

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 4099 Repeal of Property and Casualty Insurance Provisions

SPONSOR(S): Insurance & Banking Subcommittee, Nelson

TIED BILLS: **IDEN./SIM. BILLS:** HB 4081, SB 636

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Callaway	Cooper
2) Economic Affairs Committee	17 Y, 0 N	Callaway	Tinker

SUMMARY ANALYSIS

This bill deletes outdated or obsolete language relating to the following insurance topics:

- the Florida Automobile Joint Underwriting Association pre-suit notice;
- a form filing for catastrophic ground cover collapse coverage;
- a report on the sinkhole database;
- a study on the feasibility of a facility for insuring sinkhole loss and other issues related to sinkhole loss;
- the effective date for the exclusion of windstorm and contents coverage in property insurance policies; and
- the transfer of funds from the State Board of Administration to Citizens Property Insurance Corporation relating to the Insurance Capital Build-Up Program.

The bill deletes substantive language relating to the following insurance topic:

- annual report on probable maximum losses, financing options, and potential assessments for the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation.

The bill has no fiscal impact and is effective on July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Repeal of Outdated or Obsolete Statutes

The following changes made by this bill are technical and not substantive. This bill deletes outdated or obsolete language relating to various insurance topics as follows:

Florida Automobile Joint Underwriting Association Pre-Suit Notice

Section 627.311(3), F.S., allows the Office of Insurance Regulation (OIR) to approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance. The Florida Automobile Joint Underwriting Association (FAJUA) is created under the plan. Requirements of the plan are contained in section 627.311(3), F.S. Section 627.311(k)2., F.S., specifies that before a legal action may be brought against the FAJUA for certain violations by the FAJUA, the Department of Financial Services (DFS) and the FAJUA must be given 90 days' written notice of the violation giving rise to the lawsuit.¹ Typically, a 60 day pre-suit notice, rather than a 90 day pre-suit notice, is required for actions taken against insurance companies for certain violations.² In the 2004 Session, however, the pre-suit notice requirement that applies to the FAJUA was lengthened from 60 days to 90 days to give the FAJUA more time to investigate alleged violations.

By statute, the 90 day pre-suit notice period for the FAJUA expired on October 1, 2007 unless it was reenacted by the Legislature. The statute was not reenacted by the Legislature before the October 1, 2007 deadline. Thus, this bill repeals the 90 day pre-suit notice period as it is obsolete due to the expiration of the October 1, 2007 reenactment deadline.

Form Filing for Catastrophic Ground Cover Collapse Coverage

Under current law, every property insurance company must cover "catastrophic ground cover collapse" in the property insurance policy. Property insurance coverage for catastrophic ground cover collapse was made mandatory and added to the law in the 2007A Special Session.³ Catastrophic ground cover collapse coverage pays the homeowner for property damage caused from the abrupt collapse of the ground cover with a visible ground cover depression resulting in structural damage to the home to the extent that the home is condemned and ordered to be vacated. Structural damage to a home due to settling or cracking of a foundation is not catastrophic ground cover collapse and is not paid for under catastrophic ground cover collapse coverage. Damage of this type, however, may be covered under "sinkhole coverage" which can be purchased for an additional premium. All property insurers must make sinkhole coverage available for homeowners to purchase.

When coverage for catastrophic ground cover collapse was added to the law in 2007 as a mandatory coverage, insurers were required to make a form filing with the OIR by June 1, 2007 to implement this coverage requirement. This bill repeals section 627.706(3), F.S., the statutory provision added in 2007 requiring insurers to make the catastrophic ground cover collapse form filing by June 1, 2007 because the filing deadline has passed.

¹ Section 624.155, F.S., specifies the insurer violations which require pre-suit notice to DFS and to the insurer. These violations include: unfair claim settlement practices, illegal dealings in premiums, refusal to insure, favored agent or insurer, illegal dealings for life or disability insurance, life or disability insurance discrimination based on policyholder having the sickle cell trait, return of auto insurance premium upon cancellation of the policy by the policyholder, not settling claims in good faith, claims payments made to policyholders without an accompanying statement relating to the coverage, and failure to settle a claim under one portion of an insurance policy in order to influence settlement under other portions of the policy.

² s. 624.155(3)(a), F.S.

³ Section 30, Ch. 2007-1, L.O.F.

Report on the Sinkhole Database

Section 627.7065, F.S., enacted in 2005,⁴ creates a sinkhole information database for the purpose of tracking sinkhole claims made against property insurance policies. The DFS is primarily responsible for the development of the database, with input from the Department of Environmental Protection (DEP) and the Florida Geological Survey. The DFS has authority to require insurers to report past and present sinkhole claims for inclusion in the database. The DEP must investigate reports of sinkhole activity and report its findings to the database.

