

Insurance & Banking Subcommittee

Tuesday, March 23, 2021
9:30 AM - 12:15 PM
Webster Hall (212 Knott)

Meeting Packet

Chris Sprowls
Speaker

Nick DiCeglie
Chair

The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

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Meeting Agenda

Tuesday, March 23, 2021
9:30 AM – 12:15 PM
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 1305 Workers' Compensation Insurance for Employee Leasing Companies by Giallombardo
- HB 1593 Seminole County by Smith, D.

Consideration of the following proposed committee substitute(s):

- PCS for HB 305 – Insurance

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1305 Workers' Compensation Insurance for Employee Leasing Companies
SPONSOR(S): Giallombardo
TIED BILLS: **IDEN./SIM. BILLS:** SB 1458

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Rowley	Luczynski
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The workers' compensation law (ch. 440, F.S) requires an employer, subject to certain exceptions, to obtain coverage for its "employees" that provides for lost income and all medically necessary remedial treatment, attendance, and care, resulting from work-related injuries and occupational diseases. Employee leasing is an arrangement in which a leasing company, or PEO, assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client. An employee leasing company is the legal employer of leased employees and is responsible for providing them with workers' compensation coverage.

The bill makes changes to workers' compensation law by specifying when an employee leasing company must provide workers' compensation insurance to cover a subcontractor's leased and nonleased employees. The bill does not modify the current law requirement that an employee leasing company secure workers' compensation coverage for its leased employees or that a subcontractor secure workers' compensation coverage for its nonleased employees. However, the bill shifts the responsibility for a subcontractor's failure to secure workers' compensation coverage from the general contractor, which current law deems the statutory employer, to the employee leasing company.

The bill provides that if an employee leasing company and a subcontractor have an employee leasing arrangement, unless the subcontractor has secured additional workers' compensation coverage, a person is deemed an employee of the employee leasing company upon the earliest of the following: the hiring of the person by the subcontractor; the commencement of work by the person for the subcontractor; or the hiring of the person directly by the employee leasing company.

The bill has no impact on state or local government revenues or expenditures. It has an unknown direct economic impact on the private sector.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview of Florida's Workers' Compensation System

Chapter 440, F.S., is Florida's workers' compensation law. It is the stated intent of the Legislature that the workers' compensation system be self-executing and for the law to be interpreted to "assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer."[1] For work-related injuries, workers' compensation provides all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics.[2] It also provides compensation for disability when the injury causes an employee to miss more than seven days of work.[3]

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.[4] Employees generally cannot sue a covered employer for workplace injuries.[5] The law requires that all employers, with limited exceptions, provide workers' compensation insurance for their employees.

Whether an employer is required to have workers' compensation insurance depends upon the employer's industry and the number of employees. Employers may secure coverage by purchasing a workers' compensation insurance policy or qualifying as a self-insurer. An employer in a non-construction industry employing four or more part- or full-time employees must secure insurance.[6] An employer engaged in the construction industry must secure workers' compensation insurance if it employs one or more part- or full-time employees.[7] No more than three officers of a corporation or members of a limited liability company who are engaged in the construction industry may elect to be exempt from this requirement, if certain conditions are met.[8] Corporate officers and members of a non-construction LLC can elect to be exempt from workers' compensation coverage requirements.[9]

Section 440.10, F.S., makes a contractor the "statutory employer" of its subcontractor.[10] Thus, the contractor is responsible for providing workers' compensation insurance for a subcontractor's employees, unless the subcontractor has its own workers' compensation policy. While this does not relieve a subcontractor of its legal duty to provide workers' compensation insurance, it ensures that employees will have workers' compensation coverage in the event the subcontractor does not have coverage.

Employee Leasing

"Employee leasing" is an arrangement in which a leasing company, or professional employer organization (PEO), assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client.[11] It is unlawful to operate as an

[1] S. 440.015, F.S.
[2] S. 440.13(2)(a), F.S.
[3] S. 440.12(1), F.S.
[4] "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. S. 440.13(1)(d), F.S.
[5] S. 440.11(1), F.S. Employers who fail to obtain required workers' compensation coverage may be sued by an injured worker in civil court. Likewise, an employee who is either exempt or excluded from workers' compensation coverage requirements may sue his or her employer in civil court for work-related injuries, even if the employer has coverage for other employees.
[6] S. 440.02, F.S.
[7] *Id*.
[8] *Id*.
[9] *Id*.
[10] S. 440.10(1)(b), F.S.
[11] S. 468.520(4), F.S. Temporary help arrangements are excluded from the definition of employee leasing.

employee leasing company without a license, and licensed employee leasing companies may lease employees only through contractual arrangements with client companies that satisfy certain conditions, including retaining responsibility for the management of workers' compensation claims. An employee leasing company is considered the employer of leased employees[12] and is responsible for providing them with workers' compensation coverage.[13] According to the Office of Program Policy Analysis and Government Accountability (OPPAGA), there were 760 PEOs in the state as of March 2020 and the construction industry was the industry that used PEOs the most.[14]

Workers' compensation insurance requirements for employee leasing companies are set forth in s. 627.192, F.S. An employee leasing agreement generally provides that the leasing company secures workers' compensation coverage only for leased employees listed with the employee leasing company and that the client company remains responsible for coverage for all nonleased employees.[15] A leasing company's insurance carrier policy typically covers only those employees of a client company that have been processed through its payroll system.[16] Thus, new hires who are injured prior to being processed through payroll may not be covered by the policy.[17] This can lead to problems for contractors, who are statutorily responsible for their subcontractors' employees, unless the subcontractors have other workers' compensation coverage.[18]

The Department of Business and Professional Regulation, through its Board of Employee Leasing Companies, licenses and regulates employee leasing companies.[19] An employee leasing company may be disciplined for violating ch. 455, F.S., and ch. 468, F.S., for failing to maintain workers' compensation or misclassifying employees. The Department of Financial Services (DFS) is responsible for enforcing employer compliance with workers' compensation coverage requirements. If an employer fails to comply with those requirements, the DFS must issue a stop-work order within 72 hours of determining noncompliance.[20]

Effect of the Bill

The bill makes changes to workers' compensation law by specifying when an employee leasing company that has an arrangement with a subcontractor must provide workers' compensation insurance to cover the subcontractor's leased and nonleased employees. The bill does not modify the current law requirement that an employee leasing company secure workers' compensation coverage for its leased employees or that a subcontractor secure workers' compensation for its employees. However, the bill shifts the responsibility for a subcontractor's failure to secure workers' compensation coverage for an employee from the general contractor, which current law deems the statutory employer, to the employee leasing company.

The bill provides that if an employee leasing company and a subcontractor have an employee leasing arrangement, unless the subcontractor has secured workers' compensation coverage for a person hired by it, for purposes of workers compensation, such person is deemed an employee of the employee leasing company. The bill also provides that the person becomes an employee of the leasing company upon the earliest of the following: the hiring of the person by the subcontractor; the

[12] A "leased employee" is defined in s. 627.192, F.S., as "a person performing services for a lessee under an employee leasing arrangement."
[13] S. 468.529(1), F.S.
[14] OPPAGA, Report 21-04, *Review of Professional Employer Organizations and Workers' Compensation*, pp. 7-8 (Mar. 2021), https://oppaga.fl.gov/Documents/Reports/21-04.pdf (last visited Mar. 15, 2021).
[15] *Id*. at p. 2.
[16] *Id*. at p. 12.
[17] *Id*.
[18] *See* Florida United Business Association, *The Perils of PEOs for Florida's Construction Industry* (Jan. 31, 2019), https://fuba.org/2019/01/31/the-perils-of-peos-for-floridas-construction-industry/ (last visited Mar. 14, 2021).
[19] According to OPPAGA, the Board of Employee Leasing Companies "rarely finds that employee leasing companies violated workers' compensation requirements." OPPAGA, Report 21-04, *Review of Professional Employer Organizations and Workers' Compensation*, p. 4 (Mar. 2021), https://oppaga.fl.gov/Documents/Reports/21-04.pdf (last visited Mar. 15, 2021).
[20] S. 440.107, F.S.

commencement of work by the person for the subcontractor; or the hiring of the person directly by the employee leasing company.

