

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: PCS/CS/SB 992 (841824)

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

SUBJECT: Department of Financial Services

DATE: February 15, 2016      REVISED: \_\_\_\_\_

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

**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

PCS/CS/SB 992 makes various changes to statutes relating to the Department of Financial Services (DFS or the department).

Current law requires plaintiffs to serve lawsuits on insurance companies by serving documents initiating the lawsuit at the department. These documents are sent to the DFS by mail or by process server. The bill allows the DFS to create a system for electronic service of process and create an internet-based system for distributing documents to insurance companies.

The Chief Financial Officer (CFO) is designated the State Fire Marshal. The CFO administers the state fire code and the certification of firefighters. This bill provides for expiration of firefighter certifications after four years and provides a renewal process. It provides additional grounds that the State Fire Marshal can suspend, revoke, or deny an application for certification. The bill creates a procedure for an applicant for firefighter certification with a criminal record or dishonorable discharge from the United States Armed Forces to obtain a certificate if they can demonstrate by clear and convincing evidence that they do not pose a risk to persons or property.

The bill creates the "Firefighter Assistance Grant Program." The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments. The program will provide financial assistance to improve firefighter safety and

enable fire departments to provide firefighting, emergency medical, and rescue services to their communities.

The bill provides that employees of the state university system, a special district, or a water management district can participate in the deferred compensation program for state employees administered by the department.

This bill amends the Florida Single Audit Act to raise the audit threshold from \$500,000 to \$750,000 to conform to the federal single audit act. It reorganizes the statute to place the provisions relating to higher education entities in one section.

The bill provides that a licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claim filing process, or filing a claim is not acting as a public adjuster.

The bill authorizes the DFS to select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association's regular membership but does not provide for nominations.

The department administers the sinkhole neutral evaluation program for the resolution of disputed sinkhole insurance claims. This bill amends the qualifications of the neutral evaluator to provide that one cannot serve as a neutral evaluator on a claim if the individual was employed, within the previous five years, by the firm that did the initial sinkhole testing.

The bill allows the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code. This will allow, for example, the DFS' Division of Agent and Agency Services access to photographs to aid in the investigation of insurance agents.

The bill amends the Anti-Fraud Reward Program to allow rewards for persons who provide information related to crimes investigated by the State Fire Marshal.

The bill provides cost savings to the state, estimated to be \$54,500, due to the changes in the service of process. The bill appropriates the recurring sum of \$500,000 and one position to support the Volunteer Firefighter Assistance Grant Program from the Insurance Regulatory Trust Fund.

## **II. Present Situation:**

### **Service of Process on the Chief Financial Officer**

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Section 48.151, F.S., provides that the Chief Financial Officer ("CFO") is the agent for service of process for:

- All insurers applying for authority to transact insurance;
- All licensed nonresident insurance agents;

- All nonresident disability insurance agents;
- Any unauthorized insurer under s. 626.906 or s. 626.937, F.S.;
- All domestic reciprocal insurers;
- All fraternal benefit societies;
- All warranty associations;
- All prepaid limited health service organizations; under chapter 636; and
- All persons required to file statements under s. 628.461, F.S.<sup>1</sup>

All persons or entities for which the CFO is the agent for service of process must designate an individual to receive documents served on DFS. In order to serve process on an insurance company or other entity for which the CFO is the agent, a plaintiff must mail the summons and other documents to the DFS or serve the documents at the DFS by personal service at the DFS Tallahassee office. The plaintiff must pay a \$15 fee to the DFS for service.<sup>2</sup> The CFO cannot accept service via electronic mail.<sup>3</sup>

Once the DFS receives the documents, it forwards them to the insurer or entity.<sup>4</sup> The CFO can use registered or certified mail to send the documents to authorized insurers.<sup>5</sup> The CFO can use registered mail to send the documents to unauthorized insurers.<sup>6</sup> Section 624.307, F.S., also allows the CFO to use certified mail, registered mail, or other verifiable means to serve regulated entities.

