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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 1365
RELATING TO: Bail and judicial bonds
SPONSOR(S): Representative Arza

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE YEAS 14 NAYS 0
 - (2) JUDICIAL OVERSIGHT
 - (3) COUNCIL FOR COMPETITIVE COMMERCE
 - (4)
 - (5)
-

I. SUMMARY:

A bail bond is a surety bond guaranteeing the presence of a person during a court proceeding. Under Florida law, to guarantee a criminal defendant's appearance during trial, a court may permit a defendant to deposit money, called bail, with the court clerk in lieu of holding the defendant in custody. Specialized surety agents, called bail bond agents, contract with defendants to deposit money with the court clerk in exchange for payment of a small consideration or premium by the defendants.

Surety companies are given the option under Florida law to place bail consideration on outstanding bail bonds in a bail special reserve. Surety companies that view bail consideration as earned premium on the active date of the bond may keep 25 percent of the "total consideration charged" in a special reserve fund, in lieu of a regular unearned premium reserve, as a solvency safeguard.

Until recently, domestic surety insurers were offsetting required special reserve funds with agent build-up funds. The Department of Insurance has since disallowed this practice. Sureties now contribute surplus funds to meet reserve requirements.

Under the bill, in lieu of the 25 percent of "total consideration charged", surety insurers would be required to keep in special reserve the *lesser* of either 35 percent of all "bail premium-in-force," or \$7 per each \$1,000 of bail liability.

Currently, bail special reserve requirements for Florida domestic sureties are \$16.8 million. However, build-up funds constituted the vast majority of the requirements until the department suspended their use. The department estimates that the proposed change in special reserve requirements would reduce required reserve amounts, by \$15.0 million to \$1.8 million. According to staff calculations, based on certain assumptions, for two out of the five active bail sureties, current reserve requirements of \$11.8 million would be reduced under the bill by \$9.2 million to \$1.6 million.

This bill would not have an impact on state or local government.

This bill would take effect on October 1, 2001.

There is a "remove everything" amendment traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

What is surety insurance?

Surety insurance is a form of risk protection that guarantees the performance of an obligation or the payment of a debt. For a premium, an insurer (referred to as a "surety") accepts the risk that either a debtor will not pay, or an obligor will not perform a task. The most common forms of surety insurance are contractor bonds (bid, payment, maintenance, and performance bonds), indemnity bonds, contract performance bonds, and bail bonds.

What is a bail bond?

A bail bond is a surety bond guaranteeing the presence of a person during a court proceeding. Under Florida law, to guarantee a criminal defendant's appearance during trial, a court may let a defendant deposit money, called bail, with the court clerk in lieu of holding the defendant in custody. Specialized surety agents, called bail bond agents, contract with defendants to deposit money with the court clerk in exchange for a small consideration paid by the defendants.

Do surety insurers receive the full bail bond consideration?

No. Most of the consideration charged on a bail bond goes to the bail agent and bail agency. Surety companies that underwrite bail business receive between 6.5 percent and 15 percent of the "total consideration charged." The bail agency retains the remainder of the bail consideration.

What is an unearned premium reserve?

Surety companies are required to place unearned premium in a special fund called an "unearned premium reserve." Reserves are required as a solvency safeguard.

An insurer does not earn premium paid until coverage under its policy agreement has been provided. The portion of prepaid premium money attached to coverage not yet provided is referred to as unearned premium. For example, consider a yearlong insurance policy issued effective January 1, with a premium of \$1000 due on January 1. On July 1, six months into the policy term, the amount of unearned premium on the policy would be \$500 since only a half-year of coverage

has been provided. On December 31, one year later, the amount of unearned premium would be \$0 since the full year of coverage has been provided.

What is a bail “special reserve” fund?

Surety companies are given the option under Florida law to place bail consideration on outstanding bail bonds in a bail special reserve. A bail special reserve is a special version of an unearned premium reserve. Depending on how a surety insurer records bail consideration, bail consideration may be viewed as earned premium on the active date of the bond or viewed as earned premium on the date the bond is discharged. Surety companies that view bail consideration as earned premium on the active date of the bond may keep 25 percent of the “total consideration charged”¹ in a special reserve fund, in lieu of a regular unearned premium reserve, as a solvency safeguard. Of the five active bail sureties in Florida, four keep a bail special reserve fund. The other surety keeps a reserve in accordance with standard surety unearned premium reserve requirements.

Are sureties required to report bail special reserve amounts to the Department of Insurance?

No. Florida law does not require surety insurers to report the amount of bail special reserve, “total consideration charged,” or bail liability to the department. Insurers however usually footnote this information in their annual statements.

How do sureties meet bail special reserve requirements?

Since sureties only receive between 6.5 percent and 15 percent of the “total consideration charged,” sureties must contribute surplus funds to meet reserve requirements.