The bill adds to an employee leasing company's license requirements by requiring that, unless a subcontractor has secured workers' compensation insurance for its nonleased employees, an employee leasing company's arrangement with a subcontractor must provide that a person is an employee of the employee leasing company at the earliest of the individual's hiring by the subcontractor, commencement of work for the subcontractor, or hiring by the employee leasing company.

B. SECTION DIRECTORY:

Section 1. Amends s. 440.10, F.S., relating to liability for compensation.

Section 2. Amends s. 468.525, F.S., relating to license requirements.

Section 3. Amends s. 468.529, F.S., relating to licensee's insurance; employment tax; benefit plans.

Section 4. Reenacts s. 468.532, F.S., relating to discipline.

Section 5. Provides an effective date of July 1, 2021.

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:

The bill may have a positive, indeterminate fiscal impact on contractors by reducing the costs of their workers' compensation insurance policies. The bill may have a negative, indeterminate fiscal impact on subcontractors by making it more expensive to do business with employee leasing companies/PEOs. There may be a negative, indeterminate fiscal impact on employee leasing companies/PEOs. The impact on PEOs may depend on how well they can anticipate exposure and adjust the costs of their leasing arrangements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not indicate if it is intended to affect existing contractual agreements. An amendment may be needed to clarify that the bill applies to only contracts entered into on or after the effective date of the bill. The sponsor has indicated an intent to address this issue.

Currently, PEOs are not required to notify client companies in advance if they are cancelling a contract and thus cancelling their workers' compensation coverage. A provision requiring PEOs to give advance notice of termination would give client companies time to find replacement workers' compensation coverage. The sponsor has indicated an intent to address this issue.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to workers' compensation insurance for employee leasing companies; amending s. 440.10, F.S.; specifying when a person is deemed an employee of an employee leasing company for workers' compensation insurance purposes under circumstances relating to the company's employee leasing arrangement with a subcontractor; amending s. 468.525, F.S.; providing that if an employee leasing company's client company is a subcontractor, workers' compensation insurance requirements are not satisfied by the employee leasing arrangement unless certain conditions are met; amending s. 468.529, F.S.; requiring certain client companies to maintain separate workers' compensation insurance coverage unless certain conditions are met; specifying when a person is deemed an employee of an employee leasing company for workers' compensation insurance proposes under certain circumstances; providing construction; reenacting s. 468.532(1)(g), F.S., relating to discipline, to incorporate the amendment made to s. 468.529, F.S., in a reference thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (1) of section 440.10, Florida Statutes, is amended to read:

440.10 Liability for compensation.—

(1)

(d)1. If a contractor becomes liable for the payment of compensation to the employees of a subcontractor who has failed to secure such payment in violation of s. 440.38, the contractor or other third-party payor shall be entitled to recover from the subcontractor all benefits paid or payable plus interest unless the contractor and subcontractor have agreed in writing that the contractor will provide coverage.

2. If a contractor or third-party payor becomes liable for the payment of compensation to the corporate officer of a subcontractor who is engaged in the construction industry and has elected to be exempt from ~~the provisions of~~ this chapter, but whose election is invalid, the contractor or third-party payor may recover from the claimant or corporation all benefits paid or payable plus interest, unless the contractor and the subcontractor have agreed in writing that the contractor will provide coverage.

3. If a subcontractor and an employee leasing company are operating pursuant to an arrangement for employee leasing as defined in s. 468.520(4) and workers' compensation insurance is provided by the employee leasing company to the leased employees, a person is deemed an employee of the employee

leasing company for purposes of workers' compensation insurance, unless the subcontractor has secured additional workers' compensation coverage applicable to the employee, upon the earliest of the following:

a. The hiring of the person by the subcontractor.

b. The commencement of work by the person for the subcontractor.

c. The hiring of the person directly by the employee leasing company.

Section 2. Subsection (5) is added to section 468.525, Florida Statutes, to read:

468.525 License requirements.—

(5) If the client company is a subcontractor, the requirements of s. 440.10(1)(a) are not satisfied by the employee leasing arrangement unless the subcontractor has secured additional workers' compensation insurance for nonleased employees or unless the contractual arrangement provides that a person is deemed an employee of the employee leasing company for purposes of workers' compensation coverage, upon the earliest of the following:

(a) The hiring of the person by the client company.

(b) The commencement of work by the person for the client company.

(c) The hiring of the person directly by the employee leasing company.

Section 3. Subsection (1) of section 468.529, Florida Statutes, is amended, present subsections (4) and (5) of that section are redesignated as subsections (5) and (6), respectively, and a new subsection (4) is added to that section, to read:

468.529 Licensee's insurance; employment tax; benefit plans.—

(1) A licensed employee leasing company is the employer of the leased employees, except that this provision is not intended to affect the determination of any issue arising under Pub. L. No. 93-406, the Employee Retirement Income Security Act, as amended from time to time. An employee leasing company shall be responsible for timely payment of reemployment assistance taxes pursuant to chapter 443, and shall be responsible for providing workers' compensation coverage pursuant to chapter 440.

(a) However, a ~~no~~ licensed employee leasing company may not ~~shall~~ sponsor a plan of self-insurance for health benefits, except as may be permitted by ~~the provisions of~~ the Florida Insurance Code or, if applicable, by Pub. L. No. 93-406, the Employee Retirement Income Security Act, as amended from time to time. For purposes of this section, the term ~~a~~ "plan of self-insurance" excludes ~~shall exclude~~ any arrangement where an admitted insurance carrier has issued a policy of insurance primarily responsible for the obligations of the health plan.

(b) This section does not modify the statutory obligation

of a client company to secure workers' compensation coverage as required under s. 440.10 for direct employees whom the client company does not lease pursuant to an employee leasing arrangement. A client company that is engaged in the construction industry and that is in an employee leasing arrangement shall maintain separate workers' compensation insurance coverage as required under this section and s. 440.10 unless the employee leasing company and its carrier agree to provide such coverage directly to the client company, covering all persons performing work for the client at all times, in full compliance with s. 440.10.

(4) During the term of an employee leasing arrangement with a subcontractor, if a subcontractor does not obtain workers' compensation insurance for nonleased employees, a person is deemed an employee of the employee leasing company for purposes of workers' compensation insurance, upon the earliest of the following:

(a) The hiring of such person by the client company.

(b) The commencement of work by such person for the client company.

(c) The hiring of the person directly by the employee leasing company.

Section 4. For the purpose of incorporating the amendment made by this act to section 468.529, Florida Statutes, in a reference thereto, paragraph (g) of subsection (1) of section

468.532, Florida Statutes, is reenacted to read:

468.532 Discipline.—

(1) The following constitute grounds for which disciplinary action against a licensee may be taken by the board:

(g) Failing to maintain workers' compensation insurance as required in s. 468.529.

Section 5. This act shall take effect July 1, 2021.

INSURANCE & BANKING SUBCOMMITTEE

HB 1305 by Rep. Giallombardo
Workers' Compensation Insurance for Employee Leasing Companies

AMENDMENT SUMMARY
March 23, 2021

Amendment 1 by Rep. Giallombardo: The strike-all amendment makes the following changes to the bill:

- Provides that during the term of an employee leasing arrangement, if the client company is a subcontractor engaged in the construction industry, all leased and nonleased employees of the subcontractor, including any such employees who are hired by the subcontractor, commence work for the subcontractor, or are hired directly by the employee leasing company, are deemed employees of the employee leasing company (PEO) for purposes of workers' compensation coverage.