According to representatives of the DFS, many law firms are creating and filing documents in court electronically but must print and send paper copies to the DFS. The DFS believes it could improve efficiency if plaintiffs were allowed to serve DFS electronically.<sup>7</sup>

### **Alternative Retirement Benefits for OPS Employees**

Section 110.1315, F.S., requires that upon review and approval by the Executive Office of the Governor, the DFS must provide an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services. The DFS is allowed to contract with a private vendor or vendors to administer the program under a defined-contribution plan under ss. 401(a) and 403(b) or s. 457 of the Internal Revenue Code, and the program must provide retirement benefits as required under s. 3121(b)(7)(F) of the Internal Revenue Code.<sup>8</sup> By creating the program for such employees, the state does not have to contribute to Social Security as an employer.<sup>9</sup> The DFS reports that the program saved the state \$11 million in 2013 and 2014.<sup>10</sup>

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<sup>1</sup> See s. 48.151(3), F.S.

<sup>2</sup> See s. 624.502, F.S.

<sup>3</sup> See <http://www.myfloridacfo.com/division/legalservices/ServiceofProcess/default.htm> (last visited January 13, 2016).

<sup>4</sup> See ss. 624.307, 624.423, and 626.907, F.S.

<sup>5</sup> See s. 624.423, F.S.

<sup>6</sup> See s. 626.907, F.S.

<sup>7</sup> Interview with DFS staff, January 13, 2016.

<sup>8</sup> See s. 110.1315(1), F.S.

<sup>9</sup> See *Description of Intended Single Source Purchase*, Department of Financial Services, December 22, 2015 at [http://www.myflorida.com/apps/vbs/adoc/F20507\\_PUR7776DFSTRSS151610.pdf](http://www.myflorida.com/apps/vbs/adoc/F20507_PUR7776DFSTRSS151610.pdf) (last visited January 14, 2016).

<sup>10</sup> *Id.*

## Florida Deferred Compensation Program

Section 112.215, Florida Statutes, requires the CFO to create a deferred compensation plan for state employees. The plan allows state employees to defer a portion of their income and place it in an investment account. The employee does not pay taxes on the deferred amount or any investment gains until the employee withdraws the money.<sup>11</sup>

## Approval of Bonds

Section 137.09, F.S., provides that each surety upon every bond of any county officer shall make affidavit that he or she is a resident of the county for which the officer is to be commissioned, and that he or she has sufficient visible property therein unencumbered and not exempt from sale under legal process to make good his or her bond. These bonds must be approved by the board of county commissioners and by the DFS. Section 374.983, F.S., requires each commissioner of the Board of Commissioners of the Florida Inland Navigation District to post a surety bond in the sum of \$10,000 payable to the Governor and his or her successors in office, conditioned upon the faithful performance of the duties of the office. This bond must be approved by the CFO. The DFS has not been required to approve bonds under either of these statutes in quite some time and believes the requirements are not needed.<sup>12</sup>

## Florida Single Audit Act

Section 215.97, F.S., creates the Florida Single Audit Act. The DFS has explained the history and purpose:

In 1998, the Florida Single Audit Act was enacted to establish state audit and accountability requirements for state financial assistance provided to nonstate entities. The Legislature found that while federal financial assistance passing through the state to nonstate entities was subject to mandatory federal audit requirements, significant amounts of state financial assistance was being provided to nonstate entities that was not subject to audit requirements that paralleled federal audit requirements. Accordingly, it was the intent of the Act that state audit and accountability requirements, to the extent possible, parallel the federal audit requirements.<sup>13</sup>

Each nonstate entity that expends more than \$500,000 in state financial assistance<sup>14</sup> in a fiscal year is required to have an audit for that fiscal year. Nonstate entities include local governments, nonprofit organizations, and for-profit organizations.<sup>15</sup>

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<sup>11</sup> See <https://www.myfloridaderferredcomp.com/SOFWeb/default.aspx> (last visited January 14, 2016).

<sup>12</sup> See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

<sup>13</sup> See <https://apps.fldfs.com/fsaa/singleauditact.aspx> (last visited January 14, 2016).

