HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 635 Insurance
SPONSOR(S): Regulatory Affairs Committee; Insurance & Banking Subcommittee; Edwards
TIED BILLS: **IDEN./SIM. BILLS:** SB 1046

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Callaway	Cooper
2) Government Operations Appropriations Subcommittee	13 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee	17 Y, 0 N, As CS	Callaway	Hamon

SUMMARY ANALYSIS

This bill contains changes for various types of insurance. Specific issues include:

- Extending the current exemption for medical malpractice insurance policyholders from assessments levied by the Florida Hurricane Catastrophe Fund (FHCF) for another three years;
- Allowing electronic proof of automobile insurance cards;
- Expanding the persons qualified to inspect boilers;
- Extending the examination period for licensing of foreign or alien insurers;
- Streamlining the licensing process for insurance agencies;
- Exempting employees of rental car businesses from insurance agent licensing;
- Allowing an average of hurricane loss models to be used in property insurance rate filings;
- Extending the time period insurers have to use a hurricane model in property insurance rate filings;
- Allowing parties to negotiate rate factors in retrospective rating in workers' compensation;
- Repealing specified reports done by the Financial Services Commission relating to Citizens Property Insurance Corporation (Citizens) and the FCHF;
- Changing the notification period for property insurance nonrenewals, cancellations, or terminations;
- Allowing electronic delivery of certain insurance policies to policyholders with their consent;
- Expanding the insurer personnel authorized to sign insurance coverage statements;
- Allowing insurers a new method to notify policyholders of a change in the terms of their insurance policy and requiring notification to the insurance agent;
- Providing additional authority to the Department of Financial Services (DFS) relating to the alternative dispute programs for property, sinkhole, and automobile insurance claims administered by the DFS;
- Clarifying the Medicare fee schedule used for personal injury protection insurance;
- Repealing a fidelity bond required for nonresident surplus lines insurance agents selling insurance to risk retention and purchasing groups;
- Allowing mutual insurance companies to form a financial guaranty insurance company;
- Amending a definition relating to captive insurance;
- Providing exceptions to certain financial requirements for service warranty associations;
- Repealing an affidavit required of surplus lines insurance agents;
- Revising reporting, licensure, and insurer review provisions relating to insurance administrators;
- Allowing a $15 penalty for insurance premiums paid by debit or credit card that are declined;
- Requiring sinkhole repairs for Citizens' sinkhole claims, requiring Citizens to do an annual report on sinkhole policies, and requiring Citizens to offer specified sinkhole deductibles; and
- Dissolving the Florida Comprehensive Health Association.

The bill has no fiscal impact on state or local government. The bill is effective upon becoming a law, except as otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill contains changes for various types of insurance. Issues addressed include:

- the Florida Hurricane Catastrophe Fund;
- electronic proof of automobile insurance cards;
- boiler inspections;
- insurance licensing for foreign or alien insurers;
- insurance agency licensing;
- insurance agent licensing of employees of rental car businesses;
- use of hurricane loss models in property insurance rate filings;
- rate setting in workers' compensation;
- repeal of reports relating to Citizens Property Insurance Corporation and the Florida Hurricane Catastrophe Fund;
- the notification period for property insurance nonrenewals, cancellations, or terminations;
- insurance coverage statements;
- electronic delivery of insurance policies to policyholders;
- notification to policyholders of a change in the terms of their insurance policy;
- the alternative dispute programs administered by the Department of Financial Services for property, sinkhole, and automobile insurance claims; personal injury protection insurance;
- disqualification of an appraisal umpire in residential property insurance;
- sinkhole deductibles;
- the fee schedule used in personal injury protection insurance;
- a bond required for insurance agents selling insurance to risk retention and purchasing groups;
- formation of financial guaranty insurance companies;
- a definition used in captive insurance;
- financial requirements for service warranty associations;
- affidavit required of surplus lines agents;
- insurance administrators;
- penalty for premium payment made by debit or credit card and declined for insufficient premium;
- sinkhole claims submitted to Citizens; and
- The Florida Comprehensive Health Association.

Florida Hurricane Catastrophe Fund

The Florida Hurricane Catastrophe Fund (FHCF or Fund) is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers.[1] The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must participate in the FHCF (s. 215.555(4)(a), F.S. and s. 215.555(2)(c), F.S.). The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage (45, 75, or 90%) of hurricane losses to residential property above the insurer's retention (deductible).[2]

The FHCF must offer two options for reinsurance coverage for all residential property insurers. One of the two options is mandatory and thus must be purchased by all insurers on their residential property exposure. The voluntary coverage option, Temporary Increase In Coverage Limit Options (TICL), offers reinsurance to insurers above the mandatory coverage.

[1] s. 215.555, F.S. The FHCF was created after Hurricane Andrew in 1992.

[2] Retention is defined to mean the amount of losses below which an insurer is not entitled to reimbursement from the Fund. A retention is calculated for each insurer based on its proportionate share of Fund premiums.

For the mandatory coverage, the FHCF charges insurers the "actuarially indicated" premium for the coverage provided by the FHCF, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. The premium for mandatory coverage also includes a cash build-up factor which is charged on top of the actuarially indicated premium. For the 2012-2013 contract year, the cash build-up factor is 20%, meaning an insurer's premium is 20% greater than the actuarially indicated premium. The cash build-up factor increases by 5% each year until it is 25% (2013-2014 contract year).

Florida law sets the maximum amount the FHCF reimburses insurers each year for the mandatory coverage.[3] This is the FHCF's capacity. Under current law, the FHCF's capacity is $17 billion for each contract year. The capacity does not increase until the FHCF's cash and bonding ability exceeds $34 billion. Because this condition for an increase in capacity is not yet met, for the current contract year, the insurance industry as a whole is covered for losses up to $17 billion by the mandatory coverage.

Before FHCF monies are available to pay claims each insurer must meet a retention/deductible. The retention amount for each insurer is different because the amount is based on the amount of premium the insurer pays to the FHCF. For the 2012-2013 contract year, the insurance industry as a whole has an aggregate retention of $7.389 billion for mandatory coverage, meaning the total of all individual insurer retentions/deductibles will total $7.389 billion per hurricane event if all participating insurers reached their retention. Although the insurance industry's aggregate deductible/retention totals $7.389 billion, insurers can obtain reimbursement from the FHCF before the insurance industry losses total $7.389 billion because loss recovery from the FHCF is based on an individual insurer meeting its own retention for mandatory coverage prior to losses being reimbursed.

Revenue bonds are issued by the FHCF to pay claims when the FHCF's funds are inadequate. These bonds are funded by emergency assessments levied by the FHCF against property and casualty insurance premiums paid by policyholders (other than workers' compensation, accident and health, federal flood and, until May 31, 2013, medical malpractice), including surplus lines policyholders.[4] The FHCF assessment base is over $34.6 billion.[5] Annual assessments are capped at 6% of premium with respect to losses from any one year and a maximum of 10% of premium to fund hurricane losses from multiple years.[6]

The bill allows medical malpractice insurance policyholders to be exempt from FHCF assessments until May 31, 2016. The exemption has been in place since 2005[7]. These policyholders are currently exempt from the assessment base, but under current law they will be added to the base starting June 1, 2013 because their exemption expires on May 31, 2013. Thus, the bill extends the exemption for these policyholders three more years.

Proof of Insurance Cards

Florida motorists are required to present proof of insurance when registering a motor vehicle and to have this proof in their immediate possession while operating the vehicle. Historically, automobile insurance identification cards, which provide such proof, have been issued in paper format. However, eight states[8] have enacted laws/ adopted regulations that allow electronic proof or evidence of insurance, e.g., an electronic image that shows proof of coverage on an insured's cellular phone. It has estimated that another 21 states are likely to consider such legislation this year.[9]

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[3] s. 215.555(4)(c)1., F.S.
[4] s. 215.555(6)(b)1., F.S.; s. 215.555(6)(b)(10), F.S.
[5] Assessment base total is as of the end of 2011. See Report Prepared for the Florida Hurricane Catastrophe Fund on Claims-Paying Capacity Estimates by Raymond James Public Finance Department, dated October 9, 2012, available at http://www.sbafla.com/fhcf/AdvisoryCouncil/2012MeetingMaterials/tabid/1311/Default.aspx (last viewed February 27, 2013).
[6] s. 215.555(6)(b)2., F.S.
[7] Ch. 2005-2, L.O.F.
[8] The eight states are Alabama, Arizona, California, Colorado, Idaho, Louisiana, Minnesota, and Virginia. In California, the person who presents the "mobile electronic device" assumes all liability for any subsequent damage to the device. Arizona, California, and Louisiana expressly preclude law enforcement officers from accessing any other information on the device. Correspondence from Property Casualty Insurers Association of America, received March 1, 2013, on file with staff of the Insurance & Banking Subcommittee.
[9] *Id*.

The bill amends Florida law to permit proof-of-insurance cards to be issued in paper or electronic format. Further, when an electronic device is presented to a law enforcement officer for purposes of displaying an electronic proof-of-insurance card, the motorist is not consenting to a search of any other information on the device by the officer. If the electronic device is damaged while in the officer's possession, the officer is not liable for such damage.

Boiler Inspectors

Chapter 554, F.S., governs boiler safety. Most boilers are insured by boiler and machinery insurance.