- Requires that if a PEO terminates a leasing arrangement with a subcontractor engaged in the construction industry:
    - The PEO must give at least 10 days' notice to the subcontractor, and if the termination is for cause, allow the subcontractor to cure any defaults within that time frame. Notice must also be sent to the last known address of each employee and all known contractors with whom the subcontractor has contracted.
    - Workers' compensation coverage must continue to be provided by the PEO for 20 days after termination of the leasing arrangement.

- Clarifies that the bill applies to contracts for leasing arrangements entered into or renewed on or after July 1, 2021.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Giallombardo offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (1) of section 440.10, Florida Statutes, is amended to read:

440.10 Liability for compensation.—

(1)

(a) Every employer coming within the provisions of this chapter shall be liable for, and shall secure, the payment to his or her employees, or any physician, surgeon, or pharmacist providing services under the provisions of 440.13, of the compensation payable under ss. 440.13, 440.15, and 440.16. Any contractor or subcontractor who engages in any public or private

construction in the state shall secure and maintain compensation for his or her employees under this chapter as provided in s. 440.38, or pursuant to an employee leasing arrangement under s. 468.525(g).

Section 2. Paragraphs (g) and (h) are added to subsection (4) of section 468.525, Florida Statutes, to read:

468.525 License requirements.—

(4)

(g) Provides that during the term of the employee leasing arrangement, if the client company is a subcontractor engaged in the construction industry, all leased and nonleased employees of the subcontractor, including any such employees who are hired by the subcontractor, commence work for the subcontractor, or are hired directly by the employee leasing company during the term of the employee leasing arrangement, are deemed employees of the employee leasing company for purposes of workers' compensation coverage.

(h) Provides at least 10 days' notice to a client company who is a subcontractor engaged in the construction industry before terminating an employee leasing arrangement. If the termination is for cause, allows the client company to cure any contractual defaults or deficiencies within that time frame.

Section 3. Subsection (1) of section 468.529, Florida Statutes, is amended, present subsections (4) and (5) of that section are redesignated as subsections (5) and (6),

respectively, and new subsections (4), (7), and (8) are added to that section, to read:

468.529 Licensee's insurance; employment tax; benefit plans.—

(1) A licensed employee leasing company is the employer of the leased employees, except that this provision is not intended to affect the determination of any issue arising under Pub. L. No. 93-406, the Employee Retirement Income Security Act, as amended from time to time. An employee leasing company shall be responsible for timely payment of reemployment assistance taxes pursuant to chapter 443, and shall be responsible for providing workers' compensation coverage pursuant to chapter 440.

(a) However, a ~~no~~ licensed employee leasing company may not ~~shall~~ sponsor a plan of self-insurance for health benefits, except as may be permitted by ~~the provisions of~~ the Florida Insurance Code or, if applicable, by Pub. L. No. 93-406, the Employee Retirement Income Security Act, as amended from time to time. For purposes of this section, the term ~~a~~ "plan of self-insurance" excludes ~~shall exclude~~ any arrangement where an admitted insurance carrier has issued a policy of insurance primarily responsible for the obligations of the health plan.

(4) During the term of an employee leasing arrangement with a client company who is a subcontractor engaged in the construction industry, all leased and nonleased employees of the subcontractor, including any such employees who are hired by the

subcontractor, commence work for the subcontractor, or are hired directly by the employee leasing company during the term of the employee leasing arrangement, are deemed employees of the employee leasing company for purposes of workers' compensation coverage.

(7) If an employee leasing arrangement between an employee leasing company and a client company who is a subcontractor engaged in the construction industry is terminated, the employee leasing company must send notice by first class mail to the last known address of each employee who was assigned to the client company. The notification must include the date the employee leasing arrangement was terminated. The notice must also be sent by first class mail to all contractors with whom the client company has contracted, if known.

(8) Workers' compensation coverage must continue to be provided by the employee leasing company for 20 days after the leasing company terminates the arrangement with a client company who is a subcontractor engaged in the construction industry.

Section 4. For the purpose of incorporating the amendment made by this act to section 468.529, Florida Statutes, in a reference thereto, paragraph (g) of subsection (1) of section 468.532, Florida Statutes, is reenacted to read:

468.532 Discipline.—

(1) The following constitute grounds for which disciplinary action against a licensee may be taken by the

board:

(g) Failing to maintain workers' compensation insurance as required in s. 468.529.

Section 5. This act shall take effect July 1, 2021, and applies to contracts entered into or renewed on or after that date.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:
A bill to be entitled
An act relating to workers' compensation insurance for employee leasing companies; amending s. 440.10, F.S.; specifying when a subcontractor who engages in public or private construction must maintain compensation for his or her employees; amending s. 468.525, F.S.; providing that if an employee leasing company's client company is a subcontractor, workers' compensation insurance requirements are not satisfied by the employee leasing arrangement unless certain conditions are met; amending s. 468.529, F.S.; specifying when a person is deemed an employee of an employee leasing company for workers' compensation insurance; requiring that an employee leasing company provide written notice of intent to terminate an employee leasing arrangement

with a client company who is a subcontractor engaged in the construction industry; reenacting s. 468.531(1)(g), F.S., relating to discipline, to incorporate the amendment made to s. 468.529, F.S., in a reference thereto; providing an effective date.

HB 1593

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1593 Seminole County
SPONSOR(S): Smith, D.
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	18 Y, 0 N	Darden	Miller
2) Insurance & Banking Subcommittee		Fortenberry	Luczynski
3) State Affairs Committee			

SUMMARY ANALYSIS

Cemeteries in Florida are regulated under ch. 497, the ""Florida Funeral, Cemetery, and Consumer Services Act." A person may not operate a cemetery without obtaining a license from the Department of Financial Services (DFS). An applicant for a cemetery license must meet certain requirements concerning the size and location of the cemetery, as well as financial criteria. A cemetery may be exempt from licensure if owned by a religious institution, community and non-profit association, county, municipality, or fraternal organization, subject to certain criteria, or is a family cemetery of less than two acres.

The bill provides that the provisions of ch. 497, F.S., as well as rules adopted by DFS pursuant to that chapter, do not apply to cemeteries of three acres or less that are located in the unincorporated area of Seminole County and do not sell burial spaces or burial merchandise.

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Cemetery Regulation

Cemeteries in Florida are regulated pursuant to the ""Florida Funeral, Cemetery, and Consumer Services Act."[1] A person may not operate a cemetery without obtaining a license from the Department of Financial Services (DFS).[2] An applicant for a license to operate a cemetery (applicant) must be a corporation, partnership, or limited liability company and must provide the following information, using forms and procedures prescribed by rules adopted by DFS:

- The name, principal place of business, date of formation, and federal tax identification number of the applicant;
- Historical sketches and audited or unaudited financial statements concerning the applicant and each principal of the applicant;
- Any and all names under which the cemetery may do business if licensed, if different from the applicant's name;
- The exact location of the proposed cemetery;
- The exact number of acres of the proposed cemetery, including a minimum of 30 contiguous acres;
- A description of the proposed financial structure of the cemetery;
- A legal description of the cemetery;
- Maps or surveys of the proposed cemetery, and maps showing the location of the proposed cemetery in the local area, prepared by a licensed Florida professional surveyor; and
- A description of the development plans for the proposed cemetery.[3]

Applicants must have a net worth of at least $50,000, disclose any criminal history and disciplinary proceedings against a professional license, submit fingerprints, and demonstrate by clear and convincing evidence that the applicant has the ability, experience, financial stability, and integrity to operate a cemetery.[4]

If DFS finds an applicant meets the above qualifications, then DFS may issue a license if the applicant:

- Establishes a care and maintenance trust fund of at least $50,000 that is certified by a trust company, state or national bank holding trust powers, or a savings and loan association holding trust powers;
- Files an opinion or certification from a Florida attorney in good standing, or a Florida title company, that the applicant holds unencumbered fee simple title to all land identified in the application;
- Obtains approval from local zoning authorities, or if no approval by local zoning authorities is required, obtains approval of residents adjacent to the proposed cemetery;
- Designates a general manager of the cemetery who has at least three years of cemetery management experience, has the ability to operate a cemetery, and is a person of integrity;
- Has developed at least two acres for use as burial space, including a paved road from a public roadway to the developed section; and
- Files a notice, signed by a licensed Florida attorney, in the public records of the county that states the land identified in the cemetery application may not be sold, conveyed, leased, mortgaged, or encumbered without the prior written approval of DFS.[5]

[1] S. 497.001, F.S.
[2] S. 497.263(1), F.S.
[3] S. 497.263(2)(a)-(g), (i)-(l), F.S.
[4] S. 497.263(2)(h), (m)-(p), F.S.
[5] S. 497.263(3), FS.