<sup>14</sup> State financial assistance is state resources provided to a nonstate entity to carry out a state project.

<sup>15</sup> See s. 215.97(2)(m), F.S.

Section 215.97(8)(o), F.S., provides that contracts involving the State University System or the Florida College System funded by state financial assistance may be in the form of the following:

- A fixed-price contract that entitles the provider to receive full compensation for the fixed contract amount upon completion of all contract deliverables;
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided;
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables; or
- A combination of the above contract forms.

The DFS reports that because references to higher education entities are spread throughout the Florida Single Audit Act, there is confusion over which provisions apply in various situations.<sup>16</sup>

### **Driver Licenses Photographs**

The Department of Highway Safety and Motor Vehicles maintains digital photographs of licenses pursuant to s. 322.142, F.S. Those photographs are exempt from public disclosure but may be shared with various state agencies to assist the agencies' with their duties. The DFS can obtain such photographs to facilitate the validation of unclaimed property claims and the identification of false or fraudulent claims.<sup>17</sup>

### **Boiler Regulation**

Chapter 554, F.S., is the Florida Boiler Safety Act. The DFS administers the boiler safety code. Section 509.211, F.S., provides that every enclosed room or space that contains a boiler and that is located in a public lodging establishment must be equipped with a carbon monoxide sensor that bears the label of a nationally tested laboratory and complies with the most recent Underwriters Laboratories Standard 2034.<sup>18</sup> The statute provides that the carbon monoxide detector is not necessary if the DFS Division of State Fire Marshal determines the carbon monoxide hazard has been mitigated.<sup>19</sup>

### **Public Adjusters**

A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim the policyholder files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies. The Department of Financial Services (DFS) regulates all types of adjusters.

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<sup>16</sup> See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

<sup>17</sup> See s. 322.142(4), F.S.

<sup>18</sup> The standard relating to carbon monoxide detectors. See <http://ulstandards.ul.com/standard/?id=2034> (last visited January 14, 2016).

<sup>19</sup> See s. 509.211(4), F.S.

### **Appointments to the Board of the Florida Surplus Lines Service Office**

Section 626.921, F.S., creates the Florida Surplus Lines Service Office (FSLSO). The FSLSO is a self-regulating, nonprofit association for Florida surplus lines agents. The FSLSO's responsibilities include monitoring activities and compliance of the licensed surplus lines agents conducting business in Florida as well as the eligible surplus lines insurers.<sup>20</sup> The FSLSO is operated under the supervision of a board of governors consisting of:

- Five individuals appointed by the DFS from the regular membership of the Florida Surplus Lines Association.
- Two individuals appointed by the DFS, one from each of the two largest domestic agents' associations, each of whom must be licensed surplus lines agents.
- The Insurance Consumer Advocate.
- One individual appointed by the department, who must be a risk manager for a large domestic commercial enterprise.<sup>21</sup>

The Florida Surplus Lines Association membership includes surplus lines agency firms, surplus lines insurance companies, reinsurers, premium finance companies, surveyors and claim adjustment companies. The purpose of the association is to encourage an exchange of information among members and to disseminate educational information for the benefit of members and the betterment of the excess and surplus lines industry.<sup>22</sup>

### **Anti-Fraud Reward Program**

Section 626.9892, F.S., creates the Anti-Fraud Reward Program within the DFS funded from the Insurance Regulatory Trust Fund. The program allows the DFS to provide rewards of up to \$25,000 to persons providing information leading to the arrest and conviction of persons convicted of crimes investigated by the Division of Insurance Fraud. The program was established in 1999 and has paid over \$365,000 in rewards.<sup>23</sup>

### **Neutral Evaluators**

Sections 627.707-627.7074, F.S., create requirements for the investigation of sinkhole claims and a neutral evaluation program to help resolve sinkhole claims. Section 627.707, F.S., requires an insurer, upon receipt of a sinkhole claim, to inspect the policyholder's premises to determine if there is structural damage that may be the result of sinkhole activity. If the insurer confirms that structural damage exists but is unable to identify the cause or discovers that such damage is consistent with sinkhole loss, the insurer shall engage a professional engineer or a professional geologist to conduct testing<sup>24</sup> to determine the cause of the loss if sinkhole loss is covered under the policy.<sup>25</sup> If the insurer determines that there is no sinkhole loss, the insurer may deny the claim.<sup>26</sup>

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<sup>20</sup> See s. 626.921(1), F.S.