The DFS is the state agency responsible for overseeing boiler safety and does so through the Division of State Fire Marshal within the agency. DFS adopts a State Boiler Code by administrative rule to provide parameters for construction, installation, inspection, maintenance, and repair of boilers in Florida.[10] The DFS employs a chief inspector who administers the state boiler inspection program, enforces the State Boiler Code, and keeps a record of all boilers located in public assembly locations. The DFS also employs deputy inspectors who report to the chief inspector.

Boilers in public assembly locations[11] must be inspected once per year for high pressure boilers and once every two years for low pressure boilers. The chief inspector issues a certificate of compliance for boilers inspected and found to be in compliance with the State Boiler Code.

Boiler inspections are typically done by special inspectors, although inspections can be done by the chief inspector or a deputy inspector. Special inspectors hold a certificate of competency[12] from the chief inspector and are typically employed by the insurance company insuring the boiler. In order for the special inspector to inspect boilers in Florida, the insurance company employing the special inspector must be licensed in Florida to insure boilers.

The bill changes who can be a special inspector from an employee of a company licensed in Florida to insure boilers to an "authorized inspection agency" and makes conforming changes. Authorized inspection agency is defined as an insurance company licensed in any state or Canada employing boiler inspectors or a county, city, town, or other governmental subdivision employing boiler inspector as long as the boiler inspectors employed by both entities hold certificates of competency issued by the chief inspector. The change should allow more persons to be eligible to inspect boilers in Florida while maintaining the inspector competency requirement in current law.

Additionally, the bill requires insurers to annually report to the DFS the names of the authorized inspection agencies performing boiler inspections for the insurer.

Certificate of Authority for Foreign or Alien Insurers

Section 624.401, F.S., prohibits insurance transactions in Florida unless the insurer holds a certificate of authority from the state. The Office of Insurance Regulation (OIR) regulates insurers and grants certificates of authority for insurance transactions in Florida. Section 624.413, F.S., specifies information an insurer must give to the OIR in an application for a certificate of authority.

A foreign insurer is one formed under the laws of another state, district, territory, or commonwealth of the United States.[13] An alien insurer is an insurer that is not a foreign insurer or a domestic insurer, with domestic insurers being an insurer formed under Florida law.[14]

When a foreign or alien insurer files an application for a certificate of authority with the OIR, current law requires the insurer provide the OIR a copy of the most recent examination report done by the public official over insurance where the insurer is domiciled. The examination provided must be within the

[10] s. 554.103(1), F.S.; Chapter 69A-51, F.A.C.
[11] s. 554.1021(2), F.S. and Rule 69A-51.005(24), F.A.C., define public assembly locations.
[12] Section 554.113, F.S., provides the requirements for a certificate of competency, which is valid for one year. Section 554.111, F.S., provides the fees charged by DFS for a certificate of competency, which are deposited into the Insurance Regulatory Trust Fund.
[13] s. 624.06(2), F.S.
[14] s. 624.06, F.S.

three years preceding the insurer's application for a Florida certificate of authority. According to the OIR, some states examine insurers every five years, instead of three years. Thus, insurers licensed in those states that want to also be licensed in Florida cannot provide an examination within the preceding three years with their Florida license application. Thus, these insurers must wait to come into Florida until the requisite examination can be provided, which can be as long as two years. The bill changes the examination period from three years to five years to avoid the waiting time incurred by these insurers wanting to be a Florida licensed insurer. The change also provides consistency with examination requirements in current law for domestic insurers, which is five years.[15]

Insurance Agency Licensure

The bill makes significant changes to the insurance agency licensure law to streamline the licensing process and to better align the regulation of insurance agencies in Florida with other states. The DFS is the state agency responsible for licensing insurance agencies in accordance with s. 626.172, F.S. In Florida, insurance agents who are sole proprietors and do not employ other insurance agents must be licensed as both an insurance agent and an insurance agency.[16] According to the DFS, no other state requires licensure of an insurance agency when the licensed insurance agent is the sole proprietor of the agency. Furthermore, because insurance agents are vetted by the agent license process by DFS, DFS believes also licensing the agency serves no purpose. The bill eliminates the insurance agency licensing requirement for agencies owned solely by licensed insurance agents and not employing other insurance licensees.

Current law also requires each insurance agency location be licensed. Other states do not have a similar licensing requirement for branch locations of agencies. The bill eliminates the requirement that branch locations of agencies be licensed for branch locations meeting certain requirements set out in the bill. Although licensing is no longer required, insurance agencies and each branch agency cannot conduct business without an agent in charge and the agent in charge must be a licensed insurance agent. However, insurance activity can occur at any agency location as long as a licensed agent is present and an agent in charge has been designated. This is a new requirement provided in the bill. The bill sets out the requirements of the agent in charge and the effect on an agency license if an agent in charge is not appointed.

Licenses for an insurance agency expire every three years under current law.[17] The bill eliminates the expiration of an agency license. Thus, agency licenses will no longer expire.

According to DFS, when the agency licensing law was created, some existing agencies were given the opportunity to register the agency in lieu of licensing the agency. The primary benefit of registration over licensing is that registrations do not expire whereas licenses expire every three years. DFS indicates Florida is the only state that registers insurance agencies in lieu of licensing them. Thus, insurance agencies registered in Florida cannot be recognized in other states because the states only recognize licensed agencies. As a result, insurance agencies have been turning in their registrations to the DFS and applying for a Florida agency license. This allows the agency to also obtain an agency license in other states. The DFS asserts the number of registered agencies is steadily declining. Over the past four years an average of 27 registered agencies per month have canceled their registrations. Currently, there are over two times as many licensed insurance agencies as registered ones, with over 38,000 licensed agencies and over 13,000 registered ones.

The bill repeals current law allowing certain insurance agencies to obtain a registration in lieu of a license and makes conforming changes due to this repeal. The bill converts all agency registrations to licenses as of October 1, 2013.

Licensing of Insurance Agents Selling Motor Vehicle Rental Insurance

In general, insurance agents transact insurance on behalf of an insurer or insurers. Agents must be licensed by the Department of Financial Services (DFS or department) to act as an agent for an insurer,

[15] s. 624.316(2), F.S.
[16] See s. 626.112(7), F.S.
[17] s. 626.382, F.S.

and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers.[18]

Limited lines insurance agents are individuals, or in some cases entities, licensed as insurance agents but limited to selling one or more of the following forms of insurance (each requiring a separate license):

- Motor vehicle physical damage and mechanical breakdown insurance;
- Industrial fire or burglary;
- Travel insurance;
- Motor vehicle rental insurance;
- Credit insurance;
- Crop hail and multiple-peril crop insurance;
- In-transit and storage personal property insurance; and
- Portable electronics insurance.[19]

A limited lines insurance agent license generally has fewer requirements for licensing than other insurance agents. These licensees must, however, file an application with DFS and be appointed by an insurance company.

The bill makes one change to the limited license statute for motor vehicle rental insurance. Under current law, a limited license to sell motor vehicle rental insurance can be issued to a business that offers motor vehicles for rent or lease. A license issued to a rental business covers each office, branch office, or place of business associated with the rental business. The bill expands this coverage to include each employee working at the rental business. Thus, all employees would be covered by the rental business' license to sell rental insurance. According to DFS, the agency interprets the current law relating to rental insurance licensing to mean the license for the rental company business covers each branch office and each employee working at the rental business. Thus, the change made by the bill is clarifying and is consistent with the application of the current law by the DFS.

Hurricane Loss Models

In 1995 the Legislature established the Florida Commission on Hurricane Loss Projection Methodology (Commission) to serve as an independent body within the State Board of Administration.[20] The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. Members of the Commission include experts in insurance finance, statistics, computer system design, and meteorology who are full-time faculty members in the State University System and appointed by the state Chief Financial Officer (CFO); an actuary member from the FHCF Advisory Council; an actuary employed with a property and casualty insurer appointed by the CFO; an actuary employed by the OIR; the Executive Director of Citizens Property Insurance Corporation; the senior employee responsible for FHCF operations; the Insurance Consumer Advocate; and the Director of Emergency Management. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards.

Only hurricane loss models or methods the Commission deems accurate or reliable can be used by insurers in rate filings to estimate hurricane losses used to set property insurance rates. Additionally, insurers have 60 days after the Commission finds a model accurate and reliable to use the model to predict the insurer's probable maximum loss levels[21] in a rate filing.

The bill allows insurers to use loss estimates from a straight average of results from multiple models in their rate filing for property insurance rates. Current law allows only one model to be used to project loss estimates. The bill also lengthens the time insurers have to use a model or models in their rate filing from 60 to 180 days after the Commission finds the model reliable and accurate.

[18] s. 626.112, F.S.
[19] s. 626.321, F.S.
[20] s. 627.0628, F.S.
[21] Probable maximum loss is an estimate of maximum dollar value that can be lost under realistic situations.

Retrospective Rating Plan in Workers' Compensation

Retrospective rating plans[22] may be used by workers' compensation insurers to compete on price. Under such a 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. Before there were large deductible programs, retrospective rating plans were the dominant rating plan for large employers.

