

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.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 986

INTRODUCER: Senator Stargel

SUBJECT: Department of Financial Services

DATE: March 13, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Pre-meeting
2.			AGG	
3.			AP	

I. Summary:

SB 986 makes various changes to statutes relating to the Department of Financial Services (DFS). The bill addresses clean-up issues at the Department of Financial Services within the Divisions of Treasury, Accounting and Auditing, State Fire Marshal, Agent and Agency Services and Risk Management.

The bill:

- Replaces the Treasury Investment Committee with the Treasury Investment Council within the Division of Treasury and provides for the duties of the Council;
- Applies certain requirements relating to payments, warrants, and invoices to payments made in relation to certain agreements funded with federal or state assistance;
- Updates the 1991 Boiler Safety Act (Act) as to installation requirements, who can conduct inspections of boilers in public assembly locations, continuing education of inspectors, and changes criminal penalties to administrative fines for violations of the Act;
- Authorizes the Department the authority to use appropriated funds for the purpose of professional development and training courses;
- Allows licensed individuals who are active participants in insurance associations to annually earn continuing education credits;
- Provides that the Division of Agent and Agency Services may not issue a license until an applicant with a criminal history has paid all fines, restitution, and court costs;
- Removes the statute of limitations for actions relating to the Holocaust Victims Assistance Program;
- Allows for the use of firefighter's confidential information for the purposes of certain studies;
- Removes a requirement for an individual to send a written notice of claim or serve a summons on the DFS for an action against a subdivision of the state.

II. Present Situation:

The Chief Financial Officer (CFO) is a member of the Cabinet and serves as the chief fiscal officer of the state. The CFO is agency head of the DFS. The DFS performs a wide variety of functions. For example, the DFS processes various state payments, warrants, and invoices. It administers the Boiler Safety Act.¹ The DFS regulates insurance agencies, agents, and insurance adjusters. The following sections summarize various issues addressed by SB 986.

Treasury Investment Committee

Section 17.575, F.S., creates the Treasury Investment Committee (TIC) within the DFS Division of Treasury. It consists of five members appointed by the CFO who possess special knowledge, experience, and familiarity in finance, investments, or accounting. The TIC administers the Treasury Investment Program consistent with policies approved by the CFO for deposits and investments of public funds. Section 1 of the bill changes this program.

Payment of Vendor Invoices by the State

Section 215.422, F.S., governs payments by state agencies or the judicial branch to vendors. An invoice submitted to a state agency or the judicial branch must be recorded in the financial systems of the state, approved for payment by the agency or the judicial branch, and filed with the Chief Financial Officer no later than 20 days after receipt of the invoice, unless there is a dispute or some other reason not to pay.² In most cases, the DFS must approve payment of an invoice no later than 10 days after the agency the approved invoice.

If a warrant in payment of an invoice is not issued within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods and services, the agency or judicial branch must pay to the vendor interest at the statutory interest rate.

The interest requirements do not apply to payments for agreements funded with state or federal financial assistance pursuant to s. 215.971, F.S.

The Boiler Safety Act

A boiler is “a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam is superheated, or any combination of these functions is accomplished, under pressure or vacuum, for use external to itself, by the direct application of energy from the combustion of fuels or from electricity or solar energy. The term “boiler” includes fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.”³ Florida’s Boiler Safety Act (Act) provides requirements for installation of boilers in public assembly locations, boiler code requirements, education requirements, and penalties for violations. The Act has remained essentially unchanged since 1991.

¹ ss. 554.1011-554.115, F.S.

² s. 215.422(1), F.S.

³ s. 554.1021(1), F.S.

The DFS administers the Act. Sections 3-18 of this bill make changes to the Act.

Regulation of Insurance Agents and Adjusters

The DFS Division of Insurance Agents and Agency Services regulates insurance agents, agencies, and adjusters. The regulation includes licensing, disciplinary actions, and education. Sections 20-28 of the bill revise provisions relating to agent and adjuster regulation.