<sup>21</sup> See s. 626.921(4), F.S.

<sup>22</sup> See s. <http://www.myflsla.com/about/>

<sup>23</sup> See <http://www.myfloridacfo.com/sitePages/agency/dfs.aspx> (last accessed February 11, 2015).

<sup>24</sup> s. 627.7072, F.S., contains testing standards in sinkhole claims.

<sup>25</sup> s. 627.707(2), F.S.

<sup>26</sup> s. 627.707(4)(a), F.S.

Neutral evaluation is available to either party if a sinkhole report has been issued.<sup>27</sup> Neutral evaluation must determine causation, all methods of stabilization and repair both above and below ground, and the costs of stabilization and all repairs.<sup>28</sup> Following the receipt of the sinkhole report or the denial of a claim for a sinkhole loss, the insurer notifies the policyholder of the right to participate in the neutral evaluation program.<sup>29</sup>

Neutral evaluation is nonbinding, but mandatory if requested by either the insurer or the insured.<sup>30</sup> A request for neutral evaluation is filed with the DFS. The request for neutral evaluation must state the reason for the request and must include an explanation of all the issues in dispute at the time of the request.<sup>31</sup> The neutral evaluator receives information from the parties and may have access to the structure. The neutral evaluator evaluates the claim and prepares a report describing whether a sinkhole loss occurred and, if necessary, the costs of repairs or stabilization.<sup>32</sup> The report is admissible in subsequent court proceedings.<sup>33</sup> Section 627.7074(6), F.S., requires the insurer to pay reasonable costs associated with the neutral evaluation.

Section 627.7074(7), F.S., provides reasons for which a neutral evaluator may be disqualified:

- A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party.
- The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter.
- The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.
- The proposed neutral evaluator has, within the preceding five years, worked as an employer or employee of any party to the case.

### **Provisions Related to the State Fire Marshal**

Florida's fire prevention and control law, ch. 633, F.S., designates the CFO as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the DFS, is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire.<sup>34</sup> Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

<sup>27</sup> s. 627.7073, F.S., requires that a report be issued if testing required under s. 627.707-7074, F.S., is performed.

<sup>28</sup> s. 627.7074(2), F.S.

<sup>29</sup> s. 627.7074(3), F.S.

<sup>30</sup> s. 627.7074(4), F.S.

<sup>31</sup> s. 627.7074, F.S. The statute also requires the Department of Financial Services to maintain a list of neutral evaluators and provides for disqualification of neutral evaluators in specified circumstances.

<sup>32</sup> ss. 627.7074(5), (12), F.S.

<sup>33</sup> s. 627.7074(13), F.S.

<sup>34</sup> s. 633.104, F.S.

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code<sup>35</sup>, which contains fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

### III. Effect of Proposed Changes:

#### **Service of Process on the Chief Financial Officer (Sections 1, 9, 10, 11, and 13)**

This bill provides an alternative means for plaintiffs to serve process on insurers and other regulated persons. The bill allows the DFS to create an internet-based transmission system to accept service of process by electronic transmission of documents. This will allow plaintiffs to serve documents electronically and allow DFS to remove the requirement that paper documents be served.

Once served, the CFO can mail the documents, send them by some other verifiable means, or make them available by electronic transmission to a secure website established by the DFS. Once documents are made available electronically, the CFO must send notice of receipt to the person designated to receive legal process. The notice must state the date and manner in which the copy of process was made available and contain the uniform resource locator for a hyperlink to access files and information on the Department's website to obtain a copy of the process.