The bill authorizes retrospective rating plans that provide for negotiation between the employer and insurer to determine the retrospective rating factors to be used to calculate the premium when the employer has exposure in more than one state, an estimated annual standard premium in Florida of at least $175,000, and an annual estimated countrywide standard premium of $1 million or more for workers' compensation.

Repeal of Report to the Legislature Relating to the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation

Section 627.3519, F.S., requires the Financial Services Commission (FSC)[23] to provide the Legislature, by February 1st each year, a report on the aggregate net probable maximum losses[24], financing options, and potential assessments of the FHCF and Citizens Property Insurance Corporation (Citizens). This statute was enacted in 2006.[25] The FSC has provided the required report on to the Legislature each February since 2008.

The report includes the amount and term of debt needed to be issued by the FHCF 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 FHCF 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 FHCF and Citizens. Thus, the OIR gathers the information already computed from FHCF and Citizens and presents the information in a report format. The bill repeals the report.

Nonrenewal Notice For Property Insurance

Under current law,[26] personal lines or commercial lines residential property insurers must give policyholders a notice of cancellation, nonrenewal, or termination at least 100 days prior to the effective date of the cancellation, nonrenewal, or termination.[27] Further, for any cancellation, nonrenewal, or termination that takes effect between June 1st and November 30th, an insurer must provide at least 100 days written notice, or notice by June 1st, whichever is earlier. The June 1st notice deadline ensures policyholders whose property insurance policies will be cancelled, nonrenewed, or terminated during hurricane season (June 1st – November 30th) will receive notice of the cancellation, nonrenewal, or termination by the start of hurricane season.

The bill repeals the required notice by June 1st for policies being cancelled, nonrenewed, or terminated between June 1st and November 30th. The bill also lengthens the notice time period under current law from 100 days to 120 days. Under the bill, policyholders with a policy renewal date from June 1st to November 30th will receive 120 days' notice before the policy's cancellation, nonrenewal, or termination date. This change means some property insurance policyholders will receive notice of cancellation, nonrenewal, or termination during hurricane season (June 1st – November 30th). Under the bill, policies

[22] See "2012 Workers' Compensation Annual Report" (December 2012) by the Florida Office of Insurance Regulation. Available at http://www.floir.com (last viewed February 27, 2013).
[23] The Financial Services Commission is comprised of the Governor and Cabinet (s. 20.121(3), F.S.).
[24] Probable maximum loss is an estimate of maximum dollar value that can be lost under realistic situations.
[25] Section 20, Ch. 2006-12.
[26] s. 627.4133(2), F.S.
[27] A 45-day notice of cancellation or nonrenewal, rather than the 100-day or 120-day notice is allowed if the OIR determines early cancellation of some or all of an insurer's property insurance policies is necessary to protect the best interest of the public or the policyholders. (s. 627.4133(2)(b)5., F.S.)

renewing September 28th – November 30th that are being nonrenewed, cancelled or terminated by the insurer will receive notice of nonrenewal, cancellation or termination during hurricane season.

Policyholders with property insured by the same insurer for five years or more receive 120 days' notice of cancellation, nonrenewal, or termination and the bill does not change the notice period for these policyholders.

Coverage Statement

Under current law, only an officer of an insurer or the insurer's claims manager or superintendent can sign statements given to persons making a claim under a liability insurance policy. The statement sets out the name of the insurer, the name of each insured, the limits of liability coverage, and coverage defenses. A copy of the insurance policy is also included in the statement. The bill expands the insurer personnel authorized to sign coverage statements to include licensed company adjusters.

Delivery of Insurance Policies Electronically

Section 627.421, F.S., requires every insurance policy[28] to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed.

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.[29] Insurance is specifically included in E-SIGN.[30] E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

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

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

Change of Policy Terms In Insurance Policies

Under current law, to make a change in the terms of a property and casualty insurance contract, the insurer must give the policyholder written Notice of Change in Policy Terms with the policy renewal notice and the policy renewal notice must be provided to the policyholder in accordance with current law, which requires insurers to give notice of renewal 45 days prior to the renewal date.[31] A policyholder is deemed to accept the policy term change if the renewal premium is paid. If the insurer does not provide the Notice of Change in Policy Terms to the policyholder, the terms of the insurance policy are not changed.

[28] s. 627.402, F.S., defines policy to include endorsements, riders, and clauses. Reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered. (see s. 627.401, F.S.)
[29] Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.
[30] *Id.*
[31] s. 627.43141, F.S.

The bill allows an insurer to send a Notice of Change of Policy Terms separate from the renewal notice as long as the notice is sent within the policy nonrenewal time limits in current law. The nonrenewal time limits are notice at least 100 days prior to the effective date of the nonrenewal.[32] And, for any nonrenewal that takes effect between June 1st and November 30th, at least 100 days written notice, or notice by June 1st, whichever is earlier, is required. Furthermore, policyholders with property insured by the same insurer for five years or more receive 120 days' notice of nonrenewal instead of 100 days' notice. Thus, the bill requires a Notice of Change of Policy Terms to be given sooner when it is not included with the renewal notice.

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

Insurance Mediation Programs

Current law provides for alternative dispute programs, administered by the DFS for various types of insurance. DFS runs mediation programs for property insurance and automobile insurance claims and a neutral evaluation program, similar to mediation, for sinkhole insurance claims.[33] The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.

To qualify as a mediator for the property or automobile mediation programs, a person must meet specific education or experience requirements set out in statute.[34] The person must possess certain masters or doctorate degrees, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for four years.

Also, to qualify as a DFS mediator, a person must successfully complete a training program approved by the DFS. According to DFS, the required mediation training program is no longer available from outside vendors due to the low volume of DFS mediators.[35] However, in order to ensure there was a training program available for those who wanted to be DFS mediators, for the past seven or eight years DFS approved the mediator training program offered by the courts.

The bill replaces the DFS mediator education, experience, and training program requirements set out above with new ones. Under the bill, a person with an active certification as a Florida Circuit Court Mediator is qualified to be a mediator for the DFS. Also, a person not certified as a Florida Circuit Court Mediator can be a DFS mediator if the person is an approved DFS mediator on July 1, 2013 and has conducted at least one DFS mediation from July 1, 2009 – July 1, 2013. This provision essentially grandfathers in current and active DFS mediators so they can continue to be DFS mediators, even if they are not certified as a Florida Circuit Court Mediator.

According to the DFS, 200 of the 300 current DFS mediators are certified as Florida Circuit Court Mediators,[36] so these mediators would still qualify to be a DFS mediator under the new qualifications provided in the bill. The remaining 100 mediators are grandfathered in by the bill and would still qualify to be DFS mediators even though they are not certified as a Florida Circuit Court Mediator. The DFS estimates changing the DFS mediator qualifications to allow Florida Circuit Court Mediators will expand the pool of mediators qualified to mediate for DFS to over 3,000 mediators.

The bill also requires DFS to deny an application to be a mediator or neutral evaluator or revoke or suspend a mediator or neutral evaluator in specified circumstances. These circumstances primarily involve the mediator or neutral evaluator committing fraud, violating laws or DFS orders, violating a rule

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

[33] s. 627.7015, F.S., for property insurance claim mediation program; s. 627.7074, F.S., for sinkhole claim mediation program; and s. 627.745, F.S., for automobile insurance claim mediation program,

[34] s. 627.745, F.S.

[35] DFS does not provide the training program in house.

[36] Information obtained from the DFS dated February 5, 2013, on file with the Insurance & Banking Subcommittee.

governing mediators certified by the Florida courts, or not being qualified. Additionally, DFS is authorized to inquire and investigate into improper conduct of mediators or neutral evaluators. DFS does not have this authority in current law, but does have authority to inquire into and investigate improper conduct of other persons licensed by DFS, such as insurance agents and insurance adjusters.

Disqualification of Appraisal Umpire In Residential Property Claims

An appraisal clause is found in all insurance policies. The purpose of the appraisal clause is to establish a procedure to allow disputed amounts to be resolved by disinterested parties. The appraisal clause is used only to determining disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process generally works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers cannot agree on the amount of damages, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both parties.

Because current law does not address disqualification of an umpire due to impartiality, a party wanting to disqualify an umpire must go to Circuit Court and have a judge rule on the umpire's impartiality. In making the ruling, the judge uses his or her judgment about the umpire's impartiality. There are no parameters in current law for a judge's ruling on an umpire's impartiality. The bill provides parameters for the judge's impartiality ruling by adding grounds to current law which the insurer or policyholder in a residential property dispute can use to challenge the impartiality of the umpire in order to disqualify the umpire. The disqualification grounds provided in the bill are the substantially the same as those used to disqualify a neutral evaluator in sinkhole claims under s. 627.7074(7)(a), F.S.

Personal Injury Protection Insurance

House Bill 119, the personal injury protection insurance (PIP) reform bill enacted in 2012,[37] amended s. 627.736(5)(a)2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The legislation provides in part that:

> [T]he applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered…*and the applicable fee schedule or payment limitation applies throughout the remainder of that year* [italics added for emphasis]…."

The above-emphasized language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied through the calendar year (through December 31st) or whether the March 1st fee schedule applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,[38] stating that the plain language of the section requires the fee schedule in place on March 1st to apply throughout the following 365 days, or until the following March 1st. The bill amends s. 627.736(5)(a)2., F.S., to clarify that the fee schedule in place on March 1st applies until the last day of February of the following year.

