insurance on March 14, 2013:**

The CS requires Citizens provide coverage for manufactured or mobile home dwellings for a minimum insured value of at least \$3,000. Such coverage must also include the following attached structures:

- Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as that of the primary dwelling.
- Carports that are aluminum or carports not covered by the same or substantially the same materials as that of the primary dwelling.
- Patios that have a roof covering constructed of materials that are not the same or substantially the same materials as that of the primary dwelling.

The CS also requires that the corporation's board must approve the operational budget before submitting to the department. The corporation must provide to the department certain documentation before monies can be transferred from the trust fund for relocation payments. The CS specifies all funds transferred from the trust fund are to be transferred electronically and placed in a qualified public depository. Additionally, the CS allows the department to inspect the corporation's records at anytime with 5 business days notice.

B. Amendments:

None.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Mobile & Manufactured Homes Bill Number 378
(if applicable)

Name Christine Ashburn Amendment Barcode ~~548~~ 783282
(if applicable)

Job Title Director of legislative Affairs

Address 2312 Killean Center Blvd Phone 850-513-3746
Street

Tallahassee FL 32309 E-mail _____
City State Zip

Speaking: For Against Information

Representing Citizens Property Ins.

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)

3-14-13

Meeting Date

Topic Mobile Homes / Citizens

Bill Number S 378
(if applicable)

Name Joanne Simone

Amendment Barcode 783282
(if applicable)

Job Title Commissioner of City of MARGATE

Address 5790 Margate Blvd

Phone _____

Street

Margate

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing City of MARGATE

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)

3-14-13

Meeting Date

Topic mobile homes

Bill Number 378
(if applicable)

Name Lori Killinger

Amendment Barcode _____
(if applicable)

Job Title attorney

Address 315 S Calhoun St.

Phone 850 222 5702

Street

Tallahassee

FL

32308

City

State

Zip

E-mail lkillinger@llw-law.com

Speaking: For Against Information

Representing FL manufactured Housing Assn

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)

3/14/13

Meeting Date

Topic mobile homes

Bill Number SB 378
(if applicable)

Name Nancy Stewart

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1535 Killbuck Center Blvd

Phone 850-385-7805

Street
Tallahassee FL 32309
City State Zip

E-mail nancy.black.stewart@earthlink.net

Speaking: For Against Information

Representing Federation of Manufactured Home Owners of FL, Inc

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)

3-14-13
Meeting Date

Topic SUPPORT

Bill Number 378
(if applicable)

Name JANET MABRY

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2866 Bay Weather Circle
Street
Gulf Breeze
City State Zip

Phone 850-501-2502

E-mail _____

Speaking: For Against Information

Representing Florida Resident Owned Communities

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
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 Committee on Banking and Insurance

BILL: CS/CS/SB 398

INTRODUCER: Banking and Insurance Committee; Health Policy Committee; and Senator Bean

SUBJECT: Physician Assistants

DATE: March 15, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------|----------------|-----------|--------|
| 1. | McElhenny | Stovall | HP | Fav/CS |
| 2. | Matiyow | Burgess | BI | Fav/CS |
| 3. | | | JU | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 398 clarifies that a supervising physician may delegate to a physician assistant authority to order medications, including controlled substances, for patients in hospitals, ambulatory surgical centers and mobile surgical facilities.

This CS for CS substantially amends sections: 458.347 and 459.022 of the Florida Statutes:

II. Present Situation:

Background

A physician assistant (PA) is a medical professional who works as part of a team with a doctor. A PA may perform physical examinations, diagnose and treat illnesses, order and interpret lab tests, perform procedures, assist in surgery, provide patient education and counseling and make rounds in hospitals and nursing homes. A PA is a graduate of an accredited PA educational program who is nationally certified and state-licensed to practice medicine with the supervision

of a physician.¹ In Florida, PAs are licensed and regulated under the Medical Practice Act at s. 458.347, F.S., and the Osteopathic Medical Practice Act at s. 459.022, F.S.

A supervising physician may delegate only tasks and procedures to the physician assistant which are within the supervising physician's scope of practice. The physician assistant may work in any setting that is within the scope of practice of the supervising physician's practice. The Board of Medicine and the Board of Osteopathic Medicine (the boards) are required to adopt rules pertaining to the general principles that supervising physicians must use in developing the scope of practice of a physician assistant under direct supervision and under indirect supervision.² The supervising physician's scope of practice includes "those tasks and procedures which the supervising physician is qualified by training or experience to perform."³

Under current law, a supervisory physician may delegate to a fully licensed PA the authority to prescribe or dispense any medication used in the supervisory physician's practice unless such medication is listed on the a formulary of drugs that a physician assistant may not prescribe (generally referred to as the negative formulary).⁴ The Legislature specified that the negative formulary must include controlled substances, general anesthetics, and radiographic contrast materials.⁵ This same section of law that dictates at least part of the contents of the negative formulary, also provides:

This paragraph does not prohibit a supervisory physician from delegating to a physician assistant the authority to order medication for a hospitalized patient of the supervisory physician.

The boards adopted the following negative formulary:⁶

(1) PHYSICIAN ASSISTANTS APPROVED TO PRESCRIBE MEDICINAL DRUGS UNDER THE PROVISIONS OF SECTION 458.347(4)(e) OR 459.022(4)(e), F.S., ARE NOT AUTHORIZED TO PRESCRIBE THE FOLLOWING MEDICINAL DRUGS, IN PURE FORM OR COMBINATION:

- (a) Controlled substances, as defined in Chapter 893, F.S.;
- (b) General, spinal or epidural anesthetics;
- (c) Radiographic contrast materials.

(2) A supervising physician may delegate to a prescribing physician assistant only such authorized medicinal drugs as are used in the supervising physician's practice, not listed in subsection (1).

(3) Subject to the requirements of this subsection, Sections 458.347 and 459.022, F.S., and the rules enacted thereunder, drugs not appearing on this formulary may be delegated by a supervising physician to a prescribing physician assistant to prescribe.

¹ See American Academy of Physician Assistants available at: http://www.aapa.org/the_pa_profession/what_is_a_pa.aspx (last visited on Feb. 19, 2013).

² Sections 458.347(4) and 459.022(4), F.S.

³ Rules 64B8-30.012 and 64B15-6.010, F.A.C.

⁴ Sections 458.347(4)(e) and 459.022(4)(e), F.S.

⁵ Section 458.347(4)(f), F.S.

⁶ Rules 64B8-30.008 and 64B15-6.0038, F.A.C.

(4) Nothing herein prohibits a supervising physician from delegating to a physician assistant the authority to order medicinal drugs for a hospitalized patient of the supervising physician, nor does anything herein prohibit a supervising physician from delegating to a physician assistant the administration of a medicinal drug under the direction and supervision of the physician (emphasis added).

The Florida Academy of Physician Assistants indicates that certain hospitals have questioned the authority of PAs to order medications, specifically controlled substances, in the hospital setting given the uncertainty in the differing terminology between “prescribing” authority and “ordering” authority contained in the law and rules.

The terms “prescribe” and “order” are not defined in the Medical Practice Act or the Osteopathic Medical Practice Act.

An “order” is a term of art generally used in a hospital or institutional setting where an authorized practitioner orders a medication for an inpatient rather than prescribes a medication.⁷ The order is recorded in the medical record and the medication is administered to the patient by licensed nurses or other appropriately licensed health care personnel.

Under the Florida Pharmacy Act, a “prescription” includes any order for drugs or medicinal supplies written or transmitted by any means of communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist.⁸ The Florida Comprehensive Drug Abuse Prevention and Control Act, ch. 893, F.S., provides a similar definition for that term.⁹

DEA Registration

An individual practitioner who is an agent or employee of another practitioner (other than a mid-level practitioner¹⁰) registered to dispense controlled substances, may, when acting in the normal course of business or employment, administer or dispense (other than by issuance of a prescription) controlled substances if and to the extent authorized by state law, under the registration of the employer or principal practitioner in lieu of being registered himself or herself.

Practitioners (e.g., interns, residents, staff physicians, mid-level practitioners) who are agents or employees of a hospital or other institution, may, when acting in the usual course of business or employment, administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution in which he or she is employed, in lieu of individual registration, provided that:

⁷ See for example: 42 C.F.R. 482.23(c) relating to Conditions of Participation for Hospitals under Medicare, Standard: Preparation and administration of drugs and Rule 64B16-28.602, F.A.C., relating to rules of the Board of Pharmacy for Institutional Class II Dispensing.

⁸ Section 465.003(14), F.S.

⁹ Section 893.02(22), F.S.

¹⁰ Examples of mid-level practitioners include, but are not limited to: nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists, physician assistants.

- The dispensing, administering, or prescribing is in the usual course of professional practice; The practitioner is authorized to do so by the state in which he or she practices;
- The hospital or other institution has verified that the practitioner is permitted to administer, dispense, or prescribe controlled substances within the state;
- The practitioner acts only within the scope of employment in the hospital or other institution;
- The hospital or other institution authorizes the practitioner to administer, dispense, or prescribe under its registration and assigns a specific internal code number for each practitioner; and
- The hospital or other institution maintains a current list of internal codes and the corresponding practitioner.

III. Effect of Proposed Changes:

Sections 1 and 2 amend s. 458.347, F.S., relating to PAs under the medical practice act and s. 459.022, F.S., relating to PAs under the osteopathic medical practice act, respectively, to authorize a supervisory physician to delegate to his or her PA the authority to order medications for the supervisory physician's patient in any hospital, ambulatory surgical center, or mobile surgical facility notwithstanding any provision under the Pharmacy Practice Act or the Florida Comprehensive Drug Abuse Prevention and Control Act. Likewise, the PA is authorized to order any medication under these conditions. Accordingly, a PA could order a controlled substance for his or her supervising physician's patient in a hospital, ambulatory surgical center, or mobile surgical facility if the supervising physician delegated that authority to the PA. Since no specific authorization for prescribing controlled substances is included within ch. 893, F.S., the PA would need to operate under the supervising physician's DEA registration.

The effective date of the bill is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Banking and Insurance on March 14, 2013:

The CS clarifies the patient must be under the care of the supervising physician in order for the physician assistant to be able to order medication for that patient.

CS by Health Policy on February 21, 2013:

The CS provides that an order is not a prescription and authorizes the PA to order medications under the direction of the supervisory physician. The CS does not include new authority that may have expanded the scope of practice of a PA.

- B. Amendments:

None.

THE FLORIDA SENATE
APPEARANCE RECORD

WAIVE IN SUPPORT

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

3-14-2013

Meeting Date

Topic PHYSICIAN ASSISTANTS

Bill Number SB 398
(if applicable)

Name STEPHEN R. WINN

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHEE PARKWAY

Phone 878-7463

Street

TALLAHASSEE

FL

32301

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing FLORIDA OSTEOPATHIC MEDICAL 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.

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)

3/14/13

Meeting Date

Topic Physician Assistants Bill Number 398
Name Corinne Nixon Amendment Barcode _____
(if applicable)
(if applicable)

Job Title Lobbyist
Address 119 E. Park Ave Phone (850) 766-5795
Street

Tallahassee FL 32308 E-mail corinne.nixon@smallwin.com
City State Zip

Speaking: For Against Information

Representing Florida Academy of Physician Assistants

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-14-13

Meeting Date

Topic _____

Bill Number 398
(if applicable)

Name Monte Stevens

Amendment Barcode _____
(if applicable)

Job Title ~~SGO President~~ E. FMA

Address TALLAHASSEE FL 32308
Street

Phone 225-0158

City State Zip

E-mail MStevens@Flmedical.org

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.

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

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 Committee on Banking and Insurance

BILL: SB 918

INTRODUCER: Senator Garcia

SUBJECT: Public Depositories

DATE: March 8, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Johnson | Burgess | BI | Pre-meeting |
| 2. | _____ | _____ | RC | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

SB 918 revises provisions relating to the Florida Security for Public Deposits Act by expanding the definition of “qualified public depository,” to mean a “financial institution,” which would allow credit unions and other entities to be eligible to apply for designation by the Chief Financial Officer (CFO)¹ as a qualified public depository, contingent upon meeting all provisions and requirements under the act. Under current law, a qualified public depository means a bank, savings bank, or savings association that meets specific criteria.

After designation as a qualified public depository, a credit union or other financial institution would be eligible to receive deposits of state and local government public funds. According to advocates of the bill, 33 states currently allow credit unions to act as public depositories.

This bill substantially amends the following sections of the Florida Statutes: 280.02, 280.03, 280.052, 280.53, 280.07, 280.10, 280.13, 280.16, and 280.17.

II. Present Situation:

State and local governments are authorized to deposit public funds in excess of those required to meet disbursement needs or expenses in a qualified public depository pursuant to the Florida Security for Public Deposits Act (act).² For purposes of the act, a QPD means any bank, savings

¹ The CFO is the head of the Department of Financial Services pursuant to s. 20.121(1), F.S. The Division of Treasury of the department is responsible for administering the Florida Security for Public Deposits Act.

² Chapter 280, F.S.

bank, or savings association that meets certain requirements.³ The act delineates the powers and duties of the CFO and the requirements that must be met by qualified public depositories (QPDs) and public depositors.⁴ The full amount of the deposit must be insured by the Federal Deposit Insurance Corporation (FDIC), a federal government corporation. In addition, each QPD is required to pledge collateral at a level commensurate with the amount of public deposits⁵ held and a measure of its financial stability, as determined by the CFO. The CFO may demand payment under a letter of credit or direct a custodian to deposit or transfer collateral and proceeds of securities not previously credited upon the occurrence of one or more triggering events as provided for in law.⁶ The act provides that when the CFO determines that a QPD default or insolvency has occurred, the loss to public depositors is to be satisfied, insofar as possible, first through any applicable deposit insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD.⁷ The CFO is to provide coverage of any remaining loss by use of amounts assessed and collected from the other QPDs.