A cemetery license is not transferable or assignable, but control of a cemetery may be transferred, subject to approval by DFS, to another person or entity who meets the qualifications for licensure.[6]

The cemetery owner is responsible for ensuring the grounds, structures, and other improvements of the cemetery are well cared for and maintained in a proper and dignified condition.[7] DFS may adopt rules defining differing levels of care or maintenance based on industry practices, economic and physical feasibility, location, or intended uses.

The laws regarding cemetery licenses and the related rules regarding care and maintenance of cemeteries do not apply to cemeteries that are:

- Religious institution cemeteries, if the cemetery is less than five acres and provides only single-level ground burial or if the cemetery was owned and operated or dedicated prior to June 23, 1976;
- County or municipal cemeteries;
- Community and non-profit association cemeteries, if the cemetery provides only single-level ground burial and does not sell burial spaces or burial merchandise;
- Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent;
- A columbarium[8] of less than one-half acres, or a mausoleum[9] of less than 2 acres, that is owned by and immediately contiguous to an existing religious institution facility and subject to local government zoning;[10]
- A columbarium of less than five acres located on the main campus of a state university;[11] or
- Family cemeteries of less than two acres that do not sell burial spaces or burial merchandise.[12]

However, all cemeteries, including those not subject to licensure requirements, must maintain burial records, abide by anti-discrimination provisions, follow DFS rules concerning solicitations, and allow purchasers of grave space to record those purchases with the clerk of the circuit court in the county where the grave space is located.[13] All cemeteries are prohibited from requiring the purchase of a monument as a condition of purchasing a grave space and from charging a fee for the installation of a monument purchased from and installed by a person or firm other than the cemetery or its agents.[14] A county or municipality may take action to provide for the maintenance and security of any cemetery within its boundaries that has been abandoned or not reasonably maintained for a period of six months or more.[15]

Effect of Proposed Changes

The bill provides that the provisions of ch. 497, F.S., as well as rules adopted by DFS pursuant to that chapter, do not apply to cemeteries of three acres or less that are located in the unincorporated area of Seminole County and do not sell burial spaces or burial merchandise.

B. SECTION DIRECTORY:

Section 1: Creates an exception to ch. 497, F.S. for cemeteries of three acres or less that are located in unincorporated Seminole County and do not sell burial spaces or burial merchandise.

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[6] S. 497.264, F.S.
[7] S. 497.262, F.S.
[8] A "columbarium" is a structure or building that is substantially exposed above the ground and that is intended to be used for the inurnment of cremated remains. *See* s. 497.005(18), F.S.
[9] A "mausoleum" is a structure or building that is substantially exposed above the ground and that is intended to be used for the entombment of human remains. *See* s. 497.005(46), F.S.
[10] Ss. 497.260(1)(f) and (h), F.S. The religious institution must ensure the columbarium or mausoleum is perpetually kept and maintained in a manner consistent with the intent of ch. 497, F.S.
[11] *See* s. 1000.21(6), F.S.
[12] S. 497.260(1), F.S.
[13] S. 497.260(2), F.S.
[14] *Id*.
[15] *Id*.

Section 2: Provides that the bill shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? January 27, 2021

WHERE? The *Orlando Sentinel*, a daily newspaper of general circulation in Seminole County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill exempts qualifying cemeteries from all provisions of ch. 497, F.S., including those otherwise applicable to all cemeteries.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to Seminole County; providing an exception to general law; providing an exception for specified cemeteries in the unincorporated areas of Seminole County; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Notwithstanding any other law to the contrary, the provisions of chapter 497, Florida Statues, and all rules adopted pursuant thereto, do not apply to a cemetery of fewer than 3 acres in size located in the unincorporated area of Seminole County that does not sell burial spaces or burial merchandise.

Section 2. This act shall take effect upon becoming a law.

CODING: Words stricken are deletions; words underlined are additions.

PCS for HB 305

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 305 Insurance
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Fortenberry	Luczynski

SUMMARY ANALYSIS

The bill makes several changes related to insurance:

- **Office of Insurance Regulation (OIR) – Authority to examine managing general agents (MGAs) –** The bill clarifies that OIR has the same authority to examine MGAs, including affiliates of insurers, as it has to examine insurers, even if the MGA represents a single domestic insurer. It requires that each insurer paying an affiliate shall produce information regarding fees paid to the affiliate upon request by OIR. It also requires that all MGAs must execute contracts with the insurers that they do business with even if they control, or are controlled by, an insurer.
- **Collection of property insurance claims litigation data by OIR –** All insurers with a Florida certificate of authority must file quarterly and annual reports with OIR that contain various financial data and actuarial opinions. However, they are not required to collect or report data regarding the litigation of property insurance claims. The bill establishes that each insurer or insurer group doing business in Florida shall file specific data regarding litigation of personal and commercial residential property insurance claims on a quarterly basis.
- **Citizens Property Insurance Corporation (Citizens) –** The bill makes several changes to the operations of, and requirements for, Citizens, the state-run property insurer:
    - Revises the eligibility for residential property owners to obtain coverage from Citizens so that they are not eligible for Citizens' coverage if they can obtain coverage from private insurers that is less than 20 percent greater than the premium for comparable coverage from Citizens
    - Establishes that if Citizens does not buy reinsurance to cover its projected 100-year probable maximum loss, it must still include the cost of such reinsurance in its rate calculations.
    - Establishes that no employees of Citizens may receive salaries in excess of 150 percent of the salary received by the head of OIR, with certain exceptions.
- **Notice of property insurance claims –** Notice of hurricane or windstorm loss must be provided to a property insurer within three years of the date of loss. Notice for all other types of property insurance claims must be provided within five years of the date of loss. The bill changes the notice of claim deadlines in the Insurance Code so that notice of any property insurance claim must be provided to a property insurer within two years of the date of loss.
- **Presuit notice and demand requirements for property insurance claims –** The bill creates new statutory requirements for residential or commercial property suits that are not brought by an assignee, including a ten-day presuit notice and demand, after a determination of coverage, before bringing suit against an insurer. An insurer served with this notice must respond in writing within ten days by either making a settlement offer or requiring participation in an appraisal or alternative dispute resolution proceeding as provided for in the policy.

The bill has no impact on state or local government revenues or expenditures. It may have a positive direct economic impact on the private sector.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Office of Insurance Regulation (OIR) – Authority to examine managing general agents (MGAs)

Background

MGAs

An MGA is a specialized type of insurance agent or broker that has underwriting authority from an insurer.[1] MGAs can perform certain functions that insurers typically handle, including binding coverage, underwriting and pricing, agent appointments, and claims adjusting and settlement.[2] An MGA may be an affiliate of an insurer. Section 624.10(1), F.S., defines an affiliate as an entity that exercises control over or is directly or indirectly controlled by an insurer. Under current law, MGAs must enter into contracts with insurers with which they do business unless the MGA is a controlled or controlling person of the insurer (i.e. an affiliate).[3] These contracts must specify the division of responsibilities between the insurer and the MGA.[4]

Examination of Insurers and MGAs

OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.[5] Examination authority extends to the examination of MGAs[6] unless the MGA solely represents a single domestic insurer.[7] With certain exceptions, OIR must examine domestic insurers[8] at least once every five years and the exam shall cover the preceding five fiscal years.[9]

As part of the examination process, all persons being examined must make available to OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.[10] As part of an examination, OIR reviews contracts between insurers and MGAs, so that it can determine how much an insurer is paying its MGA and what services the insurer is receiving for the fee it pays. However, the lack of contracts between insurers and their affiliate MGAs sometimes makes it difficult to determine how much the insurer is paying and what services it is receiving from the MGA.