Surety Bond Required of Surplus Lines Agents For Risk Retention Groups

[37] Ch. 2012-151, L.O.F.

[38] Available at http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx (last accessed: February 27, 2013).

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurance is sold by surplus lines insurance agents.

Risk retention and purchasing groups are governed by Part XIX of chapter 627. These groups are corporations, limited liability associations, or other groups who assume and spread the liability exposure of the members of the group to all the group members. Group members typically have a common business, product, or service. Risk retention groups can be certified in Florida by the OIR. If the group is not certified in Florida, but is licensed or certified in another state, it must comply with certain Florida insurance laws set out in s. 627.944, F.S.

Purchasing groups buy insurance for the risks of group members. Purchasing groups can only purchase insurance for a risk located in Florida from an authorized insurer, a risk retention group, or a surplus lines insurer.

Section 627.952, F.S., governs the conduct of persons selling to or buying insurance for purchasing groups or risk retention groups. Persons selling or buying insurance for these groups must be licensed as a Florida resident or nonresident general lines insurance agent. General lines agents wanting to place business with a surplus lines insurer must also be licensed as a surplus lines insurance agent in Florida or in their state of residence. The bill requires surplus lines agents that are not residents of Florida to be licensed as a nonresident surplus lines agent in Florida and repeals the allowance in current law that these agents can be licensed in their state of residence.

Additionally, surplus lines agents licensed outside of Florida and selling insurance to purchasing groups must post a $50,000 fidelity bond payable to the State of Florida. The bill repeals the $50,000 bond requirement for nonresident surplus lines agents to conform to the repeal of the bond requirements enacted in 2012 for Florida licensed surplus lines agents.[39]

The bill also repeals the restriction in current law that nonresident surplus lines agents can only sell insurance to purchasing groups. Thus, these agents will now be able to sell insurance to risk retention groups and purchasing groups.

Financial Guaranty Insurers

In order to transact insurance in this state, the Florida Insurance Code (Code) states that a certificate of authority is required.[40] To qualify for and hold authority to transact insurance in this state, an insurer must be in compliance with the Code and its charter powers, and must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer.[41] In addition to applying for a certificate of authority to transact a particular kind of insurance, domestic insurers must apply to the OIR for a permit to form as either a stock or mutual insurer, and have its articles of incorporation approved by the Department of State.[42]

The distinction between stock and mutual insurers is governed by Part I, Chapter 628, F.S.:

- *Stock insurers* are defined as "incorporated insurers with its capital divided into shares and owned by its stockholders," and pay dividends to their stockholders.[43]
- *Mutual insurers*, on the other hand, are "incorporated insurers without permanent capital stock, the governing body of which is elected in accordance with this part," and pay dividends to their policyholders, who are members of the insurer.[44]

[39] In 2012, CS/CS/CS/HB 725 was enacted (Ch. 2012-209, L.O.F.). This bill repealed the fidelity bond for surplus lines agents found in ss. 626.927(5) and 626.928, F.S.
[40] s. 624.401, F.S. The Florida Insurance Code consists of chs. 624, 632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[41] s. 624.404, F.S.
[42] s. 628.051, F.S. Domestic insurers are formed under Florida law. Insurers formed under other states' laws (foreign insurers) are entitled to become domestic insurers by complying with the same legal requirements for licensing and organization and by designating a principal place of business inside Florida upon the OIR's approval. See ss. 624.06 and 628.520, F.S.
[43] ss. 628.021and 628.371, F.S.
[44] ss. 628.031, 628.381 and 628.301, F.S.

In other words, stock insurers are investor-owned, while mutual insurers are owned by their policyholders. Mutual insurers may apply to demutualize to become a stock insurer (and vice versa), both subject to the OIR's approval.[45] In order to obtain regulatory approval of a mutual insurer's plan to demutualize, the plan must be equitable to the members and be approved by at least three-fourths of the insurer's members. In addition, the members must be given the opportunity to receive stock or cash for their ownership rights in the mutual organization.[46] According to the National Association of Mutual Insurance Companies, demutualization is a complex, expensive, and lengthy process. While demutualization can provide additional capital, cash distributions to policyholders can also deplete surplus.[47]

Part XX of Chapter 627, Florida Statutes, was enacted in 1988[48] to set forth requirements for transacting financial guaranty insurance. *Financial guaranty insurance* means a surety bond, insurance policy, an indemnity contract issued by an insurer, or any similar guaranty, under which loss is payable upon proof of occurrence of financial loss to an insured claimant, obligee, or indemnitee as a result of:

1. The failure of an obligor on a debt instrument or other monetary obligation, including common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract, to make principal, interest, premium, dividend, or purchase price payments when due, if the failure is the result of a financial default or insolvency, whether such obligation is incurred directly or as guarantor by or on behalf of another obligor who also defaulted;
2. Changes in the levels of interest rates or the differential in interest rates between various markets or products;
3. Changes in the rate of exchange of currency;
4. Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or
5. Other events which the OIR determines are substantially similar to any of the foregoing.[49]

Part XX of Chapter 627, F.S. requires an insurer to obtain a certificate of authority from the OIR to transact financial guaranty insurance in Florida. The insurer must meet an initial $50 million surplus requirement at the date of initial licensing, and must maintain minimum capital, surplus, contingency reserve requirements and be within loss exposure limitations. Financial guaranty insurance corporations are subject to all provisions of the Florida Insurance Code applicable to property and casualty insurance, to the extent they are not inconsistent with Part XX, Ch. 627, F.S.[50] According to the OIR's company search website, there are currently 50 insurers with financial guaranty insurance as an authorized line of business.[51]

By definition and by express requirement under current law, only stock property and casualty insurers are eligible to become financial guaranty insurance corporations, but not mutual insurers.[52]

The Financial Guaranty Insurance Guidelines, adopted by the National Association of Insurance Commissioners in 2008, does not make a distinction between stock and mutual insurers for purposes of transacting financial guaranty insurance.[53]

The bill amends ss. 627.971 and 627.972, F.S. to allow mutual property and casualty insurers to become financial guaranty insurance corporations, subject to meeting the requirements of the Code. The bill does not change any existing requirements to become a stock or mutual insurer.

Captive Insurance

[45] ss. 628.431 and 628.441, F.S.
[46] s. 628.441(2), F.S.
[47] NAMIC, Focus on the Future Options for the Mutual Insurance Company: https://www.namic.org/policy/futureMutualAlts.asp (last viewed February 25, 2013).
[48] Chapter 88-87, Laws of Florida.
[49] s. 627.971(1)(a), F.S. See subsection (1)(b) for exclusions from the definition of "financial guaranty insurance."
[50] s. 627.972(1)(c), F.S.
[51] OIR Company Directory, http://www.floir.com/CompanySearch, last viewed February 20, 2013.
[52] ss. 627.971(6) and 627.972(1), F.S.
[53] GDL-1626, at NAIC Model Laws, Regulations, and Guidelines: http://www.naic.org/store_model_laws.htm (last viewed February 20, 2013).

Captive insurance is a form of self-insurance where an insurer is created and wholly owned by one or more non-insurers to provide owners with coverage.[54] Unlike traditional self-insurance, the owner does not retain risk but transfers risk; the insured pay premiums to the captive insurer in exchange for the coverage of a specific risk.[55] Companies generally pursue this alternative risk transfer arrangement when commercial insurance becomes unavailable or reaches excessive costs.[56]

Captives may take many formations, often being divided into pure captives and group captives. Each formation may vary in allowable corporate structure, capital and surplus, underwritten risks, and number of owners. Most captive insurance companies are formed as pure captives,[57] meaning that the captive is a wholly-owned subsidiary that insures the risks of its parents and affiliates. Group captives typically include association captives, industrial captives, risk retention groups, and reciprocals; each is owned by and insures a group.[58]

Florida captive insurance legislation became effective in 1982. Florida captive insurance is regulated by the OIR under Part V of ch. 628, F.S. That Part defines a captive insurer to be "a domestic insurer established under Part I[59] to insure the risks of a specific corporation or group of corporations under common ownership owned by the corporation or corporations from which it accepts risk under a contract of insurance."[60]

The bill changes the definition of "qualifying reinsurer parent company" in the captive insurance law to remove authority for one entity to meet the definition and add authority for another entity to meet the definition. Satisfactory non-approved reinsurers will no longer qualify as a qualifying reinsurer parent company, but trusteed reinsurers will qualify as such. According to the OIR, a satisfactory non-approved reinsurer does not exist anymore. Additionally, although defined in Florida law, it does not appear the term "qualifying reinsurer parent company" is used anywhere in statute.

Service Warranty Associations

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the OIR. The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve rates for warranties.