Public depositors are protected against loss caused by the default or insolvency of a qualified public depository. Losses are satisfied first through any applicable deposit insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting depository. If that is insufficient, the CFO provides coverage through assessment against the other qualified public depositories.

Chapter 657, F.S., is the Florida Credit Union Act (act), which authorizes the Office of Financial Regulation to regulate state-chartered credit unions. According to the act, the purpose of a credit union⁸ is to encourage thrift among its members, create sources of credit at fair and reasonable rates of interest, and provide an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition.

Deposits in a credit union are insured by the National Credit Union Share Insurance Fund (NCUSIF). Established by Congress in 1970 to insure member share accounts at federally insured credit unions, the NCUSIF is managed by the National Credit Union Administration (NCUA) under the direction of the three-person NCUA Board. NCUA regulates, charters, and insures the nation's federal credit unions. In addition, NCUA insures state-chartered credit unions that desire and qualify for federal insurance. The standard maximum share insurance amount is also \$250,000.

³ Section 280.02(26).

⁴ A public depositor is the official custodian of funds for a governmental unit who is responsible for handling public deposits.

⁵ A public deposit is defined as the moneys of the State or of any State university, county, school district, community college, special district, metropolitan governments, or municipality, including agencies, boards, bureaus, commissions, and institutions of any of the foregoing, or of any court, and includes the moneys of all county officers, including constitutional officers, that are placed on deposit in a bank, savings bank, or saving association and for which the bank, savings bank, or savings association is required to maintain reserves.

⁶ Examples of triggering events include those instances in which the CFO determines that an immediate danger to the public health, safety, or welfare exists; the QPD defaults or becomes insolvent; the QPD fails to pay an administrative penalty; the QPD fails to meet financial condition standards; and the QPD pledges, deposits, or has issued insufficient or unacceptable collateral to meet required collateral within the required time. [Section 280.041(6), F.S.]

⁷ Section 280.08, F.S.

⁸ Section 657.003, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 280.02, F.S., relating to definitions, to replace the terms, “bank,” “savings association,” “savings bank,” or “trust company” and to use the term, “financial institution.” Currently these entities are the only entities eligible to be QPDs. By using the term, “financial institution,” this would broaden the types of entities that would be eligible to become QPDs, to include credit unions. However, the term, “financial institution,” is not defined. Other conforming changes are provided.

Section 2 amends s. 280.03, F.S., relating to the exemptions from the requirements, and protection under, of the act, to exempt public deposits deposited in a financial institution by a trust department or trust company. Currently s. 280.03, F.S., provides an exemption from the requirements of ch. 280, F.S., for public deposits by a trust department or trust company made into a bank or savings association when those deposits are fully secured under the trust business laws. There is no provision for public deposits made into a credit union.

Section 3 amends s. 280.052, F.S., relating to orders to suspend or disqualify a bank or savings association that is a qualified public depository by replacing the term, “bank or savings association,” with the term, “financial institution.”

Section 4 amends s. 280.053, F.S., relating to the reinstatement and qualification of a bank or savings association that has been suspended or disqualified from acting as a qualified public depository, by replacing the term, “bank or savings association,” with the term, “financial institution.”

Section 5 amends s. 280.07, F.S., relating to mutual responsibility and guarantee of public depositories, to require any “financial institution” (instead of bank and savings association) that is designated as a qualified public depository must guarantee the public depositors against any default or insolvency of other qualified public depositories.

Section 6 amends s. 280.10, F.S., relating to merger, acquisition, or consolidation, to use the term “financial institution” in place of “bank, savings bank, or savings association.” This section addresses the effect of a bank, savings bank, or savings association that is a qualified public depository merging with, acquiring, or is consolidating with an entity that is not a qualified public depository.

Section 7 amends s. 280.13, F.S., relating to eligible collateral, to use the term “qualified public depositories” in place of “banks and savings associations.”

Section 8 amends s. 280.16, F.S. relating to reporting requirements of QPDs, to require the submission of a copy of the NCUA 5300 Call Report, and any amended reports, required to be filed with the NCUA, if such depository is a credit union. Currently, s. 280.16, F.S., lists the requirements that must be met by a qualified public depository, including a requirement that a qualified public depository submit to the Chief Financial Officer of Florida, a copy of the quarterly Consolidated Reports of Condition and Income, or a copy of the Thrift Financial Report as filed with federal banking regulatory agencies by a bank or savings association, respectively.

Section 9 amends s. 280.17, F.S., relating to notice requirements to public depositors and governmental units, to provide a technical conforming change. Presently, when a public deposit held in a QPD that has been declared in default or insolvent, each public depositor is required to submit to the CFO evidence of deposit insurance afforded the public deposit under the Federal Deposit Insurance Act, which is applicable to banks and savings associations. A reference to the Federal Credit Union Act is added for purposes of credit unions.

Section 10 provides that this act takes effective July 1, 2013.

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:

By revising the definition of “qualified public depository” to mean any financial institution, a broader range of entities would be eligible to become qualified public depositories, including credit unions, and offer their services to governmental entities.

According to information provided by advocates of the bill,⁹ 33 states authorize credit unions to accept public deposits. In 25 states, the laws expressly authorize public entities to deposit funds into credit unions as well as authorize credit unions to accept public deposits.

C. Government Sector Impact:

Not available. There would be an indeterminate cost associated with “credit union ranking” from outside services used by the Department of Financial Services to calculate financial strengths and weaknesses in order to determine the pledge percent of the collateral requirement. An indeterminate cost would be incurred to modify the Collateral

⁹ Credit Union National Association Survey of Public Deposit Laws. On file with Senate Committee on Banking and Insurance committee staff.

Administration Program in order to accommodate credit unions in the analysis and collateral tracking process.

VI. Technical Deficiencies:

Passage of this bill would result in any financial institutions, including a credit union, to become eligible to become a qualified public depository if certain requirements under ch. 280, F.S., were met. However, the term, financial institution is not defined.

Section 655.05(1)(i), F.S., defines the term, “financial institution” to mean a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq. It is unclear whether all of these types of entities would be eligible to become QPDs due to the limitations or restrictions on their activities, such as accepting deposits, pursuant to their state or federal charter.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. **Amendments:**

None.

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 Committee on Banking and Insurance

BILL: SB 706

INTRODUCER: Senator Montford

SUBJECT: Uninsured Motorist Insurance Coverage

DATE: March 8, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Knudson | Burgess | BI | Favorable |
| 2. | | | JU | |
| 3. | | | RC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

SB 706 deals with the rejection of stackable Uninsured Motorist (UM) benefits. Current law states that when the named insured, applicant, or lessee signs a form rejecting UM coverage, a conclusive presumption arises that “there was an informed knowing acceptance of such limitations” of coverage. The bill specifies that the signed form gives rise to a conclusive presumption that the rejection of stackable coverage benefits was made “on behalf of all insureds.” The bill addresses the *Travelers Commercial Insurance Company v. Harrington*¹ decision of the Florida First District Court of Appeal.

This bill substantially amends the following section of the Florida Statutes: 627.727

II. Present Situation:

Uninsured Motorist Coverage

Uninsured motorist or UM coverage provides a basis for persons to directly insure themselves against the effects of bodily injuries caused by others who are legally liable but uninsured or underinsured. Such coverage pays for medical expenses and lost wages, after PIP coverage is exhausted, and includes payment for pain and suffering.² UM also provides “excess coverage” which means that when a motorist is injured because of the negligence of another, the injured party is able to collect from the liability insurance of the negligent motorist and from his or her

¹ 86 So.3d 1274

² The insurer providing UM coverage has liability for damages in tort for pain and suffering only if the injury or disease is described in s. 627.737(2), F.S.

own uninsured motorist insurance if the negligent motorist is unable to provide full reimbursement.

Bodily injury liability policies must include UM coverage at limits equal to those for Bodily Injury (BI) liability insurance, unless the coverage is rejected or lower limits are elected by the insured. The rejection or selection of lower UM coverage limits must be made in writing on a form approved by the Office of Insurance Regulation. If a named insured signs the form, “it will be conclusively presumed that there was an informed knowing rejection of coverage or election of lower limits on behalf of all insureds.”³

Uninsured Motorist coverage is available in “stackable” and “non-stackable” coverages. Stackable UM coverage means that the coverage limits for each car insured under a motorist’s policy may be added together. Non-stackable UM coverage only pays up to the limits for one insured vehicle. Section 627.727(9), F.S., states that, “[i]nsurers may offer policies of uninsured motorist coverage...establishing that if the insured accepts the offer...coverage provided as to two or more motor vehicles shall not be added together to determine the limit of insurance coverage available to an injured person for any one accident...” If the insured elects non-stackable coverage, the insurer must provide at least a 20 percent coverage premium discount to the policyholder to account for the reduced coverage available under the policy. Under s. 627.727(9), F.S., UM coverage is stackable unless the insured waives stackable coverage in writing, and the written waiver establishes a conclusive presumption that “there was an informed, knowing acceptance of such limitations.”⁴

In *Travelers Commercial Insurance Company v. Harrington*, the First District Court of Appeal affirmed a trial court decision determining that stackable coverage benefits are available to an insured claimant under an insurance policy where the purchaser executed a signed waiver of stacking benefits, but the insured claimant did not waive such benefits. In *Harrington*, the daughter of an insured was injured in a car accident and sought recovery under an insurance policy purchased by her father who had purchased UM benefits but rejected stackable benefits in writing. The Court ruled that Ms. Harrington could recover stackable coverage benefits because the statutory language for a waiver of stackable UM coverage does not apply to other insureds under the policy who do not execute the rejection of stacking coverage.

The Court compared the provision governing written rejection⁵ of coverage in subsection (1) of s. 627.727, F.S., with the provision in subsection (9) governing written rejection of stackable coverage. The court noted that the conclusive presumption in subsection (1) that is created when the insured executes a signed, written form declining UM coverage or electing limits of such coverage that are lower than the BI coverage is “on behalf of all insureds.” The Court reasoned that the similar conclusive presumption in subsection (9) that is created when the insured executes a signed, written form declining stackable coverage only applies to the named insured because the statute does not specify that it is made on behalf of all insureds under the policy. The

³ See s. 627.727(1), F.S. The conclusive presumption related to the insured’s rejection of UM Coverage or election to obtain UM Coverage with lower limits than BI coverage was enacted in CS/HB 319 by the 1984 Legislature. See s. 1, ch. 84-41, Laws of Florida.

⁴ The conclusive presumption related to the insured’s rejection of stackable UM Coverage or election to obtain UM Coverage with lower limits than BI coverage was enacted in HB 1029 by the 1987 Legislature. See s. 1, ch. 87-213, Laws of Florida.

⁵ Or election of UM Coverage limits that are less than Bodily Injury coverage limits under the policy.

District Court of Appeal certified the stacking issue to the Florida Supreme Court, which has accepted jurisdiction.⁶

III. Effect of Proposed Changes:

Section 1. Amends s. 627.727, F.S., regarding the rejection of stackable Uninsured Motorist benefits. Current law states that when the named insured, applicant, or lessee signs a form rejecting coverage, a conclusive presumption arises that “there was an informed knowing acceptance of such limitations” of coverage. The bill specifies that the signed form gives rise to a conclusive presumption that the rejection of stackable coverage benefits was made “on behalf of all insureds.”

Section 2. The act 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:

The *Harrington* decision of the First District Court of Appeals may reduce the availability of non-stackable coverage. If the named insured or an applicant for an insurance policy cannot waive stackable UM coverage on behalf of other insureds under the policy, the loss costs associated with unstacked UM coverage are likely to rise. Florida law requires that insurers provide at least a 20 percent UM coverage premium discount if stackable benefits are waived. If the difference in loss costs between stacked and unstacked UM coverage loss costs is less than 20 percent, insurers may cease offering unstacked UM coverage. Consumers who want to purchase UM coverage would then be deprived of the choice of selecting the less expensive unstacked version of such coverage.

⁶ Florida Supreme Court Case Number SC12-1257

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-14-13
Meeting Date

Topic Uninsured Motorist

Bill Number 706
(if applicable)

Name Arnovan Brown

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S Monroe St
Street
Tallahassee FL
City State Zip

Phone _____

E-mail _____

Speaking: For Against Information

Representing PCIAA

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
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 Committee on Banking and Insurance

BILL: SB 936
INTRODUCER: Senator Lee and Senator Margolis
SUBJECT: Holocaust Victims Assistance Act
DATE: February 28, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Oh | Burgess | BI | Favorable |
| 2. | _____ | _____ | AGG | _____ |
| 3. | _____ | _____ | AP | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

SB 936 revises the Holocaust Victims Insurance Act to expand the scope of assistance that is provided by the Department of Financial Services (DFS) to Holocaust victims and their heirs. Under the current law, the DFS has authority to assist Holocaust victims and their heirs in identifying and obtaining potential and actual insurance claims. This bill broadens the DFS authority to include providing assistance to recover other financial claims, assets and property. The bill adds to the DFS assistance a component of education to mitigate the effects of nonpayment of claims or non-return of property. The bill changes the current requirement that an insurer must file an annual report to a requirement that the insurer must file a new report when there are any changes to the previous report, or when it is requested to do so by the DFS. The bill sets July 1, as the date that the DFS must file its annual report with the Legislature.