Section 627.7065(5), F.S., requires the DEP, in consultation with the DFS, to submit a report of activities by December 31, 2005 to the Governor, the Chief Financial Officer, and the Legislative presiding officers about the sinkhole database implemented by the DFS. The report was submitted on March 10, 2006. The bill repeals section 627.7065(5), F.S., because the deadline for the report submission has passed.

Florida Sinkhole Insurance Facility Study

Section 627.7077, F.S., requires the Florida State University College of Business Department of Risk Management and Insurance (FSU) to conduct a feasibility and cost-benefit study of a potential Florida Sinkhole Insurance Facility and of other matters related to the affordability and availability of sinkhole insurance. A preliminary report was due to the presiding officers of the Legislature and the Financial Services Commission by February 1, 2005 with a final report due April 1, 2005. The final report was submitted in April 2005 by FSU. The bill repeals section 627.7077, F.S., because the deadline for the report on the sinkhole study has passed.

Effective Date for the Exclusion of Windstorm and Contents Coverage In Property Insurance Policies

Section 627.712, F.S., requires property insurers to provide windstorm coverage in residential property insurance policies but allows a policyholder to exclude windstorm coverage if specified requirements are met. The statute also allows a policyholder to exclude contents coverage if specified requirements are met. The statute was first enacted in the 2007A Special Session.⁵ Section 627.712(7), F.S., provides an effective date of June 1, 2007 for the statute but allows the OIR to extend the effective date until October 1, 2007 at the latest with approval of the Financial Services Commission. The bill repeals section 627.712(7), F.S., which provides the effective date of the statute as the deadlines of June 1, 2007 and October 1, 2007 contained in the statute have passed.

Refund of Funds from the Insurance Capital Build-Up Incentive Program

In 2006, the Legislature created the Insurance Capital Build-Up Incentive Program (Capital Build Up Program or program) within the State Board of Administration (SBA) to provide insurance companies a low-cost source of capital to write additional residential property insurance. The program's goal was to increase the availability of residential property insurance covering the risk of hurricanes and to ease residential property insurance premium increases.

To accomplish its goal, the program loaned state funds in the form of surplus notes to new or existing authorized residential property insurers under specified conditions. The insurers, in turn, agreed to write additional residential property insurance in Florida and to contribute new capital to their company. The maximum dollar amount of a surplus note was \$25 million. The surplus note was repayable to the state, with a 20 year term, at the 10-year Treasury Bond interest rate (with interest only payments the first three years). The Legislature appropriated \$250 million non-recurring funds from the General Revenue

⁴ Section 18, Ch. 2005-111, L.O.F.

⁵ Section 32, Ch. 2007-1, L.O.F.

Fund to fund the program at its inception in 2006. Any unexpended balance reverted back to the General Revenue Fund on June 30, 2007.

As of June 28, 2007, the program issued \$247,500,000 in funds to thirteen qualifying insurers. Administrative expenses for the program totaled \$2,500,000. Thus, by June 2007 the entire 2006 legislative appropriation for the program was exhausted (\$247.5 million in loans, and \$2.5 million in administrative costs).⁶

CS/CS/SB 2860, enacted in 2008, required the Citizens Property Insurance Corporation (Citizens) to transfer \$250 million to the General Revenue Fund by December 15, 2008.⁷ The 2008 General Appropriations Act (GAA) contained a contingent appropriation of \$250 million to the SBA for additional funding for the Capital Build-Up Program. The appropriation was contingent upon Citizens transferring \$250 million to the General Revenue Fund.

The \$250 million transfer from Citizens for use in the Capital Build Up Program was line item vetoed by the Governor Crist.⁸ In his veto message Governor Crist stated: "[w]hile I believe the program is well intended and has had the net effect of removing nearly 200,000 policies from the Citizens Property Insurance Corporation and has kept an additional estimated 480,000 policies out of Citizens, the funding source is inappropriate. The original funding for the program came from the General Revenue Fund during the 05/06 fiscal year; however, the additional funding for the program provided in this legislation comes from policyholders' premiums paid to Citizens, which is used to pay claims in the event of a catastrophic hurricane. ...Taking \$250 million away from Citizens' ability to pay claims will substantially increase the likelihood of assessments for Floridians across the state."⁹

CS/CS/SB 2860 also required the SBA to transfer back to Citizens on January 15, 2009 any uncommitted funds that were initially transferred from Citizens for the program. The bill repeals current law requiring the transfer of funds back to Citizens on January 15, 2009. The initial transfer of funds from Citizens to the General Revenue Fund was never completed due to the Governor's line item veto in CS/CS/SB 2860. Thus, the bill repeals obsolete language from the statute.