Effect of the Bill

The bill clarifies that OIR has the same authority to examine MGAs as it has to examine insurers, whether or not an MGA is an affiliate of an insurer. This authority applies even if the MGA solely represents a single domestic insurer. It establishes that each insurer paying an affiliate shall produce information regarding the fee paid to the affiliate upon request by OIR. OIR may determine whether the fee an insurer pays to an affiliate is fair and reasonable and, in so doing, may consider the actual cost of the services being provided in exchange for the fee. Further, the bill establishes that all MGAs must

[1] IRMI, https://www.irmi.com/term/insurance-definitions/managing-general-agent (last visited Mar. 19, 2021).
[2] *Id.*
[3] S. 626.7451, F.S.
[4] *Id.*
[5] S. 624.316(1)(a), F.S.
[6] *Id.*
[7] S. 626.7452, F.S.
[8] A domestic insurer is one formed under the laws of Florida. S. 624.06(1), F.S.
[9] S. 624.316(2)(a), F.S. While s. 624.316(1)(a), F.S., clearly states that OIR may examine MGAs, because some MGAs are considered affiliates of insurers, and 624.316(2)(a), F.S., does not specify that OIR may examine affiliates in the same way as insurers, OIR has indicated that some MGAs have not been completely cooperative with the examination process.
[10] S. 624.318(2), F.S.

execute contracts with the insurers that they do business with, even if they are MGAs that control, or are controlled by, an insurer.

Collection of property insurance claims litigation data by OIR

Background

All insurers with a Florida certificate of authority to transact insurance business must file quarterly and annual reports with OIR that contain various financial data and actuarial opinions.[11] However, the law does not currently specify that insurers must report data regarding the litigation of claims.

OIR recently conducted a data survey of property insurers to gather information regarding the litigation of personal or commercial residential property insurance claims.[12] In response to this survey, several insurers indicated that they could not provide OIR with answers to questions related to litigation trends because they did not collect the requested data as part of their claims evaluation and adjusting process.[13]

Effect of the Bill

The bill establishes that each insurer or insurer group doing business in Florida must provide specific pieces of data regarding litigation of personal and commercial residential property insurance claims to OIR on a quarterly basis. This data includes, but is not limited to, the following information on a per claim basis:

- Type of policy;
- Date, location, and type of loss;
- Dates on which the claim was reported to the insurer, closed by the insurer, and reopened by the insurer;
- Whether the claimant had a public adjuster or an attorney;
- Total amounts that the insurer paid for indemnity, loss adjustment expenses,[14] and insured's attorney fees;
- Whether the insured's attorney requested that a contingency risk multiplier (CRM)[15] be applied to the attorney fees calculation and, if so, what CRM was applied.

If insurers collect and report this data, OIR and the Legislature should be able to more effectively identify current and emerging property insurance litigation trends that may be affecting insureds' rates.[16]

Citizens Property Insurance Corporation (Citizens)

Citizens is a state-created, not-for-profit, tax-exempt government entity that is an integral part of the state, whose public purpose is to provide property insurance to those unable to find affordable coverage in the private market.[17]

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[11] S. 624.424, F.S.
[12] Report from David Altmaier, Florida Insurance Commissioner, to Chair Blaise Ingoglia, Commerce Committee, regarding cost drivers affecting Florida's insurance rates, p. 12 (Feb. 24, 2021).
[13] *Id.*
[14] Loss adjustment expenses are the costs associated with investigating and adjusting losses or insurance claims. IRMI, https://www.irmi.com/term/insurance-definitions/loss-adjustment-expense (last visited Mar. 19, 2021).
[15] A CRM is a multiplier applied to attorney fees that reflects the risk of attorneys accepting, on a contingency fee basis, cases that may be difficult to win. *See e.g., Joyce v. Federated Nat'l Ins. Co.*, 228 So. 3d 1122 (Fla. 2017).
[16] Altmaier, *supra*, note 12, at 12.
[17] S. 627.351(6)(a)1., F.S.

Eligibility and Rates

Background

New applicants are eligible for coverage from Citizens if no private carrier will write them a policy for premium that is less than 15 percent greater than what Citizens would offer them for comparable coverage.[18] The rate cap, also known as the "glide path," is not closing the gap between Citizens rates and private market rates. Instead, because of the rate cap and the increasing rates of private property insurance, the gap is growing and making Citizens more like a competitor to private insurers than an insurer of last resort. Annual rate increases for existing Citizens' policyholders are capped at no more than 10 percent for any single policy.[19] It is unclear if, or how, the law allows OIR to approve a rate reduction for Citizens.

Because Citizens' rates are often well below those of private carriers, Citizens may be more competitive than otherwise intended. Due to Citizens' structure, its rates do not contain certain elements that the rates of private insurers contain. Citizens does not pay taxes like private carriers do and does not have the need to purchase as much reinsurance as private carriers due to higher levels of capital and surplus.

Current law requires that Citizens make its best efforts to procure catastrophe reinsurance at reasonable rates to cover its projected 100-year probable maximum loss.[20] Due to the high cost of reinsurance over the recent years, Citizens has determined that it is not available at reasonable rates and has not purchased it. This lack of purchase has contributed to its rates remaining more competitive and more consumers being eligible for coverage from Citizens.

Effect of the Bill

The bill establishes that residential property owners are not eligible for coverage from Citizens if they can obtain coverage from private insurers that is less than 20 percent greater than the premium for comparable coverage from Citizens.

The bill also establishes that on or after January 1, 2022, Citizens shall implement rate increases that do not exceed the following percentages for any single policy that it issues:

- Eleven percent for 2022;
- Twelve percent for 2023;
- Thirteen percent for 2024;
- Fourteen percent for 2025;
- Fifteen percent for 2026 and all subsequent years.

Additionally, the bill prohibits Citizens from filing with OIR a request for the approval of a rate reduction at any time.

The bill clarifies that Citizens need not purchase catastrophe reinsurance to cover its projected 100-year probable maximum loss if it is not available at reasonable rates. However, Citizens must include the cost of this reinsurance in its rate calculations even if it does not purchase the reinsurance.

[18] S. 627.351(6)(c)5.a., F.S.
[19] S. 627.351(6)(n)6., F.S.
[20] S. 627.351(6)(c)9., F.S. Probable maximum loss refers to the value that may be reasonably expected to be lost in a single casualty. IRMI, https://www.irmi.com/term/insurance-definitions/probable-maximum-loss (last visited Mar. 19, 2021). If an insurer is buying reinsurance to cover its 100-year probable maximum loss, it is purchasing reinsurance to cover the maximum loss that has a chance of occurring once in 100 years.

Salaries of Citizens' Personnel

Background

Citizens operates pursuant to a plan of operation (plan) that is approved by the Financial Services Commission (FSC).[21] Pursuant to the applicable statute, the plan may contain certain criteria regarding Citizens' employees.[22] Additionally, the applicable statute specifies that candidates for senior management positions with Citizens must undergo background checks, that employees must attest annually that they do not have any conflicts of interests with their employment, and that certain employees of Citizens are subject to ethics disclosures.[23] However, neither the statute nor the plan provide any parameters for the salaries that Citizens may pay its employees.