This bill substantially amends the following section of the Florida Statutes: 26.9543.

II. Present Situation:

In the 1930s and 1940s, Europeans purchased insurance to safeguard their family’s future, assist in retirement planning, or save for the education of their children. After World War II, European insurers often rejected insurance claims of Holocaust victims and heirs who lacked the documentation required by the insurer to substantiate the claim. In denying these claims, insurers have cited the following reasons: nationalization of insurers’ assets; lack of policyholder documentation; policy cancellation from nonpayment of premiums; and invalidation of claims due to the statute of limitations. Many years later, Europe’s largest insurers, many with affiliates in the United States, have been named as defendants in class action lawsuits that seek recovery of unpaid Holocaust-era insurance claims.

United States' insurance regulators and their national association, the National Association of Insurance Commissioners (NAIC), have established various means to assist Holocaust victims and their heirs to obtain insurance claims to which they are entitled. In October, 1998, the NAIC established the International Commission on Holocaust Era Insurance Claims (ICHEIC) to determine the current status of Holocaust-era insurance and to promulgate a valuation and claims process to settle the unpaid insurance claims. The NAIC also established the Holocaust Insurance Issues Working Group to study the role of the states in protecting those individuals who have filed insurance claims.

Since then, several states – California, New York, and Washington State – have passed insurance-related legislation to restrict the ability of European insurers to engage transactions in the respective state if that insurer has not paid outstanding Holocaust-era insurance claims. The Florida Legislature enacted the Holocaust Victims Insurance Act (Act) on July 1, 1998. The Act requires that an insurance company doing business in Florida which had sold policies to Holocaust victims in Europe, must pay the claims to the victims and their heirs.¹

The Holocaust Victims Insurance Act (Act)

Under the Act, the Department of Financial Services (DFS) is required to establish a toll-free number to assist individuals seeking to recover proceeds from an insurance policy issued to a Holocaust victim.²

An insurance company doing business in the state that receives a claim from a beneficiary, descendant or heir of a Holocaust victim would be required to:³

- Investigate the claim;
- Allow claimants to meet a reasonable standard of proof to substantiate a claim, pursuant to standards set by the DFS; and
- Permit claims irrespective of any statutes of limitations or limitations imposed by the insurance policy.

Insurers doing business in the state are required annually to report the following information to the DFS:⁴

- Any legal relationship with an international insurer that issued an insurance policy to a Holocaust victim between 1920 and 1945;
- The number and value of such policies;
- Any claim filed by a Holocaust victim, his or her beneficiary, heir, or descendant that has been paid, denied, or is pending;
- Attempts made by the insurer to locate the beneficiaries of such policies for which no claim has been made; and

¹ The DFS estimates there are between 14,000 to 16,000 survivors and beneficiaries in Florida.

² S. 626.9543(4), F.S.

³ S. 626.9543(5), F.S.

⁴ S. 626.9543(7), F.S.

- An explanation of any denial or pending payment of a claim.

The DFS is required annually to report to the Legislature the following information:⁵

- The number of insurers doing business in the state that have a legal relationship with an international insurer that could have issued a life insurance policy to a victim of the Holocaust between 1920 and 1945;
- A list of all claims paid, denied, or pending to a Holocaust victim, beneficiary, heir or descendant; and
- A summary of the length of time for the processing and disposition of a claim by the insurer.

According to the DFS, it fields approximately 100 calls a year through its toll-free line. In addition to its own toll-free line, the DFS has contracts with the numerous organizations, including the Gulf Coast Jewish Family Services in Clearwater, Jewish Family Services of Broward County, the Jewish Community Services of South Florida, Fred & Gladys Alpert Jewish Family & Children's Services of Palm Beach County, and Ruth Rales Jewish Family Service of South Palm Beach County. These organizations make contact with at least 200 survivors or heirs each year and help with applications for insurance claims. The DFS also has contracts with two entities for educational components of the program: the Holocaust Documentation & Education Center in Hollywood, and the Holocaust Memorial Resource and Education Center of Florida in Maitland. These organizations make contact with a total of over 900 survivors a year to assist them in identifying and perfecting insurance claims.

Since the statutory creation of the program in 1998, the agency reports that over 5,269 claims from Florida residents have been processed through the International Commission on Holocaust Era Insurance Claims (ICHEIC), the German Foundation, and the Austrian General Settlement Fund. In addition, 1,549 Florida residents have received Humanitarian payments of \$1,000 each for a total of \$1,549,000. Moreover, the ICHEIC distributed over \$329,000 to Florida residents for payments on policies for companies that are no longer in existence. To date, Florida residents have received positive decisions totaling \$17,167,682, resulting in payments of over \$12,000,000.

III. Effect of Proposed Changes:

The bill amends s. 626.9543, F.S., to expand the scope of assistance that is provided by the Department of Financial Services (DFS) to Holocaust victims and their heirs. While current law provides the DFS authority to assist Holocaust victims and their heirs in identifying and obtaining potential and actual insurance claims, the bill broadens the DFS authority to include assistance to recover other financial claims, assets and property. The bill provides that in addressing the effects of nonpayment of claims and non-return of confiscated assets, the DFS is to provide assistance with gaining access to funding to address those effects. The bill adds to the DFS assistance a component of education to mitigate the effects of nonpayment of claims or non-return of property. As a result of this broadened scope of assistance, the short title of the section is changed from the current "Holocaust Victims Insurance Act" to "Holocaust Victims Assistance Act."

⁵ S. 626.9543(8), F.S.

The bill changes the current requirement that an insurer must file an annual report to a requirement that the insurer must file a new report when there are any changes to the previous report, or when it is requested to do so by the DFS. The bill sets July 1, as the date that the DFS must file its annual report with the Legislature.

Other Potential Implications:

According to the DFS, under the bill, the agency would provide Holocaust victims and their heirs with assistance in seeking reparation for Nazi-confiscated bank accounts, art, and property. In addition, the agency would provide an education program to disseminate information as to the existence of the restitution program, the availability of restitution monies, and the appropriate procedural steps for the recovery of proceeds.

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 DFS reports that it should be able to accomplish the requirements of the bill within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Holocaust survivors

Bill Number SB 936 Holocaust survivors
(if applicable)

Name Bernie Friedman

Amendment Barcode _____
(if applicable)

Job Title _____

Address 3111 Shirley Rd
Street

Phone _____

FT Land FL
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Assoc. Jewish federations

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)

3/14/13

Meeting Date

Topic SB 936

Bill Number 936
(if applicable)

Name Logan McFaddin

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Director

Address LL-26 The Capital

Phone 413-2890

Street

Tallahassee FL 32399

City

State

Zip

E-mail logan.mcfaddin@myfloridaleg.com

Speaking: For Against Information

Representing Leg Department of Financial Services

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
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 Committee on Banking and Insurance

BILL: SB 422

INTRODUCER: Senator Benacquisto and others

SUBJECT: Cancer Treatment

DATE: March 9, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Lloyd | Stovall | HP | Favorable |
| 2. | Johnson | Burgess | BI | Favorable |
| 3. | | | AP | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

SB 422 creates the “Cancer Treatment Fairness Act.” The bill requires individual and group health insurance policies or health maintenance contracts that provide coverage for cancer treatment medications to provide coverage for oral medications in a manner no less favorable than those provided intravenously or infused.

The bill also prohibits insurers and health maintenance organizations (HMOs) from increasing or varying the cost sharing for intravenous or injectable medications in order to comply with the changes in this legislation. Insurers and HMOs are also prohibited from providing any incentive, recommending a service, or changing the classification of any medication in order to meet the requirements of this bill.

The bill includes a directive to the Division of Law Revision and Information to replace references in the bill to the effective date to the actual date the bill becomes effective. The bill provides a specific effective date of July 1, 2013.

This bill creates two new sections of law, sections 627.42391 and 641.313, Florida Statutes.

II. Present Situation:

Cancer is the general name for a group of more than 100 unique diseases, but they share a common thread in that all cancers start because abnormal cells grow out of control.¹ Half of all

¹ American Cancer Society, *What is Cancer?*, <http://www.cancer.org/cancer/cancerbasics/what-is-cancer> (last visited Feb. 6, 2013).

men and one-third of all women in the United States will develop some form of cancer during their lifetime.² The National Cancer Institute estimates that approximately 13.7 million Americans with a history of cancer were alive on January 1, 2012, and about 1,660,290 new cancer cases are expected in 2013.³ In Florida, the number of new cases in 2013 is expected to be 118,320.⁴

After diagnosis, a cancer treatment plan is developed based on a number of factors, including the type of cancer, the stage of the disease, the patient's age, and overall health.⁵ Treatment options include surgery, radiation therapy, or anticancer drug therapy; some plans may also include stem cell transplantation.⁶ Anticancer drug therapy is further broken down into three types: cytotoxic agents (chemotherapy), biologic agents and hormonal agents.⁷ These agents can include oral and intravenous or injectable products.⁸

Chemotherapy is a specific type of cancer treatment that uses drugs to kill cancer cells. It works by stopping or slowing the growth of cancer cells.⁹ Historically, intravenous therapies have been the most common method for administering anticancer drug therapies.¹⁰

A 2010 Texas Department of Insurance report found that 28 percent of the oral anticancer medications approved by the Food and Drug Administration had intravenous/injected substitutes and 23 percent had generic equivalents.¹¹ However, treatment delivery systems are changing and pills are quickly becoming a more prevalent option.¹² At least 25 percent of the drugs in the oncology development phase are oral medications.¹³ Not all oral medications have an injectable or IV equivalent.

Intravenous medications are usually administered in a physician's office or outpatient hospital setting, but an oral medication is typically dispensed as a prescription and most often provided

² American Cancer Society, *How Common is Cancer?*, <http://www.cancer.org/cancer/cancerbasics/what-is-cancer>, (last visited Feb. 6, 2013).

³ American Cancer Society, *Cancer Facts & Figures, 2013*, (1), <http://www.cancer.org/acs/groups/content/@epidemiologysurveillance/documents/document/acspc-036845.pdf> (last visited Feb. 6, 2013).

⁴ American Cancer Society, *Cancer Facts & Figures*, *supra* note 3 at 5.

⁵ National Cancer Institute at the National Institutes of Health, *What You Need to Know About Cancer: Treatment*, <http://www.cancer.gov/cancertopics/wyntk/cancer/page8>, (last visited Feb.8, 2013).

⁶ *Ibid.*

⁷ Milliman, NY, Kathryn Fitch et al., *Parity for Oral and Intravenous/Injected Cancer Drug*, 3, (Jan. 25, 2010), <http://publications.milliman.com/research/health-rr/pdfs/parity-oral-intravenous-injected.pdf> (last visited Feb. 6, 2013).

⁸ *Ibid.*

⁹ Washington State Department of Health, *Oral Chemotherapy Drug Coverage Mandated Benefit Sunrise Review*, 7 (Publication Number 631-014) (December 2010), <http://www.doh.wa.gov/portals/1/Documents/Pubs/631014.pdf> (last visited Feb.6, 2013).

¹⁰ National Cancer Institute at the National Institutes of Health, *Oral Chemotherapy: Potentials and Misconceptions*, <http://www.nccn.com/understanding-cancer/233-oral-chemotherapy.html>, (last visited Feb.15, 2013).

¹¹ Texas Department of Insurance, *Patient Cost Disparity between Orally and Intravenously Administered Chemotherapies*, Report on Senate Bill 1143, Section 3, (12), 81st Legislature, Regular Session, 2009, August 2010.

¹² Michelle Andrews, *Some States Mandate Better Coverage of Oral Cancer Drugs*, Kaiser Health News, May 14, 2012, <http://www.kaiserhealthnews.org/features/insuring-your-health/2012/cancer-drugs-by-pill-instead-of-iv-michelle-andrews-051512.aspx>, (last visited on Feb.6, 2013).

¹³ *Ibid.*

through a pharmacy.¹⁴ The intravenous or injectable medication is usually covered as a medical benefit as an office or hospital outpatient service.¹⁵

In contrast, coverage for an oral cancer drug generally falls under a plan's prescription drug benefit.¹⁶ The patient's out-of-pocket cost for an office visit or outpatient hospital visit compared to the copayment, coinsurance, or deductible for a prescription can differ by thousands of dollars, depending most frequently on the cost of the drug.¹⁷ Unlike the medical portion of many health plans, the prescription drug benefit may not include a maximum out of pocket limit.¹⁸ In addition, when the prescription costs reach a certain level, patient compliance drops and prescriptions remain unfilled.¹⁹ Beginning in January 2014, federal law prescribes out of pocket limits for individual and small group health insurance plans under the federal Patient Protection and Affordable Care Act.²⁰

As of January 2013, 21 states plus the District of Columbia have passed oral oncology parity laws.²¹ Parity laws generally require that insurance coverage for orally administered chemotherapy medication be provided on a basis no less favorable than coverage for intravenous or injected medications.²²

The National Comprehensive Cancer Network (NCCN) notes that oral chemotherapy is a more attractive option for those patients for whom cancer is a chronic disease.²³ Moreover, oral medications can be less costly to administer since they are taken at home and not in a physician's office or hospital setting.²⁴ While a physician or the physician's nursing staff may not be present for the dosing of the oral medication, there can still be a significant investment made in education and support of the patient to ensure appropriate use of the medication.²⁵

The NCCN website includes a list of misconceptions about the use of oral chemotherapy drugs.²⁶ The NCCN notes that oral chemotherapy is not for everyone and patients should be aware that oral chemotherapy is not simple to administer nor does it automatically have fewer side effects than intravenous treatment.²⁷

Patient advocacy groups for oral chemotherapy parity argue that oral medications reduce the amount of time that family members and caregivers miss work for appointments as well as

¹⁴ Milliman, *supra* note 7 at 7.