Example:

	<u>Company A</u>	<u>Company B</u>
Total consideration charged (TCC)	34.6 Million	12.4 Million
25% of TCC required by law	8.7 Million	3.1 Million
- 10% of TCC received from agent (est. share after agent and agency fees)	3.4 Million	1.2 Million
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= Amount from surplus to meet reserve	5.3 Million	1.9 Million

Until recently, domestic surety insurers were offsetting required special reserve funds with agent build-up funds.² This practice was brought to the attention of the Department of Insurance during 2000 by the New York Insurance Department during financial review of a Florida domestic surety. That surety had classified its agent build-up funds as an admitted asset on its financial statement. After discussion between the surety, Florida regulators, and New York regulators, the surety removed its agent build-up funds from its reported assets.

¹ “Total consideration charged” is the amount of “premium” paid by the defendant for the transaction. Total consideration charged includes agent fees, managing general agent fees, build-up trust fund deposits, and surety insurer compensation. The bill would refer to the surety insurer’s compensation as “bail premium-in-force.”

² Agent build-up funds are funds held by the surety insurer in trust for the agent in the event the agent cannot pay a debt. Bail agents deposit up to 40 percent of bail premium in their individual build-up funds according to the terms of their surety insurer contracts.

Since that time, the department has no longer allowed surety insurers to use agent build-up funds to offset required reserve amounts. As a result, surety insurers writing bail business have been required to appropriate excess surplus funds to cover reserve requirements.

Do other states require bail special reserve funds?

Other states have different requirements regarding solvency reserves and surety bail insurance. While both Alaska and Georgia have the same 25 percent of "total consideration charged" requirement that Florida has, New York requires surety insurers to keep 10 percent of all bail premium in reserve regardless of the state in which it is written.

Federal Government

To write surety business with the federal government, sureties must keep in special reserve the *lesser* of 35 percent of all bail premium-in-force, or \$7 per each \$1,000 of bail liability. Total bail premium-in-force is the amount of premium charged on outstanding bail bonds less agent fees and compensation. Bail liability is the total amount of bail exposure on outstanding bail bonds.

C. EFFECT OF PROPOSED CHANGES:

Surety insurers would be required to keep the *lesser* of 35% of all bail premium-in-force, or \$7 per each \$1,000 of bail liability, in special reserve. Bail premium-in-force would be the amount of "total consideration charged" on outstanding bail bonds less agent fees and compensation. Bail liability would be the total amount of bail exposure on outstanding bail bonds.

Sureties would be required to report bail premium-in-force, bail liability, and the amount of the bail special reserve, on a separate supplemental schedule attached to their financial reports.

Illustration of the effect of proposed changes:

	<u>Company A</u>	<u>Company B</u>
-LESSER OF-		
Total Consideration Charged (TCC)	34.6 Million	12.4 Million
Bail premium-in-force (est. 10 % of TCC)	3.5 Million	1.2 Million
35% of Bail premium in force	1.2 Million	0.4 Million
-OR-		
Bail liability	367.0 Million	80.0 Million
\$7 per \$1,000 of Bail liability	2.6 Million	0.6 Million
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Lesser of 35% of bail premium-in-force or \$7 per \$1000 of bail liability	1.2 Million	0.4 Million
25% of TCC required by current law	8.7 Million	3.1 Million
- Total required in reserve under bill	1.2 Million	0.4 Million
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= Change in required reserve under bill	(7.5 Million)	(2.9 Million)

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, bail special reserve requirements for Florida domestic sureties are \$16.8 million. However, build-up funds constituted the vast majority of the requirements until the department suspended their use. The department estimates that the proposed change in special reserve requirements would reduce required reserve amounts, by \$15.0 million to \$1.8 million. According to staff calculations, based on certain assumptions, for two out of the five active bail sureties, current reserve requirements of \$11.8 million would be reduced under the bill by \$9.2 million to \$1.6 million. This change would benefit domestic sureties by reducing the amount of money needed in reserve to write the current amount of bail bond business.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require municipal or county spending.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce municipal or county revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of state tax shared with municipalities and counties.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 11, 2001, the Committee on Insurance adopted a “remove everything” amendment, which is traveling with the bill. The “remove everything” amendment would change the bill as follows:

Amendment by Rep. Arza (“remove everything”): This amendment would require insurers to report their bail special reserve as a liability on their financial statement. The amendment also would ensure that the “bail premium-in-force” on a particular bond would not be less than 6.5 percent of the “total consideration received”³ for the bond. The amendment would change the effective date of the bill to July 1, 2001.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Warren A. “Drew” Crawford

Stephen T. Hogge

³ The language “total consideration received” is used to conform with s. 625.4094, F.S., enacted in 2000. (See s. 2, ch. 2000-126, L.O.F.). “Total consideration received” is the full amount of consideration received for a bail bond.