The bill changes one of the financial requirements service warranty associations must have in order to keep its license. Current Florida law allows a service warranty association to demonstrate financial responsibility by securing contractual liability insurance from an authorized insurer which covers the service warranty association's obligations under service warranties sold in Florida. There are two kinds of insurance policies that are permitted: (1) an insurance policy that pays only when the service warranty association fails to pay its obligations under the service warranties; and (2) a policy that pays claims under the association's service warranties from the first dollar. In addition, Florida law requires service warranty associations to maintain a writing ratio of gross written premiums to net assets of seven-to-one, meaning for every one dollar of net assets held by the association, the association can

[54] http://www2.iii.org/glossary/c/ (last viewed February 28, 2013).
[55] http://www.iii.org/issue_updates/captives-and-other-risk-financing-options.html (last viewed February 28, 2013).
[56] *Id.*
[57] Theriault, Patrick. *Captive Insurance Companies* (2008). Page 9. www.captive.com (last viewed February 27, 2013).
[58] http://www.captive.utah.gov/rrg.html (last viewed February 27, 2013). See also: Theriault, Patrick. *Captive Insurance Companies* (2008). Page 9.
[59] Part I of ch. 628, F.S., is entitled "STOCK AND MUTUAL INSURERS: ORGANIZATION AND CORPORATE PROCEDURES."
[60] s. 628.901, F.S.

write seven dollars of premium. Under current Florida law a service warranty association can avoid this minimum writing ratio by securing an insurance policy providing first dollar coverage from an insurer that maintains a minimum capital surplus of $100 million, maintains an "A" or higher rating, and is not affiliated with the service warranty association it insures.[61]

The bill expands the exception to the minimum writing ratio for service warranty associations. Under the bill, associations utilizing an insurance policy that pays only when the service warranty association fails to pay its obligations can avoid the writing ratio as long as the insurer issuing the policy to the association maintains a minimum capital surplus of $200 million and an "A" or higher rating. The surplus requirement for insurers issuing both kinds of insurance policies o service warranty associations helps ensure there is more than adequate capital in the insurance companies to honor all obligations of the insured association under service warranties sold in Florida.

For insurers providing first dollar coverage to service warranty associations, the bill repeals one of the three requirements for these insurers so the service warranty association purchasing insurance from the insurer can be exempt from the writing ratio required by law. The requirement that the insurer providing the first dollar coverage not be affiliated with the service warranty association it insures is repealed. These insurers must still maintain a minimum surplus of $100 million and maintain an "A" or higher rating.

Surplus Lines Agent Affidavit

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurance is sold by surplus lines insurance agents. Before a surplus lines insurance agent can place insurance in the surplus lines market, section 626.916, F.S. requires the insurance agent to make a diligent effort to procure the desired coverage from admitted insurers. Section 626.914, F.S. defines a diligent effort as seeking and being denied coverage from at least three authorized insurers in the admitted market unless the cost to replace the property insured is $ 1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.

Surplus lines insurance agents must report surplus lines insurance transactions to the Florida Surplus Lines Service Office (FSLSO) within 30 days of the effective date of the transaction, must transmit service fees to the Office each month, and must transmit assessment and tax payments to the Office quarterly.

Current law also requires a surplus lines agent to file a quarterly affidavit with the FSLSO to document all surplus lines insurance transacted in the quarter was submitted to the FSLSO. The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts. The bill repeals current law requiring this affidavit. However, surplus lines agents must still file a copy of or information on each surplus lines transaction with the FSLSO in accordance with the FSLSO's plan of operation.

Insurance Administrators

An insurance administrator is defined in s. 626.88(1), F.S., and generally is a person or entity that solicits or effects coverage, collects premiums, or adjusts or settles claims on behalf of a commercial self-insurance fund, a life insurer, or a health insurer. Insurance administrators also provide billing and collection services to health insurers and health maintenance organizations. Part VII of chapter 626, F.S., contains the statutory provisions governing insurance administrators. The bill makes several changes to the law governing these administrators.

Current law requires licensed insurance administrators to file financial statements and audited financial statements with the OIR on a calendar year basis. Some administrators, however, do not use a calendar year for financial statements and use a fiscal year instead. For these administrators, the

[61] The rating is from A.M. Best Company. However, an equivalent rating by another national rating service acceptable to the OIR is also allowed by statute.

current law requiring reporting on a calendar year basis increases costs and work load to prepare and audit financial statements on a calendar year basis as their typical statements do not coincide with a calendar year. The bill allows insurance administrators to file financial statements and audited financial statements on a calendar year or a fiscal year.

The bill also changes which persons are subject to biographical review by the OIR relating to issuance of a certificate of authority for an insurance administrator.

Under current law, insurance administrator operations for administrators that administer benefits for more than 100 certificate holders for an insurer must be reviewed by the insurer at least semiannually. The bill allows an insurer required to conduct this review to contract with a qualified third party to do the review.

Penalty for Insufficient Premium Payment

Current law allows a $15 penalty for a premium payment made by check to a premium finance company that is returned due to insufficient funds.[62] The bill extends the $15 penalty to premium payments made by credit card, debit card, or other electronic funds transfer if the payment is declined or cannot be processed due to insufficient funds.

Sinkholes

Background

A sinkhole is defined in Florida law as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater.[63] Sinkholes occur in certain parts of Florida due to the unique geological structure of the land. Sinkholes are geographic features formed by movement of rock or sediment into voids created by the dissolution of water-soluble rock. This type of subsidence formation may be aggravated and accelerated by urbanization and suburbanization, by water usage and changes in weather patterns.

Since 1981, insurers offering property coverage in Florida have been required by law to provide coverage for property damage from sinkholes.[64] In 2007, Florida law was amended to require insurers in Florida to cover only catastrophic ground cover collapse, rather than all sinkhole loss, in the base property insurance policy.[65] However, insurers must also offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents.[66] At a minimum, sinkhole loss coverage includes repairing the covered building, repairing the foundation, and stabilizing the underlying land. By law, sinkhole loss coverage by Citizens does not cover sinkhole losses to appurtenant structures, driveways, sidewalks, decks, or patios. All property insurers can restrict catastrophic ground cover collapse and sinkhole loss coverage to the property's principal building. Furthermore, insurers can require an inspection of the property before providing sinkhole loss coverage.

For sinkhole loss coverage in residential property insurance, current law allows insurers to include a deductible that applies only to sinkhole loss in the following amounts: 1% of policy dwelling limits, 2% of policy dwelling limits, 5% of policy dwelling limits, or 10% of policy dwelling limits. The insurer has the option to choose which sinkhole loss deductible is offered to policyholders and currently, most insurers, including Citizens, offer policyholders only a 10% sinkhole loss deductible.

Property insurers can nonrenew policies that contain sinkhole loss coverage in the base property insurance policy and offer policyholders a base policy containing coverage for only catastrophic ground cover collapse and offer coverage for sinkhole loss as an endorsement to the base policy for an additional premium.

[62] s. 627.841, F.S.
[63] s. 627.706(2)(b), F.S.
[64] Ch. 1981-280, L.O.F.
[65] Section 30, Ch. 2007-1, L.O.F.
[66] s. 627.706, F.S.

Notice of all sinkhole claims, including initial, reopened, or supplemental claims must be given to the insurer in accordance with policy terms within two years of the policyholder knowing about the sinkhole loss or within two years from when the policyholder reasonably should have known about the sinkhole loss.

Substantial changes to Florida's sinkhole law occurred in 2005, 2006, and 2011.[67] In 2011, the Legislature reviewed the sinkhole law and enacted comprehensive reforms addressing all areas of the law. Data collected by the Office of Insurance Regulation (OIR) in 2010, before the reforms were enacted, showed a significant increase in the number and cost of sinkhole claims from 2006 to 2010.[68] These increases impacted the financial stability of property insurers in Florida, including Citizens Property Insurance Corporation (Citizens), and were used by insurers to justify property insurance rate increases.

The sinkhole reforms enacted in 2011 were in response to the increasing number and cost of sinkhole claims. The goal of the reforms was to keep sinkhole loss insurance available to homeowners while providing more certainty in sinkhole claims for homeowners and insurers in terms of coverage, costs, repairs, and exposure.

The first complete year the reforms were in effect was 2012.[69] No data has been collected on an industry-wide basis on the number of claims, claim severity, or claim costs since the reforms were enacted, so their impact on sinkhole claims and costs on an industry-wide basis is unknown. However, Citizens performed a sinkhole study in 2012 to compute the impact of the 2011 reforms on their policies.[70] This study looked at actual sinkhole claim files from Citizens and readjusted the losses and expenses associated with the claims as if the 2011 reforms had been in effect. The actuarial analysis which accompanied the study projected the 2011 reforms would reduce Citizens' expected incurred sinkhole losses for 2013 by almost 55 percent.

Insurance Adjusting of Sinkhole Claims

Under current law, when a claim is made for sinkhole loss, the insurer must inspect the property to determine if there is structural damage resulting from sinkhole activity.[71] The definition in current law for "structural damage" was enacted in 2011 and is based on descriptions of structural damage in the Florida Building Code that are applicable to sinkholes.

Following the insurer's initial inspection, the insurer must provide written notice to the policyholder detailing:[72]

- the insurer's initial determination of the cause of the damage, if a determination is made,
- when the insurer must hire a professional engineer or professional geologist to verify or eliminate sinkhole loss,
- when the insurer must hire an engineer to recommend land and building stabilization and foundation repairs,
- a statement of the policyholder's right to demand certain testing be conducted by a geologist or engineer,
- when the policyholder can demand testing, and
- when a policyholder has to pay for testing.