Effect of the Bill

The bill provides statutory guidance that Citizens can utilize in its plan to set parameters for employee compensation. The bill establishes that no employees of Citizens may receive salaries in excess of 150 percent of the salary received by the Florida Insurance Commissioner, with certain exceptions. Anyone employed by Citizens as of June 30, 2021, whose salary exceeds this cap may keep his or her salary, but may not receive a raise. Anyone employed by Citizens whose salary does not exceed this cap as of June 30, 2021, may receive a raise as long as that raise does not cause his or her salary to exceed this cap.

Notice of Property Insurance Claims

Background

Until 2011, the Florida Insurance Code (Code)[24] did not contain a time limit for giving notice of any type of property insurance claim. Section 95.11, F.S., requires that actions on contracts be brought within five years. Because an insurance policy is a contract, the five year statute of limitations for contract actions generally applied to claims under insurance policies. Since a claim must have been made before a policyholder could sue for breach of contract, and a policyholder had five years to sue for breach of contract, the claim must have been made within five years of the date of loss.

Section 627.70132, F.S., enacted in 2011, established that notice of any hurricane or windstorm claim, supplemental claim, or reopened claim[25] under a property insurance policy must be provided to an insurer within three years after the hurricane made landfall or the windstorm caused the covered damage. Any claim for which notice is not given within the three-year timeframe is barred.[26] The three-year time limit for providing notice of a hurricane or windstorm claim does not affect the five-year statute of limitations for bringing suit under s. 95.11, F.S.[27] This means that while notice of a windstorm or hurricane claim must be provided to an insurer within three years of the date of loss, suit may still be brought for an additional two years past the notice deadline.[28] The time limit for notice of all other property insurance claims besides hurricane and windstorm claims has remained equal to the five-year statute of limitations because statutes do not specify otherwise.

Effect of the Bill

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[21] S 627.351(6)(a)2., F.S. The FSC is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S.
[22] S. 627.351(6)(c)3., F.S.
[23] S. 627.351(6)(d), F.S.
[24] The Florida Insurance Code is comprised of chapters 624-632, 634-636, 641, 642, 648, and 651, F.S.
[25] S. 627.70132, F.S., defines both "supplemental claim" and "reopened claim" as "any additional claim for recovery from the insurer for losses from the same hurricane or windstorm which the insurer has previously adjusted pursuant to the initial claim." Because these terms have the same definition, it is unclear why the statute uses both of them.
[26] S. 627.70132, F.S.
[27] *Id.*
[28] Often, the type of suit that an insured brings against an insurer is a breach of contract suit based upon a denial of a claim.

The bill changes the notice of claim deadlines in the Code so that notice of any property insurance claim, including a claim made under a property insurance policy issued by an eligible surplus lines insusrer, must be provided to a property insurer within two years of the date of loss. It also makes technical changes to the statute regarding alternative dispute resolution of property insurance claims so that the changes to the notice of claim statute do not conflict with that statute.[29]

Presuit notice and demand requirements for property insurance claims

Background

Under existing law, within 90 days after a residential property insurer receives a notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer must pay or deny the claim or a portion of the claim, unless the failure to pay is due to circumstances beyond the insurer's control which reasonably prevent payment.[30] In some circumstances, a claimant will hire an attorney and file suit against an insurer before the expiration of the allotted time for the insurer to pay or deny a claim. In contrast, as a condition precedent to bringing a third-party cause of action to enforcement an assignment agreement against an insurer, the assignee must provide the name insured and the assignor a written notice of intent to initiate litigation, delivered at least 10 business days before filing suit, but not before the insurer has made a determination of coverage.[31]

Effect of the Bill

The bill creates a new statutory section which applies to all residential and commercial property suits not brought by an assignee. Under that section, a claimant or claimant's attorney must give presuit notice of intent to initiate litigation at least ten business days prior to filing suit, but not before the insurer has made a determination of coverage as provided for under existing law.[32] The notice must include the following information:

- Insurer's acts or omissions that give rise to the suit;
- Damages in dispute;
- Demand;[33]
- Amount of reasonable and necessary attorney fees and costs incurred by the claimant.

An insurer served with a presuit notice must respond to the notice in writing within 10 business days after receiving the notice by making a settlement offer or by requiring the claimant to participate in appraisal or another form of alternative dispute resolution as provided for under the insurance policy. The bill establishes that time limits for filing a suit under s. 95.11, F.S., are tolled during the ten-day period for the insurer to respond to the presuit notice and while appraisal or alternative dispute resolution is ongoing.

The bill requires that a court must dismiss without prejudice any claimant's suit relating to a claim for which presuit notice is given if the suit is commenced before the expiration of the ten-day period for the insurer to respond. If a court dismissed a claimant's suit under these circumstances, the claimant's attorney is not entitled to an award of attorney fees for services rendered before the dismissal of the suit.

Finally, the bill establishes that presuit notice is admissible as evidence in a civil suit or an alternative dispute resolution proceeding, does not limit the evidence of attorney fees or costs, damages, or loss,

[29] S. 627.7015, F.S.
[30] S. 627.70131, F.S. This statute is sometimes referred to as the "prompt pay" statute for property insurance claims.
[31] An assignee is someone who receives policy rights through an assignment by a policyholder (assignor). IRMI, https://www.irmi.com/term/insurance-definitions/assignee (last visited Mar. 19, 2021). *See* s. 627.7152, F.S., for presuit requirements placed on assignees.
[32] S. 627.70131, F.S.
[33] The statute created by the bill defines demand as "the specific amount alleged to be owed by the insurer to the claimant under the residential or commercial property insurance policy."

which may be offered at trial, and does not relieve the insured or an assignee of any other notice required by law.

B. SECTION DIRECTORY:

Section 1. Amends s. 624.316, F.S., relating to examination of insurers.

Section 2. Amends s. 624.318, F.S., relating to conduct of examination or investigation; access to records; correction of accounts; appraisals.

Section 3. Amends s. 624.424, F.S., relating to annual statement and other information.

Section 4. Amends s. 626.7451, F.S., relating to managing general agents; required contract provisions.

Section 5. Amends s. 626.7452, F.S., relating to managing general agents; examination authority.

Section 6. Amends s. 627.351, F.S., relating to insurance risk reapportionment plans.

Section 7. Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.

Section 8. Amends s. 627.70132, F.S., relating to notice of windstorm or hurricane claim.

Section 9. Amends s. 627.7015, F.S., relating to alternative procedure for resolution for disputed property insurance claims.

Section 10. Creates s. 627.70152, F.S., relating to suits arising under a property insurance policy.

Section 11. Provides an effective date of July 1, 2021.

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:

None

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires no additional rulemaking authority for OIR. While the bill requires the adoption of a form prescribed by the FSC on which insurers will report their property insurance claims litigation data, the Florida Insurance Code contains existing authority for the promulgation of such forms by the FSC.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to insurance; amending s. 624.316, F.S.; authorizing the Office of Insurance Regulation to examine insurer affiliates; amending s. 624.318, F.S.; requiring insurer affiliates to provide certain items and information to the office during examination or investigation; amending s. 624.424, F.S.; requiring property insurers to include certain data regarding closed claims in their quarterly reports to the office; requiring insurers to provide information regarding payments to affiliates upon request by the office; requiring the office to consider certain costs in determining whether payments made by an insurer to an affiliate are fair and reasonable; amending s. 626.7451, F.S; requiring that managing general agents enter into specified contracts with insurers even when the managing general agents control, or are controlled by, the insurers; amending s. 626.7452, F.S.; providing that a managing general agent may be examined as if it were the insurer even if the managing general agent solely represents a single domestic insurer; amending s. 627.351, F.S.; revising a procedure that the plan of operation of Citizens Property Insurance Corporation must provide; requiring the corporation to include the costs of catastrophe

