

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1722

SPONSOR: Banking and Insurance Committee and Senator Horne

SUBJECT: Surety Bonds

DATE: April 10, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill revises the special reserve requirement that surety insurers must establish for bail bonds from the current 25 percent of the total consideration (premium) paid for the bail bond, to the lesser of 35 percent of the bail premiums in force or \$7 per \$1,000 of bail liability. The bail premiums would not include amounts retained by licensed bail bond agents, but may not be less than 6.5 percent of the total consideration received for all bail bonds in force.

The bill benefits Florida domestic surety insurers which would have lower special reserve requirements which, in turn, would increase their surplus and increase the bail bond premiums that they may write. The amount of the special reserve, as amended, is still considered to be an adequate protection of the financial health of surety insurers and would be the same as that required by the U.S. Treasury for all insurers who issue bonds for federal agencies.

This bill substantially amends section 625.071 of the Florida Statutes:

II. Present Situation:

Surety insurers are authorized to write bail bonds. Section 625.071 currently requires surety insurers to create a special reserve in lieu of the customary unearned premium reserve that applies to insurance companies generally. The amount of the reserve is 25 percent of the total premiums charged for the bail bonds outstanding on the date of the financial statement.

Monies held in the special reserve by surety insurers are considered a liability that reduces a company's surplus. The amount of the company's surplus, in turn, directly affects the amount of surety insurance (bail bonds) that it can write. Section 624.4095, F.S., prohibits an insurer's ratio of annual written premiums to surplus from exceeding 10 to 1 for gross written premiums or 4 to

1 for net written premiums. "Gross premiums written" are defined to mean direct premiums written and reinsurance assumed. Although "net written premium," is not defined, the primary distinction as interpreted as allowing for a deduction of reinsurance premiums ceded (paid) to a reinsurer.

Legislation in 2000 (Ch. 2000-126, L.O.F.) created s. 624.4094, F.S., relating to the reporting of bail bond premiums on financial statements, to allow surety insurers to report direct written premiums, net of any amounts retained by licensed bail bond agents. However, the net direct written premium cannot be less than 6.5 percent of the total consideration received by the agent for all bail bonds written by the agent. This was in recognition of the fact that the commission on the premium is typically about 90 to 93 percent; therefore, the actual premium dollars received by the insurer is approximately 7 to 10 percent of the premium written. Insurers writing bail bonds are authorized to use direct written premiums, net of agent commissions, for the purpose of calculating compliance with the premiums written to surplus ratio. Therefore, the effect of last year's legislation was to increase the bail bond premium writing capacity of the insurer.

However, last year's legislation did not directly affect another issue that has recently arisen regarding the amount of the special reserve required by s. 625.071, F.S. The department has historically permitted these special reserve amounts to be offset by "build-up funds" that surety insurers maintain under s. 648.29, F.S. Chapter 648, F.S., provides for the licensure of bail bond agents and additional requirements for the business of issuing bail bonds. A bail bond serves as a pledge by a bail bond agent or surety company that a defendant will appear at all scheduled proceedings before a court. If the defendant does not appear, the court will seek to recover on the bond. A surety insurer typically requires the bail bond agent to deposit into the "build-up fund" an amount that may not exceed 40 percent of the bail bond premium from that portion that is paid as commission to the agent. This fund is used to pay forfeited bonds, but if the bond is not forfeited, the funds are ultimately paid back to the agent. All build-up funds must be maintained in a trust account for the bail bond agent by the insurer in a bank or savings and loan association.

The department had previously allowed these build-up funds to be offset against the special reserve required by s. 625.071, F.S., which operated to lower the amount of the special reserve than would otherwise be required. Recently, however, the department reversed its interpretation and determined that the build-up funds may no longer be used to offset the special reserve, under the theory that the funds are the property of the agent, not the insurer. (This followed a similar interpretation by the New York Department of Insurance.) However, the department acknowledges that the resulting calculation results in a special reserve amount that is in excess of what is needed to assure financial health of a bail bond insurer.

III. Effect of Proposed Changes:

The bill revises the special reserve requirement that surety insurers must establish for bail bonds from the current 25 percent of the total consideration (premium) paid for the bail bond, to the lesser of 35 percent of the bail premiums in force or \$7 per \$1,000 of bail liability. The bail premiums would not include amounts retained by licensed bail bond agents, but may not be less than 6.5 percent of the total consideration received for all bail bonds in force. (This 6.5 percent figure is the same as the minimum 6.5 percent of total consideration paid to the agent that the insurer must report as net written premiums, after deducting amounts retained by the agent.)

Each surety insurer would be required to file a supplementary schedule showing bail premiums in force and bail liability and the associated special reserve for bail bonds with financial statements required by s. 624.424.

The revised method for reserving bail bond premiums is currently in use by the U.S. Treasury for all insurers who issue bonds for federal agencies.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill benefits Florida domestic surety insurers which would have lower special reserve requirements which, in turn, would increase their surplus and increase the bail bond premiums that they may write. The amount of the special reserve, as amended, is still considered to be an adequate protection of the financial health of surety insurers and would be the same as that required by the U.S. Treasury for all insurers who issue bonds for federal agencies.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