Notice of Actions against the State

Section 768.28, F.S., is the state's waiver of sovereign immunity statute. The DFS Division of Risk Management is responsible for the management of claims reported by or against state agencies and universities for coverage under the self-insurance fund known as the "State Risk Management Trust Fund."⁴ Section 768.28, F.S., requires notice or service on DFS in certain situations. Section 31 of the bill amends those provisions.

III. Effect of Proposed Changes:

Treasury Investment Council

Section 1 changes the name of the Treasury Investment Committee to the Treasury Investment Council. It requires that three of the five council members be from the private sector. Current members serve at the pleasure of the CFO. The bill changes the term to 4 years from the date of appointment but retains the ability of the CFO to remove members. The bill requires the council to review the investments required by s. 17.57, F.S., and meet with staff of the Division of Treasury at least biannually. The council will provide recommendations to the Division of Treasury and the CFO regarding investment policy, strategy, and procedures. It provides that council members may receive per diem and travel expenses pursuant to s. 112.061, F.S.

Payment of Vendor Invoices by the State

Section 2 provides that the payment requirements of s. 215.422, F.S., including payment of interest for late payments, apply to agreements involving state or federal financial assistance in s. 215.971, F.S.

Boiler Safety Act

The bill amends and reorganizes the Boiler Safety Act.

Section 3 amends s. 554.1021, F.S., to define "authorized inspection agency" so that various entities are allowed to conduct boiler inspections if their boiler inspectors hold valid certificates of compliance.

⁴ <http://www.myfloridacfo.com/Division/Risk/> (last accessed March 10, 2017).

Entities include local governments or governmental subdivisions that have adopted into law the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers⁵ and National Board Inspection Code for the construction, installation, inspection, maintenance, and repair of boilers to regulate boilers in public assembly locations.⁶ The bill includes insurers authorized to transact boiler and machinery insurance in Florida and inspecting agencies accredited in accordance with the National Board of Boiler and Pressure Vessel Inspector's program entitled "Accreditation of Authorized Inspection Agencies (AIA) Performing Inservice or Repair/Alteration Inspection Activities," document number NB-369, as authorized inspection agencies.⁷

Section 4 amends s. 554.103, F.S., to require the installer of any boiler place in use after July 1, 2017, to apply for a permit to install the boiler with the chief boiler inspector.⁸ The application must be on a form adopted by the DFS by rule. The application must include the ASME manufacturer's data report and other information required by law before the boiler is placed in service.⁹

Section 5 amends s. 554.104, F.S. The bill amends the certification system for boiler inspectors. Most of the amended s. 554.104, F.S., is current law in ss. 554.112 and 554.113, F.S. **Section 14** repeals those sections. The bill provides that a person may not be, act as, or advertise or hold himself or herself out to be a boiler inspector unless he or she holds a certificate of competency issued by the DFS. A person seeking certification must apply to take the certification examination.¹⁰ A person may take the certification examination if:

- Has submitted the application for examination and the required fee;
- Is at least 18 years of age;
- Has completed the 2-hour training course; and
- Has at least 3 years of experience in the construction, installation, inspection, operation, maintenance, or repair of high pressure, high temperature water boilers; or
- Meets the requirements to qualify as a commissioned inspector by the National Board of Boiler and Pressure Vessel Inspectors as set forth in NB-263, Rules for National Board Inservice and New Construction Commissioned Inspectors, as adopted by DFS rule.

The bill requires the DFS to adopt by rule a 2-hour training course on the requirements of the Boiler Safety Act and related rules. The course must be made available online and may be made available in a classroom. The bill allows a boiler insurance company to include the DFS course as part of its training of boiler inspector students.

The chief boiler inspection must issue a certificate of competency to an applicant who meets the qualifications, passes the required examination, and obtains a commission from the National Board of Boiler and Pressure Vessel Inspectors.

⁵ https://www.asme.org/getmedia/1adfc3df-7dab-44bf-a078-8b1c7d60bf0d/ASME_BPVC_2013-Brochure.aspx (last accessed March 10, 2017).