Repeal of Substantive Statute

The following is a substantive change made by the bill that is not technical in nature and does not delete obsolete or outdated law:

Repeal of Report to the Legislature Relating to Exposure, Debt, and Assessments of the Florida Hurricane Catastrophe Fund and Citizens

Section 627.3519, F.S., requires the Financial Services Commission (FSC)¹⁰ to provide the Legislature, by February 1st each year, a report on the aggregate net probable maximum losses¹¹, financing options, and potential assessments of the Florida Hurricane Catastrophe Fund (Fund) and Citizens. This statute was enacted in 2006.¹² The Financial Services Commission has provided the required report on to the Legislature each February since 2008.

⁶ Information obtained from the Final Report of the Insurance Capital Build-Up Incentive Program available at <http://www.sbafla.com/fsb/LinkClick.aspx?fileticket=TYIOUbpBbDM%3d&tabid=975&mid=2692> (last viewed February 1, 2011).

⁷ Section 16, Ch. 2008-66, L.O.F.

⁸ Section 16 of CS/CS/SB 2860 which required the \$250 million transfer from Citizens to the General Revenue Fund for use in the Capital Build Up Program was vetoed on May 28, 2008. CS/HB 5057 also required the \$250 million transfer and this bill was vetoed on June 10, 2008. (Letter to Secretary Kurt S. Browning, Secretary of State, from Governor Charlie Crist dated June 10, 2008, on file with staff of the Insurance & Banking Subcommittee).

⁹ Letter to Secretary Kurt S. Browning, Secretary of State, from Governor Charlie Crist dated May 28, 2008, on file with staff of the Insurance & Banking Subcommittee.

¹⁰ The Financial Services Commission is comprised of the Governor and Cabinet (s. 20.121(3), F.S.).

¹¹ Probable maximum loss is an estimate of maximum dollar value that can be lost under realistic situations.

¹² Section 20, Ch. 2006-12.

The report must include the amount and term of debt needed to be issued by the Fund and Citizens to support the probable maximum losses required to be reported. The assessment percentage that would be needed to support the debt is also required to be reported.

The OIR prepares the report on behalf of the FSC. The OIR does not compute or generate the information required to be reported. Much of the information needed in the report is already computed by the Fund and by Citizens and provided to various stakeholders, such as potential bond investors, rating agencies, public policymakers, and the advisory and governing boards of the Fund and Citizens. Thus, the OIR gathers the information already computed from Fund and Citizens and presents the information in a report format.

B. SECTION DIRECTORY:

Section 1: Deletes s. 215.5595(11), F.S., relating to the Insurance Capital Build-Up Incentive Program.

Section 2: Amends s. 627.311, F.S., relating to the Florida Automobile Joint Underwriting Association.

Section 3: Repeals s. 627.3519, F.S., relating to an annual report of aggregate net probable maximum losses, financing options, and potential assessments.

Section 4: Deletes s. 627.706(3), F.S., relating to a property insurance filing for catastrophic ground cover collapse coverage.

Section 5: Deletes s. 627.7065(5), F.S., relating to a report of activities relating to the sinkhole database.

Section 6: Repeals s. 627.7077, F.S., relating to a Florida Sinkhole Insurance Facility Study.

Section 7: Deletes s. 627.712(7), F.S., relating to the effective date of the statute relating to the exclusion of windstorm and contents coverage in property insurance policies.

Section 8: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The OIR's budget does not include any funds for preparation of the report covering the probable maximum loss, financing options, and assessment need of the Florida Hurricane Catastrophe Fund (Fund) and Citizens. The OIR partners with an outside source to compile and obtain the information required in the report. Much of the information required to be compiled and obtained for the report has already been compiled by the Fund and Citizens and is shared by the Fund and Citizens to enable the report to be completed without expense. Thus, repeal of the report will not reduce state expenditures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 24, 2011, the Insurance & Banking Subcommittee considered the bill, adopted a title amendment to correct a title defect in the bill, and reported the bill favorably with a Committee Substitute. The amendment changed the title of the bill to "an act relating to the repeal of property and casualty insurance provisions." The originally filed bill was titled "an act relating to the repeal of obsolete insurance provisions," however, one provision repealed by the bill was not obsolete as the provision repeals a statute requiring an ongoing report. The staff analysis was updated to reflect the adoption of the amendment.