For insurance policies covering sinkhole loss, if the insurer's inspection of the damaged property confirms structural damage to the property, but does not identify the cause of the damage, or if the damage seen on inspection is consistent with sinkhole loss, the insurer must hire, and pay for, an engineer or geologist to conduct sinkhole testing to determine the cause of the damage to the

[67] Ch. 2005-111, L.O.F.; Ch. 2006-12, L.O.F.; Ch. 2011-39, L.O.F.
[68] Report on Review of the 2010 Sinkhole Data Call by the Office of Insurance Regulation, dated November 8, 2010, link available at http://www.floir.com/Office/DataReports.aspx (last viewed March 10, 2013).
[69] The reforms were effective on May 17, 2011 when the bill (CS/CS/CS/SB 408) was signed by the Governor.
[70] Citizens Property Insurance Corporation Senate Bill 408 Sinkhole Analysis, prepared by Insurance Services Office, dated July 19, 2012, link available at https://www.citizensfla.com/about/mDetails_boardmtgs.cfm?event=419&when=Past (last viewed March 10, 2013).
[71] S. 627.707(1), F.S.
[72] S. 627.707(3), F.S.

property.[73] The engineer or geologist must issue a report on his or her findings (the report is discussed below).

If the insurer determines there is no sinkhole loss, the insurer can deny the sinkhole claim.[74] If an insurer determines there is no sinkhole loss and denies the sinkhole claim without sinkhole testing, the policyholder can demand testing. Policyholders can demand testing only if the insurance policy covers sinkhole loss. This prevents insurers from having to pay for sinkhole testing if the policy would not cover the damage. The policyholder's demand for testing must be communicated to the insurer within 60 days after the receipt of the denial of the sinkhole claim.[75] In addition, the policyholder demanding testing must pay the lesser of 50 percent of the sinkhole testing and sinkhole reporting costs or $2,500. But, the insurer must reimburse these costs to the policyholder if the testing reveals a sinkhole loss. However, if a policyholder submits a sinkhole claim without good faith grounds after sinkhole testing that reveals there is no sinkhole loss or that sinkhole activity did not cause the damage to the property, the policyholder must reimburse the insurer the lesser of 50 percent of the testing costs or $2,500.

Testing standards for sinkholes are established in s. 627.7072, F.S. The professional geologist or engineer must perform whatever tests are sufficient to determine the presence or absence of sinkhole loss or cause of damage within reasonable professional probability and to allow the engineer to make recommendations regarding any necessary building stabilization and foundation repair. Typically, the testing procedures used are shallow boring, ground penetrating radar, and deep boring.

Once testing is complete, the engineer or geologist performing the testing issues a report and certification to the insurance company and policyholder.[76] The requirements of the sinkhole report and certification are found in s. 627.7073(1), F.S. and are based upon sinkhole testing. If sinkhole loss is verified in the sinkhole report and certification, in addition to the other statements required by law, the report and certification must state structural damage to the covered building has been identified within a reasonable professional probability. In addition to other statements required by current law, if there is no structural damage or if sinkhole activity is eliminated as the cause of damage to a covered building, the report and certification must state there is no structural damage or the cause of structural damage found is not sinkhole activity within a reasonable professional probability. Florida law gives a presumption of correctness to specified information contained in the report.[77]

If the insurer verifies there is a sinkhole loss, the insurer must pay to stabilize the land and building and repair the foundation pursuant to the policy coverage and terms and in accordance with the recommendation of the professional engineer.[78] The policyholder is also given notice of the repairs to be done.

Regarding repair of sinkholes paid for by the insurer, the insurer can initially pay actual cash value of the sinkhole claim, except for the underpinning and other below foundation repair costs, until the policyholder enters into a contract to repair the sinkhole damage.[79] However, the insurer must pay for only repairs recommended in the sinkhole report prepared by the insurer's geologist or engineer.[80] The insurer must obtain approval of the property lienholder, and not the policyholder, in order to pay repair costs directly to the repair contractor. The policyholder chooses who makes the repairs.

For verified sinkholes, the policyholder must repair the property in accordance with the repair recommendations made by the insurer's engineer in the insurer's sinkhole report. The policyholder must enter into a contract to stabilize the building and repair the foundation within 90 days after the

[73] S. 627.708(2), F.S.
[74] S. 627.707(4)(a), F.S.
[75] ss. 627.707(4)(b) and (6), F.S.
[76] S. 627.7073(1), F.S.
[77] S. 627.7073(1)(c), F.S. See Universal Insurance Company of North America v. Warfel, 82 So.3d 47 (Fla. 2012) for a discussion of the presumption of correctness in sinkhole cases.
[78] S. 627.707(5),F.S.
[79] S. 627.707(5)(a), F.S.
[80] S. 627.707(5), F.S. Although a sinkhole report can be prepared by an engineer or a geologist, only an engineer can recommend sinkhole repairs. Furthermore, insurers are allowed in the law to hire professional structural engineers to recommend repairs on the damaged structure.

insurer confirms coverage for the sinkhole loss and notifies the policyholder of the confirmation.[81] Once the contract is entered into, the insurer pays the amount needed to begin repair work. The insurer continues to pay for repair work as the work is completed and repair costs incurred. The policyholder cannot be required to advance money for the repairs.

Sinkhole repairs must be complete within 12 months after the repair contract is entered into. The exceptions to this 12-month limitation are: mutual agreement between the insurer and the policyholder, neutral evaluation of the claim, litigation of the claim, or appraisal or mediation of the claim. Once the repairs are completed, the engineer overseeing the repairs must issue a report certifying the repairs are properly performed.

If after repairs are started, the insurer's engineer determines that repairs cannot be completed within policy limits, the insurer must either complete the repairs or pay policy limits to the policyholder, without reducing the payment for repair costs already paid. In this case, insurers pay over policy limits on a sinkhole claim.

Although current law requires the homeowner to repair the property affected by a verified sinkhole, often times the insurer and homeowner settle the sinkhole claim before repair work is started.[82] Homeowners that settle sinkhole claims are not required to use claim settlements to repair or remediate the home and land. Thus, arguably, homeowners are incentivized to file sinkhole claims, reach a settlement with the insurer, and use the settlement proceeds for something other than repair and replacement of the sinkhole and resulting damage.

Insurers are not allowed to nonrenew a property insurance policy because a sinkhole claim is filed if the sinkhole claim payment equals or is less than policy limits or if the property was repaired. But, insurers can nonrenew a property insurance policy if policy limits or more are paid.

Insurers who pay a claim for sinkhole loss must file a copy of the engineer or geologist report and certification with the county clerk of court. Information filed must also include:

- the legal description of the property,
- the neutral evaluation report verifying sinkhole activity as the cause of the damage to the property, if the claim has gone to neutral evaluation,
- a copy of the certification indicating sinkhole stabilization has been completed, and
- the amount paid on the sinkhole claim.

The clerk must record the report and certification. The policyholder must also file a copy of any sinkhole report prepared for the policyholder with the clerk of court before accepting payment from the insurer on a sinkhole claim. When sinkhole repairs are completed, the engineer overseeing the repairs must issue a report to the property owner specifying what repairs were done and certifying the repairs were done properly. A copy of this report must also be filed by the engineer with the clerk of court who records the report.

When property that is the subject of a paid sinkhole claim is sold, the seller who filed the sinkhole claim must disclose to the buyer that a sinkhole claim has been paid. In addition, the seller must disclose whether or not the full amount of claim payment was used to repair the sinkhole damage.

The Alternative Dispute Resolution Process for Sinkhole Claims

Section 627.7074, F.S., provides an alternative dispute resolution process for sinkhole claims. The process supersedes the mediation procedures for property insurance claims contained in s. 627.7015, F.S., but does not invalidate the appraisal clause in the property insurance policy. Thus, a sinkhole claim can go through the neutral evaluation process and subsequently go through the appraisal process. The neutral evaluation process begins once an insurer receives the sinkhole report under s. 627.7073, F.S., or denies a sinkhole claim. When either occurs, the insurer must notify the

[81] The 90-day time period is tolled during the neutral evaluation and begins again 10 days after the neutral evaluation is completed.
[82] The OIR noted in its report on the 2010 data call sinkhole repairs were initiated in only 20 percent of the total claims reported.

policyholder of the right to participate in the neutral evaluation process. The insurer must also send a pamphlet on the neutral evaluation process prepared by the DFS to the policyholder.

Participation in the neutral evaluation process is mandatory if one party requests it, however, it is nonbinding. Either the policyholder or the insurer can request neutral evaluation of a sinkhole claim. At the conclusion of the neutral evaluation, the neutral evaluator prepares a report containing recommendations about the validity of the sinkhole claim. The specific areas the neutral evaluator must opine on in the report is set forth in s. 627.7074(12), F.S. The recommendation of the neutral evaluator is not binding on either party, thus, either party can opt to litigate the sinkhole claim in court regardless of the neutral evaluator's recommendation on the claim. If the insurer timely agrees to comply with the neutral evaluator's recommendations in writing and does so, but the policyholder declines to resolve the claim and opts to proceed to court on the claim, the insurer is not liable for extracontractual damages for issues determined by the neutral evaluator and the insurer's actions to comply with the recommendation is not a confession of judgment that can be used in the court proceeding as an admission of liability on the part of the insurer. Furthermore, in the court proceeding, the insurer is not liable for attorney's fees unless the policyholder obtains a court judgment more favorable than the neutral evaluator's recommendation.