#### **Alternative Retirement Benefits for OPS Employees**

**Section 2** amends s. 110.1315, F.S., to remove the review and approval duties from the Executive Office of the Governor relating to the alternative retirement income security program for temporary and seasonal employees of the state.

#### **Florida Deferred Compensation Program**

**Section 3** amends s. 112.215, F.S., to provide that persons employed by a state university, special district, or a water management district are eligible to participate in the deferred compensation program established by the CFO. According the DFS, these employees currently participate in the program but the DFS states that clarification is needed.<sup>36</sup>

#### **Approval of Bonds (Sections 4 and 7)**

**Sections 4 and 7** amend ss. 137.09 and 374.983, F.S., to remove the requirement that the DFS approve bonds for county commissioners and commissioners of the Florida Inland Navigation District. The bonds will still be reviewed by the county boards and by the Florida Inland Navigation District.

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<sup>35</sup> See <http://www.myfloridacfo.com/division/sfm/BFP/FloridaFirePreventionCodePage.htm> (last visited January 14, 2016).

<sup>36</sup> See Department of Financial Services, *An Act Relating to the Department of Financial Services* White Paper (on file with the Committee on Banking and Insurance).

### **Florida Single Audit Act (Section 5)**

The bill amends the Florida Single Audit Act to raise the audit threshold from \$500,000 to \$750,000. According to the DFS, the federal single audit threshold was recently raised from \$500,000 to \$750,000. The bill matches the Florida threshold to the federal threshold. Many entities that receive state financial assistance also receive federal financial assistances. This change prevents an entity from having to comply with different audit thresholds.<sup>37</sup>

The bill creates a new subsection to the Florida Single Audit Act to consolidate the provisions of the Act relating to higher education entities.<sup>38</sup> The bill provides that any contract or agreement between a state awarding agency and a higher education entity that is funded by state financial assistance must comply with s. 215.971(1), F.S., (providing that the contract must include provisions relating to scope of work, deliverables, consequences for nonperformance, and return of unused funds) and s. 216.3475, F.S., (limiting payments to the prevailing rate for services). The contract must be in the form or a combination of the following:

- A fixed-price contract that entitles the provider to receive compensation for the fixed contract amount upon completion of all contract deliverables.
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided.
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables.

The bill provides that if a higher education entity has extremely limited or no required activities related to the administration of a state project and acts only as a conduit of state financial assistance, the subrecipient that is provided state financial assistance by the conduit higher education entity is subject to the contracting requirements of the bill.

The bill does not exempt the higher education entity from compliance with maintaining records concerning state financial assistance and does not exempt the entity from laws that allow access and examination of those records by the state awarding agency, the higher education entity, the DFS, or the Auditor General.

### **Driver Licenses Photographs (Section 6)**

This bill amends s. 322.142, F.S., to allow the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code by licensees and by unlicensed persons. For example, this will allow the DFS' Division of Agent and Agency Services to access photographs to aid in the investigation of insurance agents.<sup>39</sup>

### **Boiler Regulation (Section 8)**

This bill amends s. 509.211, F.S., to remove the reference to a “nationally recognized testing laboratory.” It requires the carbon monoxide detector to be listed complying with ANSI/UL

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<sup>37</sup> See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

<sup>38</sup> The bill defines “higher education entity” as a Florida College System institution or a state university.

<sup>39</sup> See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

2075, Standard for Gas and Vapor Detectors and Sensors by a nationally recognized testing laboratory accredited by the Occupational Safety and Health Administration. The bill requires that the detectors either be integrated to the establishment's fire detection system or connected to the boiler safety circuit such that the boiler does not operate when carbon monoxide is detected.

The bill removes the ability of the Division of State Fire Marshal to determine that some other method has adequately mitigated the risk. It requires the carbon monoxide detectors to meet the statutory requirements.

### **Public Adjusters (Section 12)**

The bill provides that a licensed health insurance agent is not defined as a public adjuster in certain situations. A licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claim filing process, or filing a claim is not acting as a public adjuster.