¹⁵ *Ibid.*

¹⁶ Milliman, *supra* note 7 at 1.

¹⁷ Milliman, *supra* note 7 at 12.

¹⁸ Milliman, *supra* note 7 at 4.

¹⁹ Andrews, *supra* note 12.

²⁰ *See infra* note 30.

²¹ Alliance for Access to Cancer Care, *Fact Sheet* (February 2013); On file in the Senate Health Policy Committee.

²² Milliman, *supra* note 7 at 12.

²³ National Comprehensive Cancer Network, *Oral Chemotherapy: Potentials and Misconceptions*, <http://www.nccn.com/understanding-cancer/233-oral-chemotherapy.html> (last visited: Feb. 7, 2013).

²⁴ Texas Department of Insurance, *Patient Cost Disparity between Orally and Intravenously Administered Chemotherapies*, Report on Senate Bill 1143, Section 3, (11-12), 81st Legislature, Regular Session, 2009, Aug. 2010.

²⁵ *Ibid.*

²⁶ National Comprehensive Cancer Network, *Oral Chemotherapy: Potentials and Misconceptions*, <http://www.nccn.com/understanding-cancer/233-oral-chemotherapy.html> (last visited: Feb. 7, 2013).

²⁷ *Ibid.*

provide the patient with a sense of empowerment.^{28,29} More than a quarter of employees are acting as caregivers to family members who are experiencing an illness, including cancer.³⁰

Federal Patient Protection and Affordable Care Act

In March 2010, the Congress passed and the President signed the Patient Protection and Affordable Care Act (PPACA).³¹ Under PPACA, qualified health plans (QHP) would be available from the state or federal Exchange beginning January 1, 2014. PPACA required the Secretary of Health and Human Services to establish a minimum package of essential health benefits (EHB) for individual and small group health insurance.³² The EHB package must cover benefits across ten general categories from preventive services, maternity care, hospital services to prescription drugs.³³

Section 1311(d)(3)(B) of PPACA allows a state to require QHPs to cover additional benefits above those required under the EHB; however, the law also directs the state or the issuer to offset the costs of those supplemental benefits to the enrollee.³⁴ Under the final rule released on February 25, 2013, a distinction in the rule's preamble is made between changes in benefits versus changes in cost sharing. The rule limits the offset requirement only to state-required benefits that include "care, treatment and services that an issuer must provide to its enrollees," thereby excluding a state's obligations to defray costs relating to changes in provider types and benefit delivery method.³⁵ The exchange is charged with making the determination as to whether a benefit constitutes a mandate thus requiring a state to fund the additional costs.

In addition to these provisions, certain plans under PPACA received "grandfather status." A grandfathered health plan is a plan that existed on March 23, 2010, the date that PPACA was enacted, and that at least one person had been continuously covered for one year.³⁶ Some consumer protection elements do not apply to grandfathered plans that were part of PPACA but others are applicable, regardless of the type of plan.³⁷ Providing the essential health benefits are also not required of grandfathered health plans.³⁸ A grandfathered plan can lose its status if significant changes to benefits or cost sharing changes are made to the plan since attaining its

²⁸ Patients Equal Access Coalition, *White Paper: Cost Effectiveness of Oral Chemotherapy*, <http://www.readbag.com/myeloma-pdfs-advocacy-peac-cost-effectiveness-oral-chemo> (last visited Feb. 15, 2013).

²⁹ Texas Department of Insurance, *supra* note 24 at 12.

³⁰ National Business Group on Health and National Comprehensive Cancer Network, *An Employer's Guide to Cancer Treatment and Prevention*, 1, (2011).

³¹ Pub. Law No. 111-148, H.R. 3590, 111th Cong. (Mar. 23, 2010).

³² *Ibid.*

³³ Center for Consumer Information and Insurance Oversight, *Essential Health Benefits Coverage Bulletin*, (1), Dec. 16, 2011, available at: http://cciio.cms.gov/resources/files/Files2/12162011/essential_health_benefits_bulletin.pdf (last visited: Feb. 18, 2012).

³⁴ 78 Fed. Reg. 12838, 12865 (February 25, 2013), available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-02-25/pdf/2013-04084.pdf> (last visited March 11, 2013).

³⁵ *Ibid.*

³⁶ Healthcare.gov, *Grandfathered Health Plans*, <http://www.healthcare.gov/law/features/rights/grandfathered-plans/index.html> (last visited Feb.11, 2013).

³⁷ Healthcare.gov., <http://www.healthcare.gov/news/factsheets/2012/11/ehb11202012a.html>, (last visited Feb. 11, 2013).

³⁸ Sarah Barr, *FAQ: Grandfathered Health Plans* (Dec. 2012), <http://www.kaiserhealthnews.org/stories/2012/december/17/grandfathered-plans-faq.aspx> (last visited Feb. 12, 2013).

grandfathered status.³⁹ Grandfathered plans are required to disclose their status to their enrollees every time plan materials are distributed and to identify the consumer protections that are not available as a grandfathered plan.⁴⁰ Even though exempt from the EHB, a grandfathered plan could still be required to meet a new requirement under state law if otherwise required under state requirements.⁴¹

The provisions of PPACA include annual limitations on cost sharing in section 1302(c)(1) and an annual limitation on small group plan deductibles in section 1302(c)(2) of the Affordable Care Act effective January 1, 2014. The type of plan an individual is enrolled in and the level of benefits selected will determine the amount of out of pocket costs that an individual may incur; however, out of pocket costs must remain within certain guidelines. The annual limitation on cost sharing for 2014 has not been released. However, in 2013, the annual limitation on cost sharing for self-only coverage is \$6,250 and \$12,500 for family coverage. The annual limitation on deductibles for small group market plans is \$2,000 for self-only coverage and \$4,000 for family coverage.

The federal law further prohibits the imposition of annual and lifetime benefit limits, except for certain grandfathered plans, effective January 1, 2014. These protections went into effect for children earlier, September 23, 2010, and apply to grandfathered group health insurance plans. These restrictions would limit any out of pocket costs applied to prescription drug coverage whether delivered as an oral or an injectable medication.

Florida Mandates

A “mandate” is usually defined as required health coverage for specific type of treatments, benefits, providers or categories of dependants.⁴² In Florida, health insurance coverage mandates are spread throughout the insurance statutes depending on the coverage type and insurance product. In addition, some types of health insurance coverage are exempt from state mandates, such as self-funded or ERISA plans.^{43 44} As a result, specific mandates may not be applicable to all insured persons as not all benefits are applicable to all insurance coverage types.⁴⁵ Florida has at least 52 different “mandates” falling across the small group, individual or large group health insurance market, including health maintenance organizations (HMOs).⁴⁶

³⁹ Healthcare.gov, *Keeping the Health Plan You Have: The Affordable Care Act and “Grandfathered Health Plans* (June 14, 2010), <http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html> (last visited Feb. 12, 2013).

⁴⁰ Ibid.

⁴¹ 75 Fed. Reg. 34, 538, 34,540 (June 17, 2010)

⁴² National Conference of State Legislatures, *Mandated Health Insurance Benefits and State Laws*, <http://www.ncsl.org/issues-research/health/mandated-health-insurance-benefits-and-state-laws.aspx> (last visited Feb. 20, 2013).

⁴³ Florida Department of Financial Services, *Insurance Library*, available at: http://www.myfloridacfo.com/consumers/insuranceLibrary/Insurance/L_and_H/Health_Care/Self-Funded_Medical_Plans/Self-Funded_-_Regulation.htm (last visited Feb. 20, 2013).

⁴⁴ Federal Employee Retirement Income Act of 1974 (ERISA) governs self-insured health plans.

⁴⁵ Florida Department of Financial Services, *Insurance Library*, available at: http://www.myfloridacfo.com/consumers/insuranceLibrary/Insurance/L_and_H/Health_General/MandatedHealthInsAndHMOBenefits.pdf (last visited Feb. 20, 2013).

⁴⁶ Ibid.

Under current state law, s. 627.4239, F.S., coverage for the use of drugs in the treatment of cancer is mandated under any individual or group policy that covers cancer if that drug is recognized for treatment of that indication in a standard reference compendium or recommended in the medical literature.⁴⁷ Coverage is also required for the administration of the medically necessary services to administer those drugs.⁴⁸ Current state law does not specifically address coverage under HMOs or parity for any co-insurance, deductible, or copayment that may be related to how cancer treatment medicine is delivered.

Required Study by Advocates

Section 624.215, F.S., requires every person or organization seeking consideration of a legislative proposal that would mandate specific health coverage to submit to the Agency for Health Care Administration and the appropriate legislative committee a report reviewing the social and financial impacts of the proposed coverage. The statute lists twelve components for assessment, if available:

- To what extent is the treatment or service generally used by a significant portion of the population?
- To what extent is the insurance coverage generally available?
- If the insurance coverage is not generally available, to what extent does the lack of coverage result in persons avoiding necessary health care treatment?
- If the coverage is not generally available, to what extent does the lack of coverage result in unreasonable financial hardship?
- The level of public demand for the treatment or service.
- The level of public demand for insurance coverage of the treatment or service.
- The level of interest of collective bargaining agents in negotiating for the inclusion of this coverage in group contracts.
- To what extent will the coverage increase or decrease the cost of the treatment or service?
- To what extent will the coverage increase the appropriate uses of the treatment or service?
- To what extent will the coverage increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders?
- The impact of this coverage on the total cost of health care.

The International Myeloma Foundation (Foundation) delivered a report to the Senate Health Policy Committee on February 21, 2013, assessing SB 422 and HB 301 against the criteria of s. 624.215, F.S., while specifically not admitting, that the bill's directives mandate any specific health coverage.⁴⁹

According to the Foundation, insurance coverage of oral cancer medications is not the precise issue. The issue is the out of pocket cost differential to patients between intravenous or injectables and oral treatments as most insurance plans already cover the medication.⁵⁰ The

⁴⁷ See s. 627.4239(2)(a), F.S.

⁴⁸ See s. 627.4236(2)(b), F.S..

⁴⁹ International Myeloma Foundation, Health Insurance Mandate Report, *Parity for Oral and Intravenous Cancer Medications*, 1, (February 2013) (on file with the Senate Committee on Health Policy).

⁵⁰ International Myeloma Foundation, *supra* note 48 at 2.

report states that there is a direct correlation between the levels of out of pocket costs and the number of prescriptions left abandoned. For example, claims with patient cost sharing over \$500 had more than four times the likelihood of abandonment as opposed to those that cost less than \$100.⁵¹ In addition, one in five persons uses all or most of their savings to pay for cancer treatment.⁵²

The report indicates that for some cancers, oral treatment is the only standard treatment.⁵³ More treatments are being approved as over 40 oral medications have been approved for 54 different types of cancer.⁵⁴ The report argues that oral medications are less costly to administer at home, may have fewer side effects, provide patient empowerment and are more convenient for the patient and the patient's caregivers.⁵⁵

With reduced copayments, the report points out that fewer prescriptions would be abandoned or unfilled leading to greater medication compliance.⁵⁶ The Foundation argues that by keeping these out of pocket costs affordable and making prescription drug compliance easier that the overall costs of cancer will decrease.⁵⁷

As to the potential for increased costs, the report notes that minor increases in administrative expenses may be incurred by insurance companies, but that administrative expenses saved from fewer office visits may offset those costs.⁵⁸ Citing the Milliman study, the Foundation report restates an estimate of not more than \$0.50 per member per month for the cost of implementing cancer treatment parity. The Foundation report also notes that in a survey of nine other states plus the District of Columbia with a similar parity provision, the legislation's impact on premiums was zero to negligible.⁵⁹

Division of State Group Insurance

The Division of State Group Insurance of the Department of Management Services administers the State Group Insurance Program, which offers preferred provider organization (PPO), HMO, and prescription drug coverage to active and retired state employees and their dependents. The PPO and prescription drug coverage are self-insured, meaning the State is responsible for paying all claims incurred by members. Four of the six HMOs are also self-insured. Self-insured claims are paid from the State Group Employees' Health Insurance Trust Fund.

III. Effect of Proposed Changes:

Section 1 of the bill names the act the "Cancer Treatment Fairness Act."

⁵¹ International Myeloma Foundation, *supra* note 48 at 3.

⁵² International Myeloma Foundation, *supra* note 48 at 3.

⁵³ International Myeloma Foundation, *supra* note 48 at 1.

⁵⁴ International Myeloma Foundation, *supra* note 48 at 1.

⁵⁵ *Ibid.*

⁵⁶ International Myeloma Foundation, *supra* note 48 at 5.

⁵⁷ *Ibid.*

⁵⁸ International Myeloma Foundation, *supra* note 48 at 6.

⁵⁹ *Ibid.*

Sections 2 and 3 of the bill create new sections of law, ss. 627.42391 and 641.313, F.S., to address cancer treatment parity for orally administered medications under individual and group insurance and HMO insurance policies, respectively. Under these sections, the bill adds definitions for “cancer treatment medication” and “cost sharing.”