Effect of Proposed Changes to Sinkholes

The bill makes changes to the sinkhole law, but only for sinkhole claims submitted to Citizens. The changes do not apply to sinkhole claims submitted to other property insurers. Specifically, the bill requires Citizens to submit a biannual report on the number of residential sinkhole policies issued and declined. The bill also establishes a Citizens Sinkhole Repair Program for sinkhole claims, utilizing approved repair contractors to ensure sinkhole repairs are completed. Finally, the bill requires Citizens to offer deductible amounts of 2%, 5% and 10% of the policy dwelling limits for sinkhole loss coverage.

Florida Comprehensive Health Association (FCHA)

The FCHA is Florida's high-risk pool for individuals who are unable to obtain health insurance, due to their health status. The FCHA, formerly named the State Comprehensive Health Association, was created in 1982.[83] About 7,500 individuals were insured with the FCHA in 1991, but due to increasing losses, legislation that year closed the FCHA to new enrollment, but allowed existing insureds to renew coverage. At the end of 2012, there were 170 individuals insured with the FCHA.

The FCHA is organized as a not-for-profit entity. All health insurers, as a condition of doing business, must be members of the FCHA. The FCHA is governed by a three-member board of directors appointed by Chief Financial Officer and regulatory oversight is provided by the OIR.

The FCHA is funded through a combination of premiums paid by FCHA policyholders and an assessment on all health insurers and health maintenance organizations in the state to cover FCHA operating losses. The annual assessment on health insurers is based on the earned premiums of the insurers.[84] FCHA policyholder premiums are based on commercial standard risk rates as determined by the OIR and are set at 200%, 225% and 250% of the individual market standard risk rate, depending on the level of risk.[85]

For 2012, premiums paid by FCHA members were $1,252,788 compared to claims of $1,700,473. The operating loss of the association and the related insurance industry assessment for 2012 was $810,539. The operating loss and the resulting insurance industry assessment for 2011 was $2,245,828.[86]

Effect of Proposed Changes to FCHA

[83] ss. 627.648-627.6498, F.S. is cited as the Florida Comprehensive Health Association Act.
[84] s. 627.6492, F.S.
[85] s. 627.6498, F.S.
[86] Information received from the Florida Comprehensive Health Association, on file with the Insurance & Banking Subcommittee.

The guaranteed-issue requirement of federal Patient Protection and Affordable Care Act makes a state high-risk pool unnecessary. The bill requires the dissolution of the FCHA. Coverage for each FCHA policyholder would be terminated on June 30, 2014, or on the date that health insurance coverage is effective with another insurer, whichever is earlier. The FCHA would be required to assist each policyholder in obtaining health insurance coverage, including identification of insurers and health maintenance organizations offering coverage and other specified information. The FCHA would be required to provide a written notice to each policyholder by September 1, 2013, regarding termination of their coverage and information on how to obtain other coverage.

The bill specifies that by March 15, 2015, the FCHA must determine the final assessment to be collected from member insurers or, if surplus funds remain, the refund to be provided to insurers based on the same pro-rata formula. The bill specifies the actions the FCHA must take to dissolve the corporation by September 1, 2015, including transfer of all records to DFS as custodian. According to representatives of the FHCA, typical responsibilities would include providing copies of claims records to policyholders. The FCHA would be required to transfer any remaining funds (such as proceeds from the sale of assets) to the Chief Financial Officer for deposit in the General Revenue Fund.

All of the statutes that relate solely to the operations of the FHCA would be repealed, effective October 1, 2015, which is one month later than the Sept. 1, 2015 date that the FCHA must be dissolved.

Florida Health Insurance Plan

In 2004, the Legislature created the Florida Health Insurance Plan (Plan).[87] The Plan was intended to replace the FCHA as the State's high risk insurance pool. The Board of the Plan may not implement the Plan until funds are appropriated for startup costs and any projected deficits.[88] These funds have never been appropriated and so the Plan is not in operation.

The bill repeals the statute that establishes the Florida Health Insurance Plan, which has never been implemented.

B. SECTION DIRECTORY:

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

Section 2: Amends s. 316.646, F.S., relating to security required; proof of security and display thereof; dismissal of cases.

Section 3: Amends s. 320.02, F.S., relating to registration required; application for registration forms.

Section 4: Amends s. 554.1021, F.S., relating to definitions used in the boiler inspection law.

Section 5: Amends s. 554.107, F.S., relating to special inspectors relating to boiler inspections.

Section 6: Amends s. 554.109, F.S., relating to exemptions provided for the boiler inspection law.

Section 7: Amends s. 624.413, F.S., relating to application for certificate of authority.

Section 8: Amends s. 626.0428, F.S., relating to agency personnel powers, duties, and limitations.

Section 9: Amends s. 626.112, F.S., relating to license and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.

Section 10: Amends s. 626.172, F.S., relating to application for insurance agency license.

Section 11: Amends s. 626.321, F.S., relating to limited licenses.

[87] Ch. 2004-297, s. 21, L.O.F.
[88] s. 627.64872(6), F.S.

Section 12: Amends s. 626.382, F.S., relating to continuation, expiration of license; insurance agencies.

Section 13: Amends s. 626.601, F.S., relating to improper conduct; inquiry; fingerprinting.

Section 14: Repeals s. 626.747, F.S., relating to branch agencies.

Section 15: Amends s. 626.8411, F.S., relating to application of Florida Insurance Code provisions to title insurance agents or agencies.

Section 16: Amends s. 626.8805, F.S., relating to certificate of authority to act as administrator.

Section 17: Amends s. 626.8817, F.S., relating to responsibilities of insurance company with respect to administration of coverage insured.

Section 18: Amends s. 626.882, F.S., relating to agreement between administrator and insurer; required provisions; maintenance of records.

Section 19: Amends s. 626.883, F.S., relating to administrator as intermediary; collections held in fiduciary capacity; establishment of account; disbursement; payments on behalf of insurer.

Section 20: Amends s. 626.884, F.S., relating to maintenance of records by administrator; access; confidentiality.

Section 21: Amends s. 626.89, F.S., relating to annual financial statement and filing fee; notice of change of ownership.

Section 22: Amends s. 626.931, F.S., relating to insurer reporting requirements.

Section 23: Amends s. 626.932, F.S., relating to surplus lines tax.

Section 24: Amends s. 626.935, F.S., relating to suspension, revocation, or refusal of surplus lines agent's license.

Section 25: Amends s. 626.936, F.S., relating to failure to file reports or pay tax or service fee; administrative penalty.

Section 26: Amends s. 627.062, F.S., relating to rate standards.

Section 27: Amends s. 627.0628, F.S., relating to Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.

Section 28: Amends s. 627.072, relating to making and use of rates.

Section 29: Amends s. 627.281, F.S., relating to appeal from rating organization; workers' compensation and employer's liability insurance filings.

Section 30: Amends s. 627.931, F.S., relating to insurance risk apportionment plans.

Section 31: Repeals s. 627.3519, F.S., relating to annual report of aggregate net probable maximum losses, financing options, and potential assessments.

Section 32: Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

Section 33: Amends s. 627.4137, F.S., relating to disclosure of certain information required.

Section 34: Amends s. 627.421, F.S., relating to delivery of policy.

Section 35: Amends s. 627.43141, F.S., relating to notice of change in policy terms.

Section 36: Amends s. 627.6484, F.S., relating to dissolution of association; termination of enrollment; availability of other coverage.

Section 37: Repeals s. 627.64872, F.S., relating to the Florida Health Insurance Plan.

Section 38: Repeals ss. 627.648, 627.6482, 627.6484, 627.6486, 627.6488, 627.6489, 627.649, 627.6492, 627.6494, 627.6496, 627.6498, and 627.6499, F.S., effective October 1, 2015 as conforming changes to section 36.

Section 39: Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

Section 40: Creates s. 627.70151, F.S., relating to appraisal; conflicts of interest.

Section 41: Amends s. 627.706, F.S., relating to sinkhole insurance; catastrophic ground cover collapse; definitions.

Section 42: Amends s. 627.7074, F.S., relating to alternative procedure for resolution of disputed sinkhole insurance claims.

Section 43: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 44: Amends s. 627.745, F.S., relating to mediation of claims.

Section 45: Amends s. 627.841, F.S., relating to delinquency, collection, cancellation, and return payment charges; attorney fees.

Section 46: Amends s. 627.952, F.S., relating to risk retention and purchasing group agents.

Section 47: Amends s. 627.971, F.S., relating to definitions.

Section 48: Amends s. 627.972, F.S., relating to organization, financial requirements.

Section 49: Amends s. 628.901, F.S., relating to definitions.

Section 50: Amends s. 628.909, F.S., relating to applicability of other laws.

Section 51: Amends s. 634.406, F.S., relating to financial requirements.

Section 52: Provides an effective date of upon becoming a law, except as otherwise provided.

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:

Extending the exemption for policyholders of medical malpractice insurance from the FHCF assessments causes policyholders of the other types of property and casualty insurance included in the assessment base to pay higher assessments than they would be had the exemption expired. Although medical malpractice is not currently in the FHCF assessment base, it was to be added as of June 1, 2013. Adding additional types of insurance to the assessment base grows the base and lowers the assessment for all types of insurance in the base. As of December 31, 2011, medical malpractice premiums totaled almost $555 million.[89] Thus, the bill precludes the FHCF assessment base of $34.6 billion[90] to increase by $555 million.