### **Appointments to the Board of the FLSO (Section 14)**

The bill requires that the five members of the Florida Surplus Lines Association regular membership appointed to the FLSO board of governors must be individuals nominated by the Florida Surplus Lines Association.

### **Anti-Fraud Reward Program (Section 15)**

The bill allows the DFS to give rewards under the Anti-Fraud Reward Program to persons who provide information leading to the arrest and conviction of persons who violate statutes currently investigated by the State Fire Marshal. Crimes include making false reports regarding explosives or arson (s. 790.164, F.S.), planting a "hoax" bomb (s. 790.165, F.S.), crimes related to weapons of mass destruction (s. 790.166, F.S.), arson resulting in injury to a firefighter (s. 806.031, F.S.), preventing extinguishment of a fire (s. 806.10, F.S.), crimes relating to fire bombs (s. 806.111), and burning to defraud an insurer (s. 817.233, F.S.).

### **Neutral Evaluators (Section 16)**

The bill provides that a proposed neutral evaluator is disqualified if he or she has, within the preceding five years, worked for the entity that performed the initial sinkhole testing required by s. 627.7072, F.S.

### **Provisions Related to the State Fire Marshal (Sections 17-24, 26)**

#### ***Criminal Records of Applicants for Certification***

Section 633.412, F.S., provides that a person applying for certification as a firefighter must not have been convicted of a felony, a misdemeanor relating to the certification, a misdemeanor relating to perjury or false statements, or have been dishonorably discharged from the Armed Forces of the United States. Section 15 of the bill creates s. 633.107, F.S., to give the DFS the discretion to grant certificates to some applicants with criminal records if certain conditions are met. The applicant must have paid in full any fee, fine, fund, lien, civil judgment, restitution, cost

of prosecution, or trust contribution imposed by the court as part of the judgment and sentence for any disqualifying offense. In addition, at least five years must have elapsed since the applicant completed or was released from confinement, supervision, or nonmonetary conditions imposed by the court for a disqualifying offense or at least five years must have elapsed since the applicant was dishonorably discharged from the United States Armed Forces. Once those conditions are met, the applicant must demonstrate by clear and convincing evidence that he or she would not pose a risk to persons or property if licensed or certified. Evidence must include:

- Facts and circumstances surrounding the disqualifying offense;
- The time that has elapsed since the offense;
- The nature of the offense and harm caused to the victim;
- The applicant’s history before and after the offense; and
- Any other evidence or circumstances indicating that the applicant will not present a danger if permitted to be licensed or certified.

The bill gives the DFS the discretion whether to grant or deny an exemption. The department must provide its decision to deny the exemption in writing and must state with particularity the reasons for denial. The department’s decision is subject to proceedings under chapter 120, F.S., except that a formal proceeding under s. 120.57(1), F.S., is available only if there are disputed issues of material fact that the department relied upon in reaching its decision.<sup>40</sup>

### ***Life Safety Code***

Section 19 of this bill provides that the provisions of the Life Safety Code, part of the Florida Fire Prevention Code, do not apply to “newly constructed” one and two-family dwellings. One and two-family dwellings are exempt from the Florida Fire Prevention Code and representatives of the DFS are concerned that the statute could lead to confusion.<sup>41</sup>

### ***Firefighter and Volunteer Firefighter Training and Certification***

Currently, to work as a firefighter, an individual must hold a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal (“Division”).<sup>42</sup> To obtain a firefighter certificate of compliance, an individual must:

- Satisfactorily complete the Minimum Standards Course<sup>43</sup> or have satisfactorily completed training for firefighters in another state which has been determined by the division to be the equivalent of the training required for the Minimum Standards Course.
- Passes the Minimum Standards Course examination.
- Possesses the qualifications in s. 633.412, F.S.:<sup>44</sup>
  - Be a high school graduate
  - Be at least 18 years old
  - Have no felony convictions

<sup>40</sup> The procedure set forth in this bill is similar to the procedure in s. 435.07, F.S., and discussed in *J.D. v. Florida Department of Children and Families*, 114 So.3d 1127 (Fla. 1<sup>st</sup> DCA 2013).