In addition, the bill provides that for any individual, group, or HMO policy that is delivered, issued, renewed or amended in Florida that includes major medical or other comprehensive coverage that also provides cancer treatment, such policy must also provide coverage for orally prescribed cancer medications. The bill provides that cost sharing provisions for those orally prescribed medication may not be less favorable than any cost sharing required for intravenous or injected cost sharing medications. Insurers are prohibited from taking certain actions to thwart the intent of this bill, specifically:

- Varying the terms of their policies as they exist on the effective date of this act in order to comply with this requirement. In effect, insurers may not increase cost sharing on intravenous medications or injections rather than reduce cost sharing on orally prescribed cancer treatments to meet this requirement.
- Offering an incentive that would encourage any person to accept less than the minimum protections offered under this act.
- Penalizing a health care practitioner through a reduction in compensation for recommending or providing services to a person covered under this section of law.
- Incentivizing a health care provider to not comply with this act.
- Changing the classification of any intravenous or injected cancer treatment medication.
- Increasing the cost sharing for any intravenous or injectable medications to comply with this act.

Section 4 provides a directive to the Division of Law and Information to replace any instances of “the effective date of this act” with the final effective date once this act becomes law.

Section 5 specifies the effective date of the act is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill provides an effective date of July 1, 2013, without an exemption for contracts or plans in existence prior to the effective date. As a result, impairment of contract claims may arise. The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.⁶⁰ “[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear.”⁶¹ If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.⁶² The factors that a court will consider when balancing the impairment of contracts with the public purpose include:

- Whether the law was enacted to deal with a broad, generalized economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and
- Whether the law effects a temporary alteration of the contractual relationships of those within its scope, or whether it works a severe, permanent, and immediate change in those relationships, irrevocably and retroactively.⁶³

A law that is deemed to be an impairment of contract will be deemed to be invalid as it applies to any contracts entered into prior to the effective date of the act.

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

None.

B. Private Sector Impact:

Individuals covered by an individual or small or large group policy or contract will experience a decrease in the amount of out-of-pocket cost sharing associated with oral chemotherapy medication. Self-insured or ERISA plans would not be subject to the provisions of this bill since they are regulated by the federal government. Approximately 60 percent of employees are in ERISA plans.

SB 422 may affect the cost of health insurance coverage provided in the private sector. A 2010 report by Milliman estimated that for most commercial benefit plans, the cost for oral cancer treatment parity would be under \$0.50 per member per month. Milliman notes

⁶⁰ U.S. Const. art. I, § 10; art. I, s. 10, Fla. Const.

⁶¹ *Susan Cohn v. The Grand Condominium Association, Inc., et al.*; 62 So. 3d 1120 (Fla. 2011). See also *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979). See also *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

⁶² *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So. 2d 681 (Fla. 1980); *Yellow Cab C. v. Dade County*, 412 So. 2d 395 (Fla. 3rd DCA 1982). See also *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983).

⁶³ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979).

that parity for some plan designs with very high cost sharing for oral specialty drugs and low cost sharing for medical benefits could cost about \$1.00 per member per month, or, in unusual circumstances, more.⁶⁴ Milliman notes that there are thousands of benefit design variations, and plan design features could affect these parity costs. The actual cost of parity would vary based on the benefit design of a specific plan and the level of cost sharing required of the insured.⁶⁵ The report did not address administrative costs associated with implementation of parity.

C. Government Sector Impact:

According to the Division of State Group Insurance (DSGI), the projected negative fiscal impact to the State Group Employees’ Health Insurance Trust Fund for the five-year period of 2013-2017 is approximately \$240,000 per year (\$2.1 million for the 5-year period), based on 2012 claims data. This estimate assumes that the state establishes parity of the costs of treatment for cancer drugs regardless of the method of delivery. The State would lower the oral cancer prescription drug cost to \$0 for the Standard HMO plan since members in Standard HMO do not pay a copayment if infused treatment is received in an outpatient setting in the network. According to DSGI, the bill’s requirement that costs may not be allowed to increase in order to comply would have the effect of not allowing the State to increase the medical services copayment to offset the increased cost of lowering the prescription drug copayments. In addition, the DSGI noted that the bill did not provide guidance as how a plan would compare the pharmacy copayment to the outpatient coinsurance for infusion/injection therapy.

In calendar year 2012, the state paid \$17.1 million in prescription drug claims for oral cancer medications; members paid \$291,848. The PPO and HMO standard plan members pay copayments (\$50) for prescription drugs; Health Investor Health Plan (HIHP) members pay coinsurance.⁶⁶ Coinsurance for the HIHP members varies from 30 -50 percent, contingent upon the type of drug. The copayments and coinsurance for drugs are depicted below:

| State Employees’ Prescription Drug Plan | Retail (up to a 30-day supply) | | Mail Order (up to a 90-day supply) | |
|---|-----------------------------------|------|---------------------------------------|------|
| | Standard | HIHP | Standard | HIHP |
| Generic Drugs | \$7 | 30% | \$14 | 30% |
| Preferred-Brand Drugs | \$30 | 30% | \$60 | 30% |
| Nonpreferred-Brand Drugs | \$50 | 50% | \$100 | 50% |

Members enrolled in the standard PPO plan are subject to coinsurance and deductibles for medical services. For example, members in the standard PPO and HMO pay a \$250 fee per hospital admission if infused treatment is received in an inpatient setting in the network. If the infused treatment is provided in an outpatient setting in the network, a member in the standard PPO is subject to a calendar year deductible and coinsurance.

⁶⁴ Milliman, *supra* note 7 at 1.

⁶⁵ *Ibid.*

⁶⁶ All member cost share amounts reported assumed to be in-network.

Currently, the lowest standard plan copayment for cancer treatment is for outpatient services in the HMO plan; members pay \$0.

The July 1, 2013 effective date of the bill would result in a fiscal impact to DSGI since the seven plans operate on calendar year basis. There will be costs associated with necessary changes to the benefit documents as well as any systems changes necessary in a very short timeframe that would be incurred by the State for the current contracted plan year. Changing the effective date of the legislation to January 1, 2014, would allow more time for the appropriate documents and system changes to be made and for information to be provided to state group health insurance members during open enrollment scheduled for October 2013.

The impact of the bill on local government plans is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill includes a directive to add an effective date once the act takes effect; however, the bill already includes an effective date in Section 5. It is unclear why Section 4 is necessary when an effective date has been provided and no conflicting effective dates are included in the bill.

VIII. Additional Information:

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

None.

B. Amendments:

None.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-14-13
Meeting Date

Topic oral parity

Bill Number 422
(if applicable)

Name Carole Green

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 07463

Phone 850-590-2206

Street
Fort Myers, FL 33919
City State Zip

E-mail Carole@capitalstrategies
inc.com

Speaking: For Against Information

Representing Florida Cancer Specialists and myself

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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-14-13

Meeting Date

Topic Cancer Treatment Fairness Act Bill Number 422
(if applicable)

Name Jaqueline Holmes Amendment Barcode _____
(if applicable)

Job Title Student

Address 4905 Bullyger Dr Phone 850-907-8266
Street

Tallahassee FL 32309 E-mail _____
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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APPEARANCE RECORD

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3-14-13

Meeting Date

Topic Cancer Treatment Fairness Act Bill Number 422
(if applicable)

Name Victoria Holmes Amendment Barcode _____
(if applicable)

Job Title Student

Address 4905 Ballygar Dr. Phone 850-907-8266

Street
Tallahassee FL 32309
City State Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/20/11)

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3/14/13

Meeting Date

Topic Cancer Treatment Fairness Act Bill Number 472
(if applicable)

Name Jennifer Brown Amendment Barcode _____
(if applicable)

Job Title Mom

Address 4905 Ballygar Dr Phone 850-284-9570
Street

Tallahassee FL 32309 E-mail _____
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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/14/13
Meeting Date

Topic SB 422

Bill Number 422
(if applicable)

Name Logan McFaddin

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Director

Address LL-26 The Capitol
Street

Phone 413-2890

Tallahassee, FL 32399
City State Zip

E-mail logan.mcfaddin@myfloridacfo.com

Speaking: For Against Information

Representing Department of Financial Services

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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APPEARANCE RECORD

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3-14-13

Meeting Date

Topic _____

Bill Number 422
(if applicable)

Name MONTE STEVENS

Amendment Barcode _____
(if applicable)

Job Title FL. MEDICAL ASSOC

Address 800 PIEDMONT EAST

Phone 225-0158

Street

TALLAHASSEE

FL

32308

E-mail mstevens@flmedical.org

City

State

Zip

Speaking: For Against Information

Representing FMA

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)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/14/13

Meeting Date

Topic Cancer Treatment

Bill Number SB 422
(if applicable)

Name Shira Kastan

Amendment Barcode _____
(if applicable)

Job Title Asst Vice President

Address 1320 S Dixie Hwy #325 Phone 305 274-2618

Street

Coral Gables FL 33140

City

State

Zip

E-mail skastan@miami.edu

Speaking: For Against Information

Representing Sylvester Cancer Ctr. @ Univ. of Miami

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)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/19/13

Meeting Date

Topic Cancer Treatment Bill

Bill Number SB 0422
(if applicable)

Name Kristina Wiggins

Amendment Barcode _____
(if applicable)

Job Title P5 GROUP

Address 225 S Adams St

Phone (850) 251-8694

Street

Tallahassee FL 32301

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Susan g Komen

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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/14/13
Meeting Date

Topic Drug Parity

Bill Number 422
(if applicable)

Name Merritt Martin

Amendment Barcode _____
(if applicable)

Job Title Director

Address 502 S Willow Ave

Phone 813-240-9454

Tampa FL
City State Zip

E-mail merritt.martin

Speaking: For Against Information

Representing Moffitt Cancer Center

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

3-14-13

Meeting Date

Topic Cancer Treatment

Bill Number SB 422
(if applicable)

Name Chris Hansen

Amendment Barcode _____
(if applicable)

Job Title Gray Robinson

Address _____

Phone 850/577-9090

Street

1allahassu FL 32301

City

State

Zip

E-mail Chansen@gray-robinson.com

Speaking: For Against Information

Representing Bayer Health Care

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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-14-2013

Meeting Date

Topic _____

Bill Number SB 422
(if applicable)

Name STEVE MORSE

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1290 KISSIMMEE ST.
Street

Phone 352 270 4111

TALLAHASSEE FL 32310
City State Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

3/14/13

Meeting Date

Topic _____

Bill Number SB 422
(if applicable)

Name Rebecca Mahony

Amendment Barcode _____
(if applicable)

Job Title _____

Address 102 Greenleaf Ln
Street

Phone 352 422-4427

Crawfordville FL
City *State*

32327
Zip

E-mail wonhond@gmail.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

3/14/13

Meeting Date

Topic Cancer Treatment Fairness Act

Bill Number 482 (if applicable)

Name Eric Ponders

Amendment Barcode (if applicable)

Job Title

Address 2011 Delta Blvd

Phone

Street

Tallahassee FL

32303

E-mail

City

State

Zip

Speaking: [X] For [] Against [] Information

Representing

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] 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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/14/13

Meeting Date

Topic Cancer Treatment Farmers Act

Bill Number 422
(if applicable)

Name Nanette Shimpf

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2011 Delta Blvd
Street

Phone _____

Tallahassee FL 32303
City State Zip

E-mail _____

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)

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APPEARANCE RECORD

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3/14/13

Meeting Date

Topic Cancer Treatment Fairness Act

Bill Number 472 (if applicable)

Name Emily Read

Amendment Barcode (if applicable)

Job Title

Address 2011 Delta Blvd

Phone

Street

Tallahassee FL 32303

City

State

Zip

E-mail

Speaking: [X] For [] Against [] Information

Representing

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

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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)

3/14/13
Meeting Date

Topic Cancer Treatment Fairness Act

Bill Number 422
(if applicable)

Name Matt Sherer

Amendment Barcode _____
(if applicable)

Job Title Oncology Service Line Administrator - TMH

Address 1775 One Healing Place

Phone 850-431-5038

Street

Tallahassee FL 32308

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

3-14-13
Meeting Date

Topic ACCESS TO CANCER CARE TX ACT

Bill Number SB 422
(if applicable)

Name JERI FRANCOEUR

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1 SHARON TERR
Street
ORMOND BEACH FL 32174
City State Zip

Phone 386-295-1554

E-mail jhfrancoeur@gmail.com

Speaking: For Against Information

Representing ALLIANCE FOR ACCESS TO CANCER CARE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

3/14/13

Meeting Date

Topic Cancer Treatment Fairness Act

Bill Number 422
(if applicable)

Name Luke Webb

Amendment Barcode _____
(if applicable)

Job Title _____

Address 4500 Prairie Avenue
Street

Phone 786-546-9603

Miami Beach FL 33140
City State Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

3/14/13

Meeting Date

Topic Cancer Treatment

Bill Number 422
(if applicable)

Name Corinne Mixon

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 119 East Park 32301
Street

Phone 766-5795

Tallahassee _____
City State Zip

E-mail corinnemixon@gmail.com

Speaking: For Against Information

Representing Florida Academy of Physician Assistants

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

3/14/13
Meeting Date

Topic Cancer Treatment Fairness Act

Bill Number SB 422
(if applicable)

Name Ryan Reid

Amendment Barcode _____
(if applicable)

Job Title Interim Vice President, Advocacy & Public Policy

Address 3709 W. Jetton Avenue
Street
Tampa, FL 33629
City State Zip

Phone (813) 810-4015

E-mail ryan.reid@cancer.org

Speaking: For Against Information

Representing American Cancer Society Cancer Action Network (ACS CAN)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
APPEARANCE RECORD

WAIVE IN SUPPORT

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

3-14-2013

Meeting Date

Topic CANCER TREATMENT

Bill Number SB 422
(if applicable)

Name STEPHEN R. WINN

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 200M APALACHEE PARKWAY

Phone 878-7463

Street
TALLAHASSEE FL 32301
City *State* *Zip*

E-mail _____

Speaking: For Against Information

Representing FLORIDA CHIROPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

3/14/13

Meeting Date

Topic Cancer Treatment Fairness Act

Bill Number SB 422 (if applicable)

Name Meghan Hoza

Amendment Barcode (if applicable)

Job Title

Address 225 S. Adams St

Phone

Tallahassee FL 32301

E-mail

Speaking: [X] For [] Against [] Information

Representing Susan G. Komen

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

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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)

Meeting Date _____

Topic Cancer Treatment Funding Act

Bill Number 422
(if applicable)

Name Ken Pruitt

Amendment Barcode _____
(if applicable)

Job Title _____

Address 10750 Heric Rd.