⁶ <http://www.nationalboard.org/Index.aspx?pageID=4> (last accessed March 10, 2017).

⁷ <https://www.nationalboard.org/SiteDocuments/Commissioned%20Inspectors/NB-369.pdf> (last accessed March 10, 2017).

⁸ The chief boiler inspector is appointed by the CFO pursuant to s. 554.105, F.S.

⁹ Current law requires the information at least 90 days after the boiler is placed in service. s. 554.103(2), F.S.

¹⁰ The examination required by the bill is the examination administered by the National Board of Boiler and Pressure Vessel Inspectors.

The bill moves the current language of s. 554.104, F.S., relating to the approval of boilers of special design to s. 554.103, F.S. The bill creates the 2-hour training course requirement.

Section 6 amends s. 554.105, F.S., to change the title “chief inspector” to “chief boiler inspector” and makes technical changes. **Section 7** amends s. 554.106, F.S., to change the title “deputy inspector” to “deputy boiler inspector.” It provides that deputy boiler inspectors will conduct inspections of uninsured boilers and engage in public outreach and other duties as assigned by the chief boiler inspector.

Section 9 amends s. 554.108, F.S., requires inspections of boilers in public assembly locations within 30 days after the expiration of the boiler’s certificate of operation and provides reporting requirements. The bill provides for more frequent inspections if a boiler has had previous code violations.

Section 11 amends s. 554.109, F.S., to strike provisions relating to inspections by insurers or local governments because those provisions are in the new s. 554.1081, F.S. The bill also strikes unnecessary provisions related to water supply boilers and water heaters. **Section 10** creates s. 554.1081, F.S.

Section 12 amends s. 554.1101, F.S., to require boiler insurance companies to notify the chief boiler inspector within 30 days after the issuance of a new or renewal boiler and machinery insurance policy.

Section 13 amends s. 554.111, F.S., relating to fees paid to the DFS for certification inspections, applications, and examinations. The bill requires that an application for a boiler permit include the inspection fee. Currently, the fee is collected after the inspection. The bill does not raise any of the current fees.

Section 15 amends s. 554.114, F.S., to remove criminal penalties for violations of the Act. Current law provides that specified violations are a second-degree misdemeanor. This bill provides for administrative fines of \$10 per day for the first 10 days of noncompliance, \$50 per day for the next 20 days of noncompliance, and \$100 per day for subsequent days. Violations that can lead to financial penalties are operating a boiler without a valid certificate, using a certificate for any boiler other than the boiler for which it was intended, and inspecting a boiler without holding a valid certificate. The bill also provides penalties if boiler insurance companies or authorized inspection agencies fail to comply with inspection requirements. **Section 16** makes conforming changes to s. 554.115, F.S.

Section 17 creates s. 554.1151, F.S., to give the DFS discretion to impose fines in lieu of or in addition to revocation or suspension of certificates in s. 554.115, F.S. Fine amounts are up to \$500 for non-willful violations and up to \$3,500 for willful violations. It provides for suspension or revocation if the fines are not paid within 30 or 90 days.

Section 18 creates s. 554.116, F.S. It requires a boiler insurance company that insures any boiler in this state to file a report with the chief boiler inspector regarding claims paid by the insurer under policies insuring boilers in this state. The report must include the type of establishment in which the boiler was located, the location of the establishment, the amount of the loss, the

apparent cause of the loss, and any other information that the DFS determines is not inconsistent with the intent of the safety objectives of the State Boiler Code. The bill requires the DFS to adopt a form by rule for submission of the report.

Regulation of Insurance Agents and Adjusters

Sections 20 and 23 amends ss. 626.015 and 626.2815, F.S., relating to continuing education requirements for licensees. The bill provides that “active participants” in “associations” may receive 2 hours of continuing education credit each calendar year. The bill defines active participant as a member who attends 4 or more hours of association activities each year. It defines association to include:

- Florida Association of Insurance Agents (FAIA);
- National Association of Insurance and Financial Advisors (NAIFA);
- Florida Association of Health Underwriters (FAHU);
- Latin American Association of Insurance Agencies (LAAIA);
- Florida Association of Public Insurance Adjusters (FAPIA);
- Florida Bail Agents Association (FBAA); or
- Professional Bail Agents of the United States (PBUS).