<sup>41</sup> See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

<sup>42</sup> See s. 633.416, F.S.

<sup>43</sup> This course provides the basic fundamental knowledge and skills to function in a fire fighting environment and consists of at least 398 hours. See <http://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm> (last visited January 14, 2016).

<sup>44</sup> See s. 633.408(4), F.S.

- Have no misdemeanor convictions relating to the certification or for perjury or false statements
- Be of good moral character
- Be in good physical condition as determined by a division approved physical examination
- Be a nonuser of tobacco or tobacco products for at least year prior to the application

A volunteer firefighter certificate of completion is used for individuals who satisfactorily complete a course established by the division.

Section 21 of the bill requires that an individual seeking a firefighter certificate of compliance must pass the minimum standards course examination within 12 months after completing the required courses. Section 21 also provides that a firefighter certificate of compliance or a volunteer firefighter certificate of completion expires four years after the date of issuance unless renewed.

Section 22 of the bill repeals the requirement of the DFS to suspend or revoke all other certificates an individual holds, if it suspends an individual's certificate.

### ***Retention and Renewal of Certificates***

Under current law, s. 633.414, F.S., provides requirements to retain a firefighter certificate of compliance and a volunteer firefighter certificate of completion. In order for a firefighter to retain a certificate of compliance, the firefighter must, every four years:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the four-year period, and provide proof of such instruction to the division;
- Successfully complete a refresher course consisting of a minimum of 40 hours of training; or
- Within six months before the four-year period expires, successfully retake and pass the Minimum Standards Course examination.

Currently, in order for a volunteer firefighter to retain a volunteer firefighter certificate of completion, the volunteer firefighter must, every four years, be active as a volunteer firefighter or successfully complete a 40 hour refresher course.<sup>45</sup>

Section 23 of the bill requires that the firefighter complete a "Firefighter Retention Refresher Course within six months before the four-year period expires. It further provides that a firefighter or volunteer firefighter certificate expires if the individual does not meet retention requirements. Section 23 provides that the State Fire Marshal may suspend, revoke, or deny a certificate if a reason for denial existed but was not known at the time of issuance, for violations of ch. 633, F.S., or rules or orders of the State Fire Marshal, or falsification of records.

Section 24 of the bill provides that, effective July 1, 2013, an individual who holds a certificate is subject to revocation for:

- A conviction of a misdemeanor relating to the certification or to perjury or false statements;
- A conviction of a felony; or

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<sup>45</sup> See s. 633.414, F.S.

- A dishonorable discharge from the Armed Forces of the United States.

***Firefighter Assistance Grant Program (Section 18)***

Section 18 of this bill creates the “Firefighter Assistance Grant Program.” The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.

The program provides financial assistance to improve firefighter safety and enable fire departments to provide firefighting, emergency medical, and rescue services to their communities. The bill requires the division to administer the program and annually award grants to volunteer fire departments and combination fire departments using the annual Florida Fire Service Needs Assessment Survey. The purpose of the grants is to assist fire departments in providing volunteer firefighter training and procuring necessary firefighter personal protective equipment, self-contained breathing apparatus equipment, and fire engine pumper apparatus equipment. The division is required to prioritize the annual award of grants to such fire departments and volunteer fire departments demonstrating need as a result of participating in the Florida Fire Service Needs Assessment Survey.

The bill requires the State Fire Marshal to adopt rules for the program that require grant recipients to:

- Report their activity to the division for submission in the Fire and Emergency Incident Information Reporting System;
- Annually complete and submit the Florida Fire Service Needs Assessment Survey to the division;
- Comply with the Florida Firefighters Occupational Safety and Health Act, ss. 633.502-633.536, F.S.;
- Comply with any other rule determined by the State Fire Marshal to effectively and efficiently implement, administer, and manage the program; and
- Meet the definition of the term “fire service provider” in s. 633.102, F.S.