Phone 772-971-5760

Street

Ft Pierce FL 34945

E-mail Ken@thePSgroup.com

City

State

Zip

Speaking: For Against Information

Representing Susan Komen Foundation

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)

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 Committee on Banking and Insurance

BILL: SB 1262

INTRODUCER: Senator Hays

SUBJECT: Florida Hurricane Catastrophe Fund

DATE: March 11, 2013

REVISED: 3/16/2013

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

I. Summary:

SB 1262 reduces the Florida Hurricane Catastrophe Fund (Cat Fund) coverage limits and maximum reimbursement percentage, and eliminates the Temporary Increase in Coverage Limit option after the conclusion of the 2012-2013 Cat Fund contract year. The bill is designed to reduce the overall financial obligations of the fund, reducing the likelihood and amount of bonding and emergency assessments needed to fund deficits in the event the Fund experiences a shortfall after a major hurricane. The major proposed changes are summarized as follows:

Phases in annual decreases of the \$17 billion Cat Fund mandatory coverage limit beginning in the 2013-2014 contract year as follows:

- For the 2013-2014 contract year, \$16 billion.
- For the 2014-2015 contract year, \$15 billion.
- For the 2015-2016 contract year and thereafter, \$14 billion.

Reduces the maximum reimbursement amount from 90 percent to the following percentages:

- For the 2013-2014 contract year, 85 percent.
- For the 2014-2015 contract year, 80 percent.
- For the 2015-2016 contract year and thereafter, 75 percent.

The bill eliminates the \$2 billion Temporary Increase in Coverage Limit (TICL) optional coverage layer for the 2013-2014 contract year. The State Board of Administration is required to adopt revised or amended rules and forms, or addenda thereto, necessary to ensure that the

statutory changes made by SB 1262 apply to each participating insurer's Cat Fund reimbursement contract for the 2013-2014 contract year that begins on June 1, 2013.

The bill deletes a prohibition against insurers recouping reinsurance costs that duplicate coverage provided by the Cat Fund.

The effective date of the bill is July 1, 2013.

This bill amends the following sections of the Florida Statutes: 215.555, 624.424, 627.062, 627.0629, and 627.351.

II. Present Situation:

The Florida Hurricane Catastrophe Fund (Cat Fund)

The Cat Fund is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. The Cat Fund is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention (deductible). The Cat Fund provides insurers an additional source of reinsurance that is significantly less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the Cat Fund, the fund acts to lower residential property insurance premiums for consumers. The Cat Fund must charge insurers the actuarially indicated premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

Cat Fund Mandatory Coverage

All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the Cat Fund. The Cat Fund is authorized by statute to sell \$17 billion of mandatory layer coverage. Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. For example, if an insurer paid 10 percent of the total premium paid in a contract-year, then that insurer would be eligible to receive up to 10 percent of the mandatory layer of coverage (\$1.7 billion of the \$17 billion mandatory layer).

Insurers that experience multiple hurricanes causing loss during the contract year may receive reimbursement from the Cat Fund for losses that exceed the applicable retention. The insurer's full retention is applied to each hurricane causing the two largest losses for that insurer. For each other covered event resulting in losses, the insurer's retention is only one-third of the full retention. To access the Cat Fund an insurer must have incurred losses above the retention levels calculated and set by statute. When faced with a multi-storm season, insurers must reach their full retention levels on the two largest storms of the season. The retention level is then reduced to one-third the normal amount for any other storms that season. Citizens Property Insurance

Corporation is the largest purchaser of Cat Fund coverage. For the 2012 - 2013 hurricane season Citizens will have purchased \$1.75 billion in private reinsurance coverage along with the \$5.73 billion in mandatory layer reinsurance from the Cat Fund.

Cat Fund Premiums

The Cat Fund must charge insurers the “actuarially indicated” premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. The “actuarially indicated” premium is an amount that is adequate to pay current and future obligations and expenses of the fund. In practice, each insurer pays the Cat Fund annual reimbursement premiums that are proportionate to each insurer’s share of the Cat Fund’s risk exposure. The cost of Cat Fund coverage is significantly lower than the cost of private reinsurance due to the fact that the fund is a tax-exempt non-profit corporation and does not charge a “risk load.”

Cat Fund Bonding and Assessment Authority

Reimbursements to insurers for losses above the current cash balance of the fund are financed through bonding. When the cash balance of the Cat Fund is insufficient to cover losses, the law authorizes the Cat Fund to issue revenue bonds, which are funded by emergency assessments on property and casualty policyholders. If a large storm triggered the full capacity of the Cat Fund, bond issues totaling over \$8 billion could be necessary for the fund to meet its maximum obligations.

Bonds would be funded by an emergency assessment of up to 6 percent of premium on most lines of property and casualty insurance for funding losses from a single year, and up to 10 percent of premium for funding losses from multiple years. All lines of property and casualty insurance, including surplus lines insurance, are subject to emergency assessment except for workers’ compensation and medical malpractice liability insurance. The Cat Fund’s broad-based assessment authority is one of the reasons the Cat Fund was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.

Cat Fund Financial Obligations and Claims Paying Resources

The Cat Fund’s coverage obligations for the 2012-2013 hurricane season¹ totaled \$17.023 billion dollars for a single storm, which consisted of \$17 billion of mandatory coverage and \$23 million dollars in optional TICL coverage. The Cat Fund projected year-end cash balance for the 2012-2013 hurricane season is \$8.503 billion. Obligations exceeding the cash balance of the Cat Fund would require bonding of up to \$8.503 billion. The assessment base for the Cat Fund is approximately \$34.640 billion for premiums written at year end 2011, enabling the Cat Fund to levy annual assessments of as much as \$2.078 billion for one contract year and \$3.454 billion for multiple contract years.

¹ June 1, 2012 – May 31, 2013

Cat Fund Claims-Paying Capacity Estimates

In May and October of each contract year, the SBA is required to publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity, the fund's estimated claims-paying capacity, and the projected balance of the fund as of December 31. After the end of each calendar year, the board is required to notify insurers of the estimated borrowing capacity, estimated claims-paying capacity, and the balance of the fund as of December 31 to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss reimbursement purposes.

The October 9, 2012, Claims Paying Capacity Estimate (Estimate)² is the most recent such report to be issued.³ The report, prepared by Raymond James, evaluated the Cat Fund's bonding capacity by analyzing the current financial markets and obtaining written feedback from a senior managing underwriter from four large financial services firms (Barclay's, Citi, Goldman Sachs, and J.P. Morgan). The October 9, 2012, Estimate noted that the Cat Fund's total obligations of \$17.023 billion exceed the projected year-end fund balance of \$8.503 billion, thus the Cat Fund may need to raise up to \$8.503 billion through bonding in order to fund its liabilities.

The senior managers from Citi, Goldman Sachs, J.P. Morgan, and Barclays estimated the bonding capacity of the Cat Fund to be from \$2 billion to \$12 billion over the 12 months following a storm, leading to an average estimate of \$7 billion in bonding capacity. The Estimate anticipated, however, that the Cat Fund would have an additional bonding capacity of \$6 billion from 12 to 24 months after the hurricane, which would have enabled the Cat Fund to pay its entire obligations. A hurricane requiring the Cat Fund to pay its full obligation \$17.023 billion would leave an estimated \$4.480 billion in bonding capacity and \$1.354 billion in new premium collections to fund losses in the subsequent hurricane season, leaving the fund with over \$11 billion in unfunded obligations for that subsequent hurricane season.

III. Effect of Proposed Changes:

Section 1. Amends s. 215.555, F.S. by reducing the Florida Hurricane Catastrophe Fund coverage limits and reducing the maximum reimbursement percentage. This section is effective upon becoming a law. The major proposed changes are summarized as follows:

Decreases the Maximum Reimbursement Percentage for Cat Fund Coverage

Under current law, insurers have the option to purchase Cat Fund reinsurance that provides reimbursement of 90 percent, 75 percent, or 45 percent of the insurer's losses within the mandatory Cat Fund layer of coverage. The bill reduces the maximum reimbursement amount from 90 percent to the following percentages:

- For the 2013-2014 contract year, 85 percent.
- For the 2014-2015 contract year, 80 percent.
- For the 2015-2016 contract year and thereafter, 75 percent.

² Claims-Paying Capacity Estimates (October 9, 2012).

³ The first Claims Paying Capacity Estimate for the 2013-2014 hurricane season is due to be published in May 2013.

The bill requires insurers that elect the maximum coverage level available must purchase the following year's renewal of the reimbursement contract at the highest available coverage level if revenue bonds after a covered event (hurricane) are outstanding.

Decreases the Cat Fund Mandatory Coverage Limit

The bill phases in annual decreases of the \$17 billion Cat Fund mandatory coverage limit beginning in the 2013-2014 contract year as follows:

- For the 2013-2014 contract year, \$16 billion.
- For the 2014-2015 contract year, \$15 billion.
- For the 2015-2016 contract year and thereafter, \$14 billion.

Other Provisions

The bill terminates the \$2 billion layer of Temporary Increase in Coverage Limit (TICL) options Cat Fund coverage. TICL coverage is an optional Cat Fund coverage that insurers may elect to purchase. The coverage was established by the Legislature in Special Session 2007-A to provide additional reinsurance capacity from the Cat Fund beginning in the 2007 hurricane season and ending after the 2013 hurricane season (the 2013-2014 contract year).

The State Board of Administration Finance Corporation (SBA Finance Corporation or Corporation) is the new name of the Florida Hurricane Catastrophe Fund Corporation. The SBA Finance Corporation is the public benefits corporation that issues bonds to fund Cat Fund reimbursements when, after a hurricane, the Corporation board determines that the moneys in the Cat Fund are (or will be) insufficient to pay the amount of reimbursement promised in reimbursement contracts.

Section 2. Amends s. 627.062, F.S., to delete the prohibition against insurers recouping reinsurance costs that duplicate coverage provided by the Cat Fund.

Sections 3-5. Make conforming changes to s. 627.062, F.S., s. 627.0629, F.S., and s. 627.351(6)(v), F.S.

Section 6. Creates an unnumbered statute requiring the State Board of Administration to adopt revised or amended rules and forms, or addenda thereto, necessary to ensure that the statutory changes made by SB 1262 apply to each participating insurer's Cat Fund reimbursement contract for the 2013-2014 contract year that begins on June 1, 2013. Such rules, forms, and addenda supersede previously adopted rules, forms, and addenda that apply to the 2013-2014 contract year in the event of any conflicts. The SBA may use emergency rulemaking to assure timely adoption of the revisions, amendments, and addenda.

Section 7. Provides an effective date of July 1, 2013.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Eliminating the TICL coverage layer and reducing the mandatory layer to \$16 billion and the maximum reimbursement percentage to 85 for the 2013 – 2014 Contract Year could result in an unconstitutional impairment of contracts. Section 215.555(18), F.S., requires insurers purchasing Cat Fund coverage to execute the reimbursement contract (essentially, their Cat Fund policies) by March 1 prior to the upcoming Contract Year. Accordingly, all insurers in the state have executed their reimbursement contract for the coming 2013-2014 Contract Year based upon a 17 billion dollar mandatory layer of coverage and a 90 percent maximum reimbursement. Though the bill authorizes emergency rulemaking to alter the reimbursement contracts, it is questionable whether the state could successfully require insurers to rewrite their reimbursement contracts.

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.⁴ “[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear.”⁵ If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.⁶ The factors that a court will consider when balancing the impairment of contracts with the public purpose include:

- Whether the law was enacted to deal with a broad, generalized economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and

⁴ U.S. Const. art. I, § 10; art. I, s. 10, Fla. Const.

⁵ *Susan Cohn v. The Grand Condominium Association, Inc., et al*; 62 So. 3d. 1120 (Fla. 2011). See also *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979). See also *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

⁶ *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So. 2d 681 (Fla. 1980); *Yellow Cab C. v. Dade County*, 412 So. 2d 395 (Fla. 3rd DCA 1982). See also *Exxon Corp. v Eagerton*, 462 U.S. 176 (1983).