Section 21 amends s. 626.207, F.S. Current law provides that persons with certain criminal convictions¹¹ are barred from applying for licensure for licenses regulated under ch. 626, F.S., for specified periods of time.¹² The bill allows such persons to apply for licensure but provides that such persons are barred from licensure.

The time a person is barred from applying for licensure begins to run upon completion of the criminal sentence including the payment of all fines, restitution, and court costs.¹³ This provides that the time begins to run upon completion of an applicant’s criminal sentence (including the end of any period of probation or community control) and provides that a license cannot be issued until all fines, restitution, and court costs are paid. This will allow applicants who pay their restitution during, for example, a period of probation, to be licensed sooner.

In *Kauk v. Department of Financial Services*,¹⁴ the court considered whether the *per se* bar in s. 626.207, F.S., applied to someone who had had his civil rights restored through executive clemency. The court held that the DFS could not impose a bar against Kauk because Kauk had had his civil restored and a hearing officer had found Kauk to be a “citizen fully rehabilitated.”¹⁵ This bill codifies the result of *Kauk*. It provides that the time bars in s. 626.207, F.S., do not apply to someone who has had his civil rights restored or has been issued a pardon. The bill does not require the DFS to issue a license if a person has been granted a pardon or had his or her civil rights restored. Rather, it provides the DFS cannot consider the finding of guilt or entry of the plea for which clemency was granted as grounds to deny the application.

¹¹ When “conviction” is used when discussing DFS agent and agency regulatory statutes in this bill analysis, it means a conviction or the entry of guilty or nolo contendere plea regardless of whether adjudication was withheld.

¹² Persons and entities licensed by the DFS include agents, agencies, adjusters, adjusting firms, customer representatives, or managing general agents.

¹³ s. 626.207(6), F.S.

¹⁴ 131 So.3d 805 (Fla. 1st DCA 2014).

¹⁵ 131 So.3d at 808.

Section 22 makes similar changes to the law relating to health insurance navigators so that the same disqualifying periods and clemency rules will apply to insurance agents and to navigators.

Section 626.611, F.S., provides grounds for which the DFS must deny an application for licensure or appointment and grounds for which it must suspend or revoke an existing license or appointment. Section 626.621, F.S., provides grounds for which the DFS may refuse to issue a license or appointment, or may suspend or revoke an existing license or appointment. These sections apply to applicants for licensure or license renewal, agents, adjusters, customer representatives, service representatives, and managing general agents. Section 626.611, F.S., currently requires a suspension or revocation for convictions of felonies involving moral turpitude. **Section 24** amends s. 626.611, F.S., to require suspension or revocation for all felonies. **Section 25** currently makes revocation or suspension for felonies that do not involve moral turpitude discretionary with the DFS. This bill makes a revocation or suspension mandatory for all felonies.

Section 25 also provides that license denial, license revocation, or suspension is discretionary with the DFS if a state agency, court, other state, any nation, or possession or district of the United States takes regulatory action against a license to practice a regulated profession or business.

Sections 26 and 27 allow trustees to advise persons, settlors, or beneficiaries regarding their interests in a trust regarding life or health insurance plans.

Section 28 amends s. 626.861, F.S., to allow a regular employee of a property insurer handling claims to adjust claims with respect to residential property insurance when the sublimit coverage does not exceed \$500.

Holocaust Victims

Section 626.9543, F.S., provides that any insurer doing business in this state, in receipt of a claim from a Holocaust victim or from a beneficiary, descendant, or heir of a Holocaust victim, must:

- Diligently and expeditiously investigate all such claims;
- Allow such claimants to meet a reasonable, not unduly restrictive, standard of proof to substantiate a claim, pursuant to standards established by the DFS; and
- Permit claims irrespective of any statute of limitations or notice requirements imposed by any insurance policy issued, provided the claim is submitted on or before July 1, 2018.