The bill requires that funds be used to:

- Provide firefighter training to individuals to obtain a Volunteer Firefighter Certificate of Completion. Training must be provided at no cost to the fire department or student by a division-approved instructor and must be documented in the division’s electronic database;
- Purchase firefighter personal protective equipment, including structural firefighting protective ensembles and individual ensemble elements such as garments, helmets, gloves, and footwear; and
- Purchase self-contained breathing apparatus equipment and purchase fire engine pumper apparatus equipment.

**Section 26** appropriates \$500,000 in recurring funds from the Insurance Regulatory Trust Fund and one position to implement the Firefighter Assistance Grant Program.

**Rulemaking (Section 25)**

The bill provides the DFS rulemaking authority relating to unclaimed property to include property reported to the CFO pursuant to s. 43.19, F.S., relating to unclaimed funds paid to the court; s. 45.032, F.S., relating to the disposition of surplus funds after a judicial sale; s. 732.107, F.S., relating to unclaimed funds in intestate probate proceedings; s. 733.816, F.S., relating to unclaimed funds held by personal representatives in probate proceedings; and s. 744.534, F.S., relating to unclaimed funds in guardianship proceedings.

**Effective Date (Section 27)**

This bill takes effect July 1, 2016.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/CS/SB 992 creates a system for electronic service of process at DFS. This could result in cost savings for plaintiffs who serve documents at the DFS but reduce revenue for process servers who serve pleadings at the DFS office in Tallahassee.

C. Government Sector Impact:

The DFS anticipates a \$54,000 per year recurring savings from reduced postage, printing, and information technology costs due to the changes in the service of process statutes in this bill. Future reductions of two or three OPS positions is anticipated.<sup>46</sup>

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<sup>46</sup> See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

The bill appropriates \$500,000 in recurring funds from the Insurance Regulatory Trust Fund and one position to implement the newly created Volunteer Firefighter Assistance Grant Program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 633.107 and 633.135.

This bill substantially amends the following sections of the Florida Statutes: 48.151, 110.1315, 112.215, 137.09, 215.97, 322.142, 374.983, 509.211, 624.307, 624.423, 624.502, 626.854, 626.907, 626.921, 626.9892, 627.7074, 633.208, 633.216, 633.408, 633.412, 633.414, 633.426, and 717.138.

**IX. Additional Information:**

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

**Recommended CS/CS by Appropriations Subcommittee on General Government on February 11, 2016:**

The committee substitute:

- Changes the standards for carbon monoxide detectors in public lodging establishments and requires that the detectors be integrated into the establishment's fire detection system or connected to the boiler safety circuit so the boiler is prevented from operating when carbon monoxide is detected.
- Removes a provision that increased certain fees for service of process.
- Revises the definition of public adjuster so that licensed health insurance agents can assist insureds with specified issues.
- Changes the Anti-Fraud Reward Program to allow rewards for persons who provide information related to crimes investigated by the State Fire Marshal.
- Requires the award of grants to certain fire departments under the Firefighter Assistance Grant Program be prioritized based on the annual Florida Fire Service Needs Assessment Survey.
- Provides for additional rulemaking authority relating to the Division of Unclaimed Property.
- Appropriates the recurring sum of \$500,000 from the Insurance Regulatory Trust Fund and one position to implement the Firefighter Assistance Grant Program.

**CS by Banking and Insurance on January 19, 2016:**

The committee substitute:

- Maintains current law regarding “for-profit organizations” and the Florida Single Audit Act. The original bill excluded for-profit organizations from the Act.
- Creates a procedure for applicants for certification as firefighters who have been convicted of a felony to obtain certification if they demonstrate by clear and convincing evidence that they would not pose a risk to persons or property if they were granted a certificate.
- Creates the “Firefighter Assistance Grant Program.” The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.
- Requires the DFS to select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association’s regular membership but does not provide for nominations.
- Provides discretion for the State Fire Marshal to suspend or revoke other certificates when a firefighter or other certificate holder has a certificate suspended or revoked.
- Removes a provision of the original bill relating to sinkhole insurance.

**B. Amendments:**

None.