- Whether the law effects a temporary alteration of the contractual relationships of those within its scope, or whether it works a severe, permanent, and immediate change in those relationships, irrevocably and retroactively.⁷

A law that is deemed to be an impairment of contract will be deemed to be invalid as it applies to any contracts entered into prior to the effective date of the act.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Representatives from the Cat Fund state that the current mandatory layer of coverage (\$17 billion) plus the optional coverages offered under current law (\$2 billion in TICL coverage for 2013-2014) place potential liabilities on the fund that it may not be able to meet due to the current status of the financial markets. These representatives note that if a major hurricane had fallen upon Florida during the 2012 hurricane season, the Fund would have needed to rely upon an \$8.503 billion bond issue, which is in excess of the estimated \$7 billion in bonding posited in the October 2012 Claims Paying Capacity Estimates. Though additional bonding capacity may be available if the bond issues are spread out over a longer period of time (2 years instead of 1 year), some private market insurers may require prompt payment of Cat Fund funds to maintain their ability to pay claims timely and avoid insolvency in the event of a major storm.

Representatives from the Cat Fund assert that lowering coverage limits and the maximum reimbursement percentage will reduce the fund's potential reliance on bonding backed by assessments. In addition, the increase in co-pays will encourage responsible claims practices among insurers, and the reduction in the limit will improve the Cat Fund's ability to provide coverage for subsequent storm seasons after a major event. Changing the name of the Finance Corporation should improve the marketability of the Cat Fund's bonds.

Most insurers likely will purchase reinsurance to offset the reductions in Cat Fund limits and maximum reimbursement percentages, the cost of which will be included in the premiums they charge consumers. Cat Fund representatives note that the costs of reinsurance fluctuate from year to year, and thus it is difficult to make a precise estimate of the consumer impact of this bill. The actuary for the Office of Insurance Consumer Advocate in the Department of Financial Services has projected the following premium impact of the bill:

⁷ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979).

- 2013/2014 Contract Year – 1.2 percent premium increase associated with reducing the maximum reimbursement percentage to 85 percent and reducing the mandatory layer to 16 billion.
- 2014/2015 Contract Year – 1.2 percent premium increase associated with reducing the maximum reimbursement percentage to 80 percent and reducing the mandatory layer to \$15 billion.
- 2015/2016 Contract Year – 1.2 percent premium increase associated with reducing the maximum reimbursement percentage to 75 percent and reducing the mandatory layer to \$14 billion.
- Total Estimated Cumulative Premium Increase – 3.7 percent
 - The premium impact calculations assume that private market reinsurance covering the same layers of coverage as the Cat Fund will be available at a rate on line of 20 percent for the 2013/2014 contract year and subsequent contract years. According to representatives from the Office of the Insurance Consumer Advocate, the rate on line for such coverage was 22 percent during the 2012/2013 contract year. The premium impact of the bill's provisions are directly affected by the cost of private market reinsurance.

Representatives of some business groups have voiced support for reducing the Cat Fund's capacity and reimbursement percentage because these changes will reduce the likelihood that the Cat Fund will be required to levy assessments on all property and casualty lines of business (except workers' compensation and medical malpractice liability insurance). Many of these business groups view these assessments as a "tax" on other lines of insurance (such as motor vehicle insurance) that subsidizes the residential property insurance market. Another asserted benefit is that a smaller Cat Fund will be in a better financial position to pay its obligations the year after a major storm that depletes the cash reserves of the fund and requires bonding. The most recent Cat Fund Claims-Paying Capacity Estimates indicate that if a storm triggered the entire layer of Cat Fund recoverable, the fund anticipates only having \$5.824 billion in claims paying resources (cash reserves plus estimated bonding capacity).

Representatives of some insurers and consumer advocates have voiced concern that reducing the mandatory layer and maximum reimbursement percentage of the Cat Fund may have a negative effect on the private homeowners property insurance market. The reductions in the Cat Fund will result in most insurers purchasing additional layers of reinsurance from the global reinsurance market at a higher cost than Cat Fund coverage. The cost of such reinsurance will likely be passed onto policyholders by private market insurers, but not necessarily by Citizens Property Insurance Corporation, which is not required to purchase reinsurance that guarantees the corporation's ability to pay all claims stemming from a 1 in 100 year probable maximum loss storm, a benchmark that most private market insurers meet in their reinsurance programs. These representatives also assert that reductions in Cat Fund size resulting in private market premium increases may hinder the depopulation of Citizens by increasing the disparity between rates charged by Citizens and private market insurers.

The coverage changes effective for the 2013 – 2014 Contract Year are contrary to the provisions of s. 215.555(18), F.S., which discourages the Legislature from passing laws

changing Cat Fund coverage that are effective for the Contract Year beginning shortly after the conclusion of the regular session of the Legislature in which the law was passed. The Legislative findings state that because the Legislative session ends approximately 1 month before the new Cat Fund contract year, “participants in the fund always face the possibility that legislative actions will change the coverage provided or offered by the fund with only a few days or weeks of advance notice. The timing issues...can create uncertainties and disadvantages for the residential property insurers that are required to participate in the fund when such insurers negotiate for the procurement of private reinsurance or other sources of capital.”

C. Government Sector Impact:

The bill reduces the assessment liability of the Cat Fund, which decreases the probability that the Fund will be required to issue bonds to meet its financial obligations. Supporters of the legislation also note that the Cat Fund is not the only insurance-related state entity granted assessment authority. Citizens and the Florida Insurance Guaranty Association each have statutory authority to issue bond debt to meet obligations incurred in the event a major hurricane exhausts the financial resources of each entity. Reducing the likelihood of Cat Fund bonding and assessments will assist Citizens and FIGA in being able to raise funds from bond issues because Cat Fund bonds will be less likely to be in competition for investors in the event of a storm.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/14/2013
Meeting Date

Topic CAT FUND Bill Number SB 1262
Name DON BROWN Amendment Barcode _____
Job Title _____
(if applicable) (if applicable)

Address POB 866 Phone _____
Street
DEFUNIAK SPRINGS, FL 32435 E-mail DON@DONBROWNFLORIDA.COM
City State Zip

Speaking: For Against Information

Representing AIF

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

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S-001 (10/20/11)

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

3/14/2013
Meeting Date

Topic Cat Fund

Bill Number SB 1262
(if applicable)

Name David Christian

Amendment Barcode _____
(if applicable)

Job Title VP Government Relations

Address _____
Street

Phone _____

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing Florida Chamber

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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3/14/2013
Meeting Date

Topic _____

Bill Number SB 1262
(if applicable)

Name Mark Delegal

Amendment Barcode _____
(if applicable)

Job Title Retained Counsel

Address 215 S. Monroe Street #200

Phone 850-222-3533

Tallahassee FL 3230
City State Zip

E-mail mdelegal@pearlinterlaw.com

Speaking: For Against Information

Representing State Farm Florida Insurance Company

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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APPEARANCE RECORD

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

3-14-13

Meeting Date

Topic CAT FUND

Bill Number 1262
(if applicable)

Name GARY FARMER

Amendment Barcode _____
(if applicable)

Job Title ATTORNEY

Address 475 N ANDREWS AVE

Phone 954-574-2820

Street

FT. LAUDERDALE FL 33301

E-mail GARY@PATHTOJUSTICE.COM

City

State

Zip

Speaking: For Against Information

Representing FLORIDA JUSTICE ASS'N

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)

3/14/2013

Meeting Date

Topic

CAT FUND

Bill Number

1202 AS AMENDED

(if applicable)

Name

CHRISTIAN CAMARA

Amendment Barcode

~~50000~~

(if applicable)

Job Title

STATE DIRECTOR

Address

PO Box 10577

Phone

(305) 608-4300

Street

TALLAHASSEE FL 32302

E-mail

CCAMARA@RSTREET
ORLO

City

State

Zip

Speaking:

For

Against

Information

Representing

R-STREET INST.

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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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)

03/14/2013
Meeting Date

Topic CAT FUND

Bill Number SB 1262
(if applicable)

Name DON BROWN

Amendment Barcode HAYS AMENDMENT
(if applicable)

Job Title _____

588276

Address PO Box 866
Street

Phone _____

DEERUNIAK SPRINGS FL 32435
City State Zip

E-mail Don@DonBrownFlorida.com

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/2013

Meeting Date

Topic CAT Fund Workshop

Bill Number 1262 (Sen. Hays) (if applicable)

Name Gary Farmer

Amendment Barcode Sen. Ping 548468 (if applicable)

Job Title President, Fla. Justice Association

Address 218 S. Monroe St.

Phone 224-9403

Street

Tallahassee Fla. 32301

City

State

Zip

E-mail

Speaking: [X] For [] Against [] Information

Representing Fla. Justice Association

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] 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)

3/14

Meeting Date

Topic Cat Fund

Bill Number _____ (if applicable)

Name Jay Neal

Amendment Barcode _____ (if applicable)

Job Title Executive Director

Address 7950 S Military Trail

Phone 888-745-5551 x112

Street Lake Worth, FL

E-mail jneal@floridainsurance
reform.org

City State Zip

Speaking: For Against Information -

Representing FAIR Florida Association for Insurance Reform

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)

3-14-13

Meeting Date

Topic CAT Fund

Bill Number 1262
(if applicable)

Name Robin Westcott

Amendment Barcode 548468
(if applicable)

Job Title Insurance Consumer Advocate

588276
303624

Address LL 22 The Capitol

Phone _____

Street

Tallahassee

E-mail Robin.Westcott@myfloridacfo.com

City

State

Zip

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

*Request of Sen Hayes
Bill Sponsor*

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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/12/13
Meeting Date

Topic CAT Fund Amdt Idea.

Bill Number 1262
(if applicable)

Name Tim Meenan

Amendment Barcode _____
(if applicable)

Job Title _____

Address 204 S. Monroe St.

Phone (850) 681-6710

Tallahassee FL 32301
City State Zip

E-mail Tim@blanklaw.com

Speaking: For Against Information

Representing Tower Hill Ins Group.

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/13

Meeting Date

Topic CAT FUND REFORM-REINSURANCE CAPACITY

Bill Number 1262

(if applicable)

Name DENNIS BURKE

Amendment Barcode

(if applicable)

Job Title VP, STATE RELATIONS

Address 1445 NEW YORK AVENUE, NW

Phone 202-783-8325

Street

WASHINGTON, DC 20005

E-mail burke@reinsurance.org

City

State

Zip

Speaking: [X] For [] Against [] Information

Representing REINSURANCE ASSOCIATION OF AMERICA

Appearing at request of Chair: [X] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

IF NEEDED/DESIRED

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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic SB 1202

Bill Number _____
(if applicable)

Name JACK Nicholson

Amendment Barcode _____
(if applicable)

Job Title COO - FHCR

Address _____
Street

Phone 850-413-1340

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing SBA

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)

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 Committee on Banking and Insurance

BILL: CS/SB 810

INTRODUCER: Banking and Insurance Committee and Senator Simmons

SUBJECT: Wrap-up Insurance Policies

DATE: March 15, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Knudson | Burgess | BI | Fav/CS |
| 2. | | | CM | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 810 authorizes a wrap-up insurance policy for a nonpublic construction project to have a workers' compensation deductible of \$100,000 or more if:

- The workers' compensation minimum standard premium calculated on the combined payrolls for all entities covered by the wrap-up policy exceeds \$500,000;
- The project's estimated total cost is \$25 million or more;
- The insurer must pay the first dollar of a workers' compensation claim without a deductible;
- The reimbursement of the deductible by the insured does not affect the insurer's obligation to pay claims;
- The insurer must comply with specified workers' compensation filing requirements; and
- The insurer has a program for having the construction project owner, general contractor, or a combination of the two reimburse the insurer for losses paid within the deductible.

The effective date is July 1, 2013.

This bill creates the following section of the Florida Statutes: 627.4138

II. Present Situation:

Wrap-Up Insurance Policies

Historically, for large construction projects, the project owners, the contractors, and the subcontractors purchase insurance independently to protect against their own potential financial losses related to the project. The contractor includes the cost of insurance in its bid and recovers the cost under the contract in the amount paid by the project owner. Under this arrangement, a contractor with a good safety record sometimes receives a rebate from its insurer as part of the provisions of the insurance contract. Because the contractors' cost of insurance has been recovered as part of the construction contract, any subsequent insurance rebates received by the contractor generate additional profits. In addition, a contractor with good a safety record can sometimes be awarded an additional bonus from the project owner.

In contrast to the traditional arrangement, consolidated insurance programs, often referred to as "wrap-up" insurance, are offered in the insurance market for large construction projects. Wrap-up insurance is a program or series of insurance policies purchased by one party (either the project owner or general contractor) to cover itself and all of its subordinate contractors and subcontractors for operations at a specific project site. Under wrap-up insurance, one party is responsible for purchasing insurance coverage that applies to all parties performing work, instead of the more traditional situation in which each party purchases its own coverage. Wrap-up policies may provide various coverages, but most commonly are used to provide workers' compensation and general liability coverage.

Wrap-up policies generally take the form of one of two types of consolidated insurance programs. In a contractor-controlled insurance program (CCIP), the general contractor purchases coverage for itself and each of its subcontractors. In an owner-controlled program (OCIP), the project owner purchases insurance to cover itself and all of its contractors and subcontractors. Under an OCIP, the project owner would receive any rebates that may be received from the insurer, based on the project's safety record.

In 1999, the U.S. General Accounting Office (GAO) published a report analyzing the advantages and disadvantages of wrap-up insurance for large construction projects. Based on an analysis of six large transportation projects, the report identified the following advantages and disadvantages of wrap-up insurance policies.¹

Advantages

- Cost savings attributable to a greater purchasing power and economies of scale available for large, labor-intensive projects.
- Elimination of overlap in coverage that can otherwise occur among the contractors and subcontractors insuring for the same accidents. These gaps can be avoided with wrap-up insurance.