Section 29 removes the July 1, 2018, claims deadline.

Current law provides that any action brought by Holocaust victims or by a beneficiary, heir, or a descendant of a Holocaust victim seeking proceeds of an insurance policy issued or in effect between 1920 and 1945, inclusive, may not be dismissed for failure to comply with the statute of limitations if the action is commenced on or before July 1, 2018. This bill removes the July 1, 2018, deadline and would allow actions to be brought without any statute of limitations.

Notice of Actions against the State

Section 31 amends s. 768.28, F.S. Section 768.28, F.S., is the state's waiver of sovereign immunity. Under current law, s. 768.21(6)(a), F.S., provides that an action cannot be initiated against the state or one of its agencies or subdivisions unless a claimant presents the claim in writing to the appropriate agency and to the DFS. A claimant does not have to provide notice to the DFS if the claim is against a municipality or the Florida Space Authority. DFS reports that it receives many notices when claimants make claims against counties. The DFS Division of Risk Management is not involved in claims against counties so the DFS believes it is not necessary that DFS receive the notice. The bill provides that a claimant does not have to present notice to the DFS if the claim is against a "subdivision of the state."

Similarly, s. 768.21(7), F.S., requires service of process on DFS unless the case is brought pursuant to s. 768.28, F.S., process must be served on the agency head and DFS except for municipalities or the Florida Space Authority. The bill provides that service is not required on a "subdivision of the state."

It is not clear exactly what "subdivision of the state" could mean. The Florida Constitution refers to "counties" as "political subdivisions."¹⁶ Section 768.28(2), F.S., defines "state agencies or subdivisions" to include the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Florida Space Authority. Failure to file notice or serve DFS can result in dismissal of a case.¹⁷

Miscellaneous Provisions

Section 8 amends s. 554.107, F.S., to make conforming changes for consistency with other changes made by the bill.

The Office of Insurance Regulation may expend funds, subject to availability, for the professional development of its staff. Expenditures may include dues for professional organizations, fees for examinations leading to professional designations, and relevant training courses. **Section 19** of this bill gives the DFS a similar ability to expend funds for professional development of staff. The bill does not provide an appropriation.

Section 30 amends s. 633.516, F.S., relating to studies of firefighter employee occupational diseases. The bill provides that DFS may contract for studies, subject to the availability of funds, of occupational diseases of firefighters. When such a study or another study that is wholly or partly funded under an agreement with the DFS tracks a disease of an individual firefighter or a person in another fire-related field, the DFS may, with associated security measures, release confidential information, including a social security number, of that individual to a party who has entered into an agreement

¹⁶ Art. VIII, s. 1, Fla. Const.

¹⁷ See, e.g., *Lederer v. Orlando Utilities Commission*, 981 So.2d 521 (Fla. 5th DCA 2008);

Section 32 amends s. 288.706, F.S., to change statutory citations to conform to changes made in section 2 of the bill.

Sections 33 and 34 amends ss. 626.7315 and 627.351, F.S., to change statutory citations to conform with the changes made in Section 20 of the bill.

Section 35 provides an effective date of July 1, 2017.

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:

The impact on the private sector from changes to the Boiler Safety Act is not known.

C. Government Sector Impact:

The changes to the Boiler Safety Act could have an indeterminate fiscal impact on the DFS.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁸ Department of Financial Services, *Analysis of SB 986* (March 8, 2017).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 17.575, 215.422, 554.1021, 554.103, 554.104, 554.105, 554.106, 554.107, 554.108, 554.109, 554.1101, 554.111, 554.114, 554.115, 624.307, 626.015, 626.207, 626.9954, 626.2815, 626.611, 626.621, 626.7845, 626.8305, 626.861, 626.9543, 633.516, 768.28, 288.706, 626.7315, and 627.351.

This bill creates the following sections of the Florida Statutes: 554.1081, 554.1151, and 554.116.

This bill repeals the following sections of the Florida Statutes: 554.112 and 554.113.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.