reinsurance to its projected 100-year probable maximum loss in its rate calculations even if the corporation does not purchase such reinsurance; deleting obsolete language relating to the corporation's rate filings; requiring the corporation to annually implement a rate increase that does not exceed a certain percent for specified years; prohibiting the corporation from seeking approval by the office for a rate reduction; providing limits on salaries and salary raises of current employees of the corporation and employees hired by the corporation on or after a specified date; amending s. 627.3518, F.S.; conforming a cross-reference; amending s. 627.70132, F.S.; providing that claims, supplemental claims, and reopened claims under certain property insurance policies for loss or damage caused by perils are barred unless notice is given within a specified timeframe; revising the timeframe for notice for loss or damage caused by windstorm or hurricane; providing date of loss for weather-related events; revising the definition of the term "supplemental claim" or "reopened claim" to include all perils; amending s. 627.7015, F.S.; conforming a provision to changes made by the act; creating s. 627.70152, F.S.; providing applicability; providing definitions; requiring that written notice be provided

to an insurer before suit is filed under an insurance policy; requiring that certain information be included in the notice; requiring that notice be served within specified time limits; requiring that an insurer provide a response to the notice within specified timeframe; providing for tolling of time if appropriate; requiring an insurer to investigate, review, and evaluate a dispute stated in the notice; requiring an insurer to investigate each claim in the notice in accordance with the Florida Insurance Code; requiring a court to dismiss without prejudice a claimant's suit under certain circumstances; providing for evidentiary requirements regarding the notice; prohibiting a court from awarding attorney fees to a claimant under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (2) of section 624.316, Florida Statutes, is amended to read:

Section 624.316 Examination of insurers.—

(2)(a) Except as provided in paragraph (f), the office may examine each insurer, <u>including affiliates,</u> as often as may be warranted for the protection of the policyholders and in the

public interest, and shall examine each domestic insurer not less frequently than once every 5 years. The examination shall cover the preceding 5 fiscal years of the insurer and shall be commenced within 12 months after the end of the most recent fiscal year being covered by the examination. The examination may cover any period of the insurer's operations since the last previous examination. The examination may include examination of events subsequent to the end of the most recent fiscal year and the events of any prior period that affect the present financial condition of the insurer.

Section 2. Subsection (2) of section 624.318, Florida Statutes, is amended to read:

624.318 Conduct of examination or investigation; access to records; correction of accounts; appraisals.—

(2) Every person, including an affiliate, being examined or investigated, and its officers, attorneys, employees, agents, and representatives, shall make freely available to the department or office or its examiners or investigators the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination or investigation. An agent who provides other products or services or maintains customer information not related to insurance must maintain records relating to insurance products and transactions separately if necessary to give the department or office access to such records. If records relating

to the insurance transactions are maintained by an agent on premises owned or operated by a third party, the agent and the third party must provide access to the records by the department or office.

Section 3. Subsection (11) of section 624.424, Florida Statutes, is renumbered as subsection (12), and a new subsection (11) and subsection (13) are added to that section, to read:

624.424 Annual statement and other information.—

(11) Each authorized insurer or insurer group issuing personal lines or commercial lines residential property insurance policies in this state shall file with the office on a quarterly basis in conjunction with the statements required by paragraph (1)(a) a supplemental report on an individual and group basis for closed claims. The report must be on a form prescribed by the commission and must include the following information for each claim closed, excluding liability only claims, within the reporting period in this state:

(a) Unique claim identification number.

(b) Type of policy.

(c) Zip code of the property where the claim occurred.

(d) County where the claim occurred.

(e) Date of loss.

(f) Peril or type of loss.

(g) Date reported to insurer.

(h) Initial date closed.

(i) Date claim most recently reopened, if applicable.

(j) Most recent date closed.

(k) Public adjuster on the claim.

(l) Attorney for the claimant.

(m) Water mitigation firm used.

(n) Total indemnity paid by the insurer.

(o) Total loss adjustment expenses paid by the insurer.

(p) Amount paid for insured's attorney fees.

(q) Contingency fee multiplier requested to be applied to the calculation of the insured's attorney fees payment, and, if so, contingency risk multiplier requested.

(r) Contingency risk multiplier applied to the calculation of the insured's attorney fees payment, and, if so, contingency fee multiplier applied.

(s) Other information deemed necessary by the commission to provide the office with the ability to track litigation and claims trends occurring in the property market.

(13) Each insurer doing business in this state which pays a fee, commission, or other financial consideration or payment to any affiliate directly or indirectly is required upon request to provide to the office any information the office deems necessary. The fee, commission, or other financial consideration or payment to any affiliate must be fair and reasonable. In determining whether the fee, commission, or other financial consideration or payment is fair and reasonable, the office

shall consider, among other things, the actual cost of the service being provided.

Section 4. Subsection (6) of section 626.7451, Florida Statutes, is amended to read:

626.7451 Managing general agents; required contract provisions.—No person acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibility for a particular function, specifies the division of responsibilities, and contains the following minimum provisions:

(6) The contract shall specify appropriate underwriting guidelines, including:

(a) The maximum annual premium volume.

(b) The basis of the rates to be charged.

(c) The types of risks which may be written.

(d) Maximum limits of liability.

(e) Applicable exclusions.

(f) Territorial limitations.

(g) Policy cancellation provisions.

(h) The maximum policy period.

~~This subsection shall not apply when the managing general agent is a controlled or controlling person.~~

For the purposes of this section and ss. 626.7453 and 626.7454, the term "controlling person" or "controlling" has the meaning set forth in s. 625.012(5)(b)1., and the term "controlled person" or "controlled" has the meaning set forth in s. 625.012(5)(b)2.

Section 5. Section 626.7452, Florida Statutes, is amended to read:

Section 626.7452 Managing general agents; examination authority.—The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer ~~except in the case where the managing general agent solely represents a single domestic insurer~~.

Section 6. Paragraphs (c) and (n) of subsection (6) of section 627.351, Florida Statutes, are amended, and a new paragraph (jj) is added to subsection (6) of that section, to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy

forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of

losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must

provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive

provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness

under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is

appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the

corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the

Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 ~~15~~ percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the

corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the

corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept

appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing

agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation;

or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss

payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray

deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its rate calculations even if it does not purchase catastrophe

reinsurance.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective

date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency

assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those

of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a

minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE

CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to

augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

~~4. The rate filings for the corporation which were approved by the office and took effect January 1, 2007, are rescinded, except for those rates that were lowered. As soon as possible, the corporation shall begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who paid higher rates as a result of that rate filing. The rates in effect on December 31, 2006, remain in effect for the 2007 and 2008 calendar years except for any rate change that results in a lower rate. The next rate change that may increase rates shall take effect pursuant to a new rate filing recommended by the corporation and established by the office, subject to this paragraph.~~

4.~~5. Beginning on July 15, 2009, and annually thereafter,~~ The corporation must make a recommended actuarially sound rate

filing for each personal and commercial line of business it writes~~, to be effective no earlier than January 1, 2010~~.

5.~~6. Beginning on or after January 1, 2010, and~~ Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following ~~10 percent~~ for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Eleven percent for 2022.

b. Twelve percent for 2023.

c. Thirteen percent for 2024.

d. Fourteen percent for 2025.

e. Fifteen percent for 2026 and all subsequent years.

6. At no time may the corporation file for approval by the office for a rate reduction.

7. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

8. The corporation's implementation of rates as prescribed in subparagraph 6. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation

writes.

(jj) An employee of the corporation may not receive an annual salary, whether base pay or base pay combined with any bonus or incentive payments, in excess of 150 percent of the annual salary paid to the head of the office, subject to the following:

1. Anyone employed by the corporation as of June 30, 2021, whose salary exceeds the salary limits in this paragraph may retain his or her current salary but may not receive a raise.

2. Anyone employed by the corporation as of June 30, 2021, whose salary does not exceed the salary limits in this paragraph may receive a raise such that his or her salary does not exceed the salary limits in this paragraph.