¹ U.S. General Accounting Office, "Transportation Infrastructure: Advantages and Disadvantages of Wrap-Up Insurance for Large Construction Projects," Report No. GAO/RCED-99-155 (June 1999). Available at <http://www.gao.gov>.

- More efficient claims handling processes and less litigation because a single insurer is used for reporting claims, conducting investigations, settling claims, and providing for payment of claims.
- Facilitation of a well-managed centralized safety program that results in fewer injuries.

Disadvantages

- Increased administrative costs. Although it may result in overall cost savings, the purchaser of the wrap-up product must devote additional resources related to emphasizing job safety, controlling losses, and managing claims.
- Potential for large premium payments at the start of a construction project and the establishment of a special reserve to ensure funds available to pay deductible requirements on claims.

Workers' Compensation Insurance Policies with Large Deductibles

Large deductible workers' compensation insurance policies are regulated by the Office of Insurance Regulation (OIR) under Rule 69O-186.006, F.A.C. The rule establishes guidelines for large deductible (a deductible of \$100,000 or more per claim) workers' compensation filings. In order to qualify for a large deductible policy, an employer must have a workers' compensation standard premium of at least \$500,000.² Under large deductible programs, the carrier is obligated to pay the claim from the first dollar, but the insured (the employer) then reimburses the workers' compensation carrier, for each claim, for losses paid within the deductible.

The OIR reports that the typical large deductible policy will have a deductible credit that ranges from 30 to 90 percent. As a result, the premiums paid by employers that purchase large deductible policies will be a fraction of the premiums paid for other workers' compensation plans. An ancillary effect of the availability of large deductible plans is that an increasing number of very large employers have ceased being individually self-insured and instead buy large deductible products.

The OIR notes that in some recent insolvencies there have been problems with large deductible policies and the lack of collectible collateral. The remaining obligations of insolvent companies are paid by the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA),³ which is ultimately covered by assessments against all workers' compensation policyholders in Florida.⁴

² Before the availability of large deductible programs, retrospective rating plans were the dominant rating plan for large employers. Under a retrospective rating plan, the final premium paid by the employer is based on the actual loss experience of the employer during the policy, plus insurer expenses and an insurance charge. If the employer controls the amount of claims, it pays lower premiums.

³ FWCIGA's purpose is to provide a mechanism for the payment of covered claims, to avoid excessive delay in payment, and to avoid financial loss to claimants in the event of the insolvency of a member insurer. See <http://www.fwciga.org>.

⁴ For additional discussion on employer and insurer solvency concerns and large deductible policies see "Workers' Compensation Large Deductible Study," NAIC/IAIABC Joint Working Group Study (March 2006). Available at http://www.naic.org/store_pub_whitepapers.htm.

Limited Availability of Wrap-Up Policies With Large Deductibles

Though remote, the possibility currently exists that a Florida wrap-up policy for a nonpublic construction project could provide for a large deductible for workers' compensation claims. Among the criteria to be met would be that each entity covered under the wrap-up policy have a minimum workers' compensation standard premium of \$500,000.⁵ Satisfaction of this requirement would likely be rare, as every entity on a construction project would need to be an extremely large employer and small subcontractors would be excluded.

III. Effect of Proposed Changes:

Section 1. Creates s. 627.4138, F.S., regarding wrap-up insurance policies for nonpublic construction projects. The bill defines a "wrap-up insurance policy" to mean a consolidated insurance program or series of insurance policies issued to the nonpublic owner or general contractor (or a combination of the two) of a construction project through a consolidated insurance program that provides coverage workers' compensation coverage, various forms of liability coverage, or a combination of such coverages for the contractors and subcontractors working at a specified contracted work site of the construction project.

The bill authorizes a wrap-up insurance policy to include a deductible of \$100,000 or more for workers' compensation claims if all of the following prerequisites are met:

- The workers' compensation minimum standard premium calculated on the combined payrolls for all entities covered by the wrap-up policy exceeds \$500,000;
- The project's estimated total cost is \$25 million or more;
- The insurer must pay the first dollar of a workers' compensation claim without a deductible;
- The reimbursement of the deductible by the insured does not affect the insurer's obligation to pay claims;
- The insurer must comply with all workers' compensation filing requirements under ch. 440, F.S., for losses, including those below the deductible limit;
- The insurer must file unit statistical reports with the National Council on Compensation Insurance (NCCI) which show all losses, including those below the deductible limit;
- Any unit statistical reports needed to calculate an experience modification factor for the insured must be filed with the NCCI;
- The insurer must comply with NCCI aggregate financial calls, detail claim information calls, unit statistical reporting, and other required calls; and
- The insurer must have a program for having the owner, general contractor, or a combination of the two reimburse the insurer for losses paid within the deductible.

Section 2. Provides an effective date of July 1, 2013.

⁵ See, e.g., Rule 69O-186.006, F.A.C.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Representatives from the Office of Insurance Regulation anticipate that the bill will greatly expand the use of large deductibles for wrap-ups. Currently, workers' compensation wrap-up construction project policies require that the General Contractor and all sub-contractors on the project receive individual policies because the workers' compensation law prohibits any employer from being added as an "additional insured" on any other employer's policy.

The bill safeguards the payment of workers' compensation benefits to injured workers by requiring the insurer to pay the first dollar of a workers' compensation claim without applying the deductible and specifying that the failure of a policyholder to reimburse an insurer for the deductible by the insured does not affect the insurer's obligation to pay claims.

C. Government Sector Impact:

According to representatives from the Workers Compensation Insurance Guaranty Association (FLWCIGA), large deductible policies were a factor in three of the seven liquidations that occurred from January 2009 through June 2012 requiring reimbursement from the association. The FLWCIGA incurred losses of approximately \$49 million due to the three companies. If the FLWCIGA requires additional funds to pay its obligations, it will levy assessments on workers' compensation insurers, who are authorized to include assessments as an appropriate factor in the making of rates.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance on March 14, 2013:

The CS specifies that a wrap up policy is a consolidated insurance program for non-public construction projects and makes the owner and general contractor of a non-public construction project responsible for reimbursing an insurer for workers' compensation costs paid within the policy's large deductible.

- B. **Amendments:**

None.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/14/2013

Meeting Date

Topic ~~Cond...~~

Bill Number S 810
(if applicable)

Name Gerald Wester

Amendment Barcode _____
(if applicable)

Job Title _____

Address 101 E College Suite 300

Phone 850 457 256

Street

Tall

City

FL

State

32301

Zip

E-mail _____

Speaking: For Against Information

Representing Zurich Ins. Co.

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)

THE FLORIDA SENATE
APPEARANCE RECORD

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Meeting Date _____

Topic WRAP-UP INSURANCE POLICIES

Bill Number 810
(if applicable)

Name DONOVAN BROWN

Amendment Barcode _____
(if applicable)

Job Title COUNSEL, STATE GOVERNMENT RELATIONS

Address _____
Street

Phone _____

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
APPEARANCE RECORD

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3-14-13

Meeting Date

Topic Wrap up policies

Bill Number 810
(if applicable)

Name Gary Guzzo

Amendment Barcode _____
(if applicable)

Job Title _____

Address 108 S. Monroe St
Street
Tall, Fla 32301
City State Zip

Phone _____

E-mail _____

Speaking: For Against Information

Representing Liberty Mutual Insurance Co.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Finance and Tax
Banking and Insurance
Children, Families, and Elder Affairs
Ethics and Elections
Rules
Transportation

JOINT COMMITTEE:

Joint Committee on Administrative Procedures

SENATOR MIGUEL DIAZ de la PORTILLA

40th District

March 12, 2013

The Honorable David Simmons
Chair, Banking and Insurance Committee

Via email

Dear Chairman Simmons:

Due to a personal business matter in my district, I need to return to Miami Wednesday evening. I respectfully request that I be excused from the meeting of the Banking and Insurance Committee on Thursday, March 14.

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
State Senator, District 40

Cc: Mr. Steve Burgess, Staff Director
Ms. Sheri Green, Committee Administrative Assistant

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

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 Banking and Insurance Cmte. Judge:

Started: 3/14/2013 8:03:16 AM

Ends: 3/14/2013 10:28:51 AM

Length: 02:25:36

8:03:17 AM Chairman Clemens calls meeting to order
8:03:54 AM CAA calls Roll
8:04:22 AM Tab 1 - SB 102 by Sen. Detert
8:05:12 AM Senator Detert recognized to explain bill
8:06:13 AM Amd. 874742 by Sen. Detert--fav/without objection
8:06:54 AM Amd. 487838 by Sen. Detert--favorable
8:07:22 AM Amd. 906446 by Sen. Detert --w/o objection -- adopted
8:10:32 AM Sen. Ring w/question
8:11:33 AM Sen. Margolis with remarks on bill
8:13:09 AM Sen. Lee with question
8:14:49 AM Sen. Richter with question
8:15:49 AM Senator Detert with response
8:16:57 AM Senator Detert with response
8:16:59 AM Senator Ring for debate on bill
8:18:44 AM Senator Lee with comments
8:21:31 AM Senator Lee with comments
8:21:34 AM Senator Margolis for debate on bill
8:23:14 AM Sen. Detert recognized to close on bill
8:24:17 AM Roll call on SB 102 --passed
8:24:58 AM Motion for CS -- adopted
8:25:13 AM TAB 2 - SB 378 by Senator Bean
8:25:27 AM Senator Bean recognized to explain bill
8:25:53 AM Amd. (late filed) 783282 - w/o objection taken up
8:26:49 AM Sen. Richter with question on amendment
8:27:58 AM Sen. Margolis with question to Sen. Bean
8:28:39 AM Senator Bean with response
8:31:02 AM Senator Bean with response
8:31:04 AM Amd. 783282 adopted without objection
8:31:16 AM Late filed Amd. 559150 by Sen. Richter --motion adopted to take up late filed amend.
8:32:09 AM Amd. 559150 -- without objection - favorable
8:32:25 AM Sen. Detert with question on bill
8:33:26 AM Nancy Stewart, Federation of Manufactured Homeowners' of FL
8:34:40 AM Senator Lee with question on bill
8:35:29 AM Sen. Bean recognized to close on bill
8:35:38 AM Motion by Margolis for CS--w/o objection
8:35:51 AM Roll call on SB 378 -- passed
8:36:40 AM TAB 3 - CS/SB 398 - explanation of bill by Senator Bean
8:37:16 AM Amd. 542866 by Sen. Hays--w/o objection -- favorable
8:38:42 AM Motion for CS - Montford w/o objection
8:38:58 AM Roll call on CS/SB 398 -- favorable
8:40:24 AM TAB 4 - SB 918 -- Motion to TP by sponsor - w/o objection
8:40:43 AM TAB 5 - SB 706 by Senator Montford
8:41:11 AM Sen. Montford recognized to explain bill
8:43:47 AM Sen. Montford recognized to explain bill
8:43:53 AM Roll call on SB 706 --favorable
8:44:29 AM TAB 6 - SB 936 by Sen. Lee
8:45:12 AM Sen. Lee recognized to explain the bill
8:47:08 AM Bernie Friedman, FL Assoc. Jewish Federations
8:47:52 AM Senator Detert with question
8:48:53 AM Senator Lee recognized to close on bill
8:49:33 AM CAA roll call on SB 936 -- Favorable
8:50:32 AM TAB 7 -- SB 422 by Sen. Benacquisto

8:50:46 AM Sen. Benacquisto recognized to explain the bill
8:51:56 AM Sen. Benacquisto recognized to explain the bill
8:54:07 AM Luke Webb, Miami Beach
8:57:01 AM Jeri Francoeur, Alliance for Access to Cancer Care
9:00:13 AM Carole Green, FL Cancer Specialists
9:00:32 AM Sentor Negrón with question --any insurance reps and their position on the bill
9:04:02 AM Ms. Westcott, Consumer Advocate Services
9:10:08 AM Sen. Benacquisto recognized to close on bill
9:12:30 AM Roll call on SB 422 -- Favorable
9:13:25 AM TAB 8 - SB 1262 by Senator Hays--Workshop on bill
9:17:26 AM Senator Hays recognized to explain the bill
9:21:33 AM Sen. Ring recognized to explain AMD. 548468
9:37:50 AM Presentation by Jack Nicholson --Cat fund
9:39:58 AM Tim Meenan - Tower Hill Insurance Group
9:47:21 AM Robin Westcott, Insurance Consumer Advocate
10:04:29 AM Senator Hays with question
10:10:30 AM Jay Neal, FAIR FL Association or Insurance Reform
10:11:30 AM Don Brown, AIF
10:20:45 AM Dennis Burke, Reinsurance Assoc. of America -- Washington, DC
10:21:46 AM Sen. Lee with question to Jack Nicholson
10:23:48 AM Sen. Ring recognized for preliminary close on amendment 548468
10:24:55 AM Sen. Simmons turns chair over to Sen. Clemens
10:25:08 AM Sen. Simmons recognized to explain bill
10:25:33 AM Sen. Simmons recognized to explain bill
10:25:58 AM Amd. 914600 by Senator Simmons - without objection -- adopted
10:26:58 AM Amd. 266422 by Sen. Simmons -- without objection -- adopted
10:27:41 AM Amd. 266422 by Sen. Simmons -- without objection -- adopted
10:27:49 AM Motion by Simmons for CS--w/o objection
10:28:07 AM Roll call on bill SB 810 -- passed
10:28:39 AM meeting adjourned