If the FHCF has to issue revenue bonds to pay claims, it is likely to obtain more favorable bonding terms with a larger the assessment base. Thus, extending the exemption for medical malpractice from being added to the assessment base may result in the FHCF receiving less favorable bonding terms than it would receive had medical malpractice been added to the base on June 1, 2013.

Policyholders of medical malpractice insurance will not have to pay FHCF assessments on their medical malpractice insurance for another three years. Under current law, these policyholders would have had to start paying FHCF assessments levied due to hurricanes occurring on or after June 1, 2013.

The changes made to the boiler inspection law should allow more persons to be eligible to inspect boilers in Florida while maintaining the inspector competency requirement in current law. The changes also mean insurers writing boiler and machinery insurance no longer have to maintain a certificate of authority to transact insurance in Florida in order for boiler inspectors employed by the insurer to be authorized to inspect boilers in Florida. However, the insurer must hold an insurance license in another state or Canadian province.

The changes made by the bill to the use of retrospective rating in workers' compensation may reduce workers' compensation premiums for some employers.

Insurers emailing policies will save costs associated with printing and mailing insurance policies to policyholders. The exact amount of savings cannot be calculated as it is unknown how many insurers will opt to deliver their policies by email and how many policyholders will choose to obtain their policies by email rather than by mail. However, any savings realized by insurers should be passed through to policyholders.

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

[89] This total includes premiums from surplus lines insurance and risk retention groups. Information obtained from the OIR on February 27, 2013, on file with the Insurance & Banking Subcommittee.

[90] Assessment base total is as of the end of 2011. See Report Prepared for the Florida Hurricane Catastrophe Fund on Claims-Paying Capacity Estimates by Raymond James Public Finance Department, dated October 9, 2012, available at http://www.sbafla.com/fhcf/AdvisoryCouncil/2012MeetingMaterials/tabid/1311/Default.aspx (last viewed February 27, 2013).

The bill permits more types of insurers to become financial guaranty insurers by allowing mutual insurers to become licensed as financial guaranty insurance corporations.

The bill allows a $15 penalty on policyholders who pay insurance premiums by debit card, credit card, or other electronic funds transfer if the card is declined.

Policyholders of Citizens with sinkhole claims will have their property which is damaged by a sinkhole repaired.

Citizens' policyholders will be offered insurance policies with lower sinkhole deductibles.

Once the FCHA final assessment against member insurers is calculated and paid, the member insurers will no longer have to pay assessments to the FCHA.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to DFS for rules relating to certification of neutral evaluators for sinkhole insurance claims, relating to DFS' authority to deny an application for approval as a property insurance claim mediator, and relating to DFS' authority to revoke approval of a property insurance mediator or certification of a sinkhole claim neutral evaluator. The bill changes rulemaking authority under current law given to DFS for approving mediators for property insurance claims.

The Department of Highway Safety and Motor Vehicles is authorized to adopt rules relating to electronic proof-of-insurance cards.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2013, the Insurance & Banking Subcommittee considered the bill, adopted 15 amendments to the bill and reported the bill favorably with a committee substitute. The amendments:

- Provided that when an electronic device is presented to a law enforcement officer for purposes of displaying an electronic proof-of-insurance card that the motorist is not consenting to a search of any other information on the device. Further, the officer is not liable if the device is damaged while in the officer's possession.
- Added new provisions to the bill relating to boiler inspectors. These provisions:
    - changed who is qualified to be a special inspector for boiler inspection purposes from an employee of a company licensed in Florida to insure boilers to an "authorized inspection agency,"

    - provided a definition of an "authorized inspection agency," and
    - required insurers to annually report to the DFS the names of the authorized inspection agencies performing boiler inspections for the insurer.
- Added new provisions to the bill relating to insurance agency licensure. These provisions:
    - repealed the requirement in current law that insurance agents that are sole proprietors must also hold an insurance agency license.
    - eliminated the licensing requirement in current law for each branch location of an insurance agency.
    - eliminated expiration of an insurance agency license.
    - eliminated registration of insurance agencies that are not licensed and converts existing agency registrations to licenses.
- Expanded the time period property insurers have to use hurricane models in rate filings from 120 to 180 days and allows insurers to use a straight average of multiple models instead of having to use only one model.
- Changed the time period property insurers have to notify a policyholder of a cancellation, nonrenewal, or termination to 120 days and maintains the other changes to the notice of cancellation, nonrenewal, or termination time period made by the bill.
- Required policyholders to affirmatively elect to receive their insurance policies electronically instead of mail. This election applies to all types of insurance.
- Required a sample Notice of Policy Change be sent to the policyholder's agent at or before it is sent to the policyholder and maintains the other changes to the Notice of Policy Change made by the bill.
- Reworded one of the grounds that can be used by a policyholder or insurer to disqualify an umpire in the appraisal process.
- Removed the changes to sinkhole deductibles from the bill to maintain current law.
- Clarified, for purposes of personal injury protection reimbursement, that the Medicare fee schedule in effect on March 1st of the year in which services are rendered remains in effect until the last day of February of the following year.
- Authorized DFS to suspend approval of a mediator or certification of a neutral evaluator to conform with the other changes in the bill to the DFS mediation and neutral evaluation programs.
- Allowed a trusteed reinsurer to be a qualifying reinsurer parent company for captive insurance purposes and maintains the other changes to the definition of qualifying reinsurer parent company made by the bill.
- For purposes of an exception to the writing ratio required for service warranty associations, repealed the requirement in current law that an insurer issuing a contractual liability policy to a service warranty association cannot be affiliated with the warranty association.
- For three years, extended the exemption in current law which exempts medical malpractice policyholders from assessments levied by the FHCF. Currently, the exemption expires on May 31, 2013 and the amendment makes the exemption expire on May 31, 2016.

The staff analysis was updated to reflect the committee substitute.

On April 4, 2013, the Regulatory Affairs Committee heard the bill, adopted 13 amendments, and reported the bill favorably with a committee substitute. The amendments made the following changes to the bill:

- Changed the insurance agency licensing provisions contained in the bill. The amendment required the agent in charge of an insurance agency to hold an insurance license for the type of insurance license transacted at the agency location. It also allowed insurance activity to occur at any agency location as long as a licensed agent is present. Finally, the amendment clarified the responsibilities of the agent in charge and the effect on an agency license if an agent in charge is not appointed.
- Required any person that directs or participates in the management or control of an insurance agency by ownership of any agency bank accounts to submit fingerprints with the application for an insurance agency license.
- Made a technical change to the bill's provision giving the DFS authority to require fingerprints of persons the DFS believes has a felony conviction or nolo contendere plea to a crime involving insurance. The bill authorized fingerprints of "entities" and "entities" cannot be fingerprinted, so the amendment authorized fingerprints of only "individuals."

- Changed provisions relating to third party administrators relating to their financial statement filings, the licensing process, and their periodic review by insurers.
- Added a provision to the bill repealing current law requiring surplus lines agents to file a quarterly affidavit with the Florida Surplus Lines Service Office (FSLSO) to document all surplus lines insurance transacted in the quarter was submitted to the FSLSO. The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts.
- Removed the provisions in the bill repealing the registration of life expectancy providers used in viatical settlements with the OIR. Thus, current law is maintained and these providers will continue to register with the OIR.
- Added provisions to the bill relating to sinkhole loss coverage offered by Citizens. Specifically, the amendment:
    - Requires Citizens to submit a biannual report on the number of residential sinkhole policies issued and declined.
    - Establishes a Citizens Sinkhole Repair Program for sinkhole claims, utilizing approved repair contractors to ensure sinkhole repairs are completed.
    - Requires Citizens to offer deductible amounts of 2%, 5% and 10% of the policy dwelling limits for sinkhole loss coverage.
- Limited the application of the provision in the bill allowing insurance companies to deliver insurance policies electronically to personal lines insurance.
- Added a provision to the bill that terminates coverage provided by the Florida Comprehensive Health Association as of 6/30/14 at the latest. Provided details relating to the termination of coverage. Repealed other statutes as conforming changes.
- Restored current law allowing the DFS to adopt rules for a property mediation program that requires mediators to meet qualifications contained in the Florida rules that govern mediators certified by the Florida courts.
- Corrected a reference in the bill to the name of the court mediator certification and prohibits court mediators in a sanctioned status from becoming a DFS mediator. Also, allowed DFS to deny an application to be a DFS mediator or suspend or revoke approval of a mediator if the mediator violates a rule that governs mediators certified by the Florida courts.
- Added a provision to the bill allowing premium finance companies to charge a $15 penalty for a premium payment made by credit card, debit card, or other electronic funds transfer if the payment is declined due to insufficient funds. Current law allows the $15 penalty only for insufficient premium payment made by check.
- Changed the bill's provision relating to retrospective rating in workers' compensation to provide an additional requirement employers must meet, $175,000 or more in annual Florida workers' compensation premiums, to be eligible for the retrospective rating plan authorized under the bill.

The staff analysis was updated to reflect the committee substitute.