3. Anyone hired by the corporation on or after July 1, 2021, is subject to the salary limits in this paragraph.

Section 7. Subsection (5) of section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at

or below the eligibility threshold established in s. 627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant is received from an authorized insurer through the program, and the premium offered exceeds the eligibility threshold contained in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered is more than the corporation's renewal premium for comparable coverage, the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. An applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the offer of coverage pursuant to

this subsection continues to insure the applicant and increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)5. ~~s. 627.351(6)(n)6.~~

Section 8. Section 627.70132, Florida Statutes, is amended to read:

627.70132 Notice of property insurance ~~windstorm or hurricane~~ claim.—A claim, supplemental claim, or reopened claim under an insurance policy that provides property insurance, as defined in s. 624.604, including a property insurance policy issued by an eligible surplus lines insurer, for loss or damage caused by any ~~the~~ peril ~~of windstorm or hurricane~~ is barred unless notice of the claim, supplemental claim, or reopened claim was given to the insurer in accordance with the terms of the policy within 2 ~~3~~ years after the date of loss ~~hurricane first made landfall or the windstorm caused the covered damage~~. For claims resulting from hurricanes, tornadoes, windstorms, severe rain, or other weather-related events that are tracked by weather services and media, the date of loss is the date that the hurricane made landfall, or the tornado, windstorm, severe rain, or other weather-related event is verified by the National Oceanic and Atmospheric Administration or another disinterested verifiable third party to have occurred, in the location of the property that is the subject of the claim. For purposes of this section, the term "supplemental claim" or "reopened claim" means any additional claim for recovery from the insurer for losses

from the same peril ~~hurricane or windstorm~~ which the insurer has previously adjusted pursuant to the initial claim. This section does not affect any applicable limitation on civil actions provided in s. 95.11 for claims, supplemental claims, or reopened claims timely filed under this section.

Section 9. Paragraph (e) of subsection (9) of section 627.7015, Florida Statutes, is amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(9) For purposes of this section, the term "claim" refers to any dispute between an insurer and a policyholder relating to a material issue of fact other than a dispute:

(e) With respect to a ~~windstorm or hurricane~~ loss that does not comply with s. 627.70132.

Section 10. Section 627.70152, Florida Statutes, is created to read:

627.70152 Suits arising under a property insurance policy.—

(1) APPLICATION.—This section applies to all residential or commercial property suits not brought by an assignee.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Claimant" means an insured who is filing suit under a residential or commercial property insurance policy.

(b) "Demand" means the specific amount alleged to be owed by the insurer to the claimant under the residential or

commercial property insurance policy.

(c) "Notice" means claimant presuit notice.

(3) NOTICE.—

(a) As a condition precedent to filing a suit under a property insurance policy, a claimant or the claimant's attorney must provide the insurer with a written notice of intent to initiate litigation before filing suit under the policy. Such notice must be served by certified mail, return receipt requested, or electronic delivery at least 10 business days before filing suit, but may not be served before the insurer has made a determination of coverage under s. 627.70131. The notice must specify all of the following:

1. That the notice is being provided pursuant to this section.

2. The alleged acts or omissions of the insurer giving rise to the suit.

3. The damages in dispute.

4. The demand.

5. The amount of reasonable and necessary attorney fees and costs incurred by the claimant, to be calculated by multiplying the number of hours actually worked on the claim as of the date of the notice by the claimant's attorney by a reasonable hourly rate.

6. If provided by an attorney or other representative, that a copy of the notice was provided to the claimant.

Documentation to support the information provided in this paragraph may be provided along with the notice to the insurer.

(b) A notice of intent to initiate litigation must be served within the time limits provided in s. 95.11. However, the notice is not required if the suit is a counterclaim. Service of a notice tolls the time limits provided in s. 95.11 for 10 days if such time limits will expire before the end of the 10-day notice period.

(c) An insurer must respond in writing to the notice within 10 business days after receiving the notice specified in paragraph (a) by making a settlement offer or requiring the claimant to participate in appraisal or another method of alternative dispute resolution under the policy. The time limits provided in s. 95.11 are tolled as long as appraisal or other alternative dispute resolution is ongoing. An insurer must have a procedure for the prompt investigation, review, and evaluation of the dispute stated in the notice and must investigate each claim contained in the notice in accordance with the Florida Insurance Code.

(d) A court must dismiss without prejudice any claimant's suit relating to a claim for which a notice of intent to initiate litigation is given as required by this subsection if such suit is commenced before the expiration of the 10-day notice period.

(4) ADMISSIBILITY OF NOTICE AND RESPONSE.—The notice provided pursuant to subsection (3) and, if applicable, the documentation to support the information provided pursuant to paragraph (3)(a):

(a) Are admissible as evidence in a civil suit or an alternative dispute resolution proceeding relating to the claim for which the notice is given.

(b) Do not limit the evidence of attorney fees or costs, damages, or loss which may be offered at trial.

(c) Do not relieve any obligation that an insured or assignee has to give notice under any other provision of law.

(5) ATTORNEY FEES.—If a court dismisses a claimant's suit pursuant to paragraph (3)(d), the court may not award to the claimant any incurred attorney fees for services rendered before the dismissal of the suit.

Section 11. This act shall take effect July 1, 2021.

INSURANCE & BANKING SUBCOMMITTEE

PCS for HB 305 by Rep. Rommel
Insurance

AMENDMENT SUMMARY
March 23, 2021

Amendment 1 by Rep. Rommel (Lines 69 and 188): The amendment creates a statutory framework for addressing certain property insurance practices by contractors, public adjusters, public adjuster apprentices, and those acting on their behalf, as follows:

- Establishes that no contractor, including a general, building, residential, or roofing contractor, or someone acting on the contractor's behalf may:
    - Solicit a residential property owner to file an insurance claim.
    - Offer an incentive to a residential homeowner for allowing the inspection of the residential property owner's roof or for making an insurance claim for roof damage.
    - Offer or accept any compensation or reward for referral of services for which property insurance proceeds are payable.
    - Interpret policy provisions, advise an insured about policy provisions, or adjust claims on behalf of an insured unless licensed as a public adjuster.
    - Provide an insured with an agreement authorizing repairs without providing a good faith estimate of the cost of the repairs.
- Establishes that a contractor may not enter into a contract with a residential property owner to repair or replace a roof without including notice that the contractor is prohibited from engaging in certain acts.
- Establishes that a public adjuster, public adjuster apprentice, or those acting on their behalf may not:
    - Offer an incentive to a residential homeowner for allowing the inspection of the residential property owner's roof or for making an insurance claim for roof damage.
    - Offer or receive any compensation or reward for referral of any services for which property insurance proceeds would be used for roofing repairs or replacement.
- Provides that any contractor, public adjuster, public adjuster apprentice, or person acting on their behalf may be subject to a fine of $10,000 per violation for each of the statutory prohibitions.
- Provides that any unlicensed person who engages in the prohibited acts shall be guilty of unlicensed contracting or public adjusting, as applicable, and is subject to a fine of $10,000 per violation for each of the statutory prohibitions.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Rommel offered the following:

Amendment (with title amendment)

Between lines 69 and 70, insert:

Section 489.147, Florida Statutes, is created to read:

489.147 Prohibited property insurance practices.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Prohibited advertisement" means any written or electronic communication that encourages, instructs, or induces, a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage. Prohibited advertisements may include door hangers, business cards, magnets, flyers, pamphlets, and emails.

(b) "Soliciting" means contacting, in person, by telephone, by electronic means including email and real-time communication face-to-face directed to a specific person, and by delivery to, residential property owners.

(2) No contractor, as defined by s. 489.105, including but not limited to, a general contractor, building contractor, residential contractor, or roofing contractor, may directly or indirectly engage in the following:

(a) Soliciting a residential property owner by means of a prohibited advertisement.

(b) Offering to a residential property owner a rebate, gift, gift card, cash, coupon, the waiver of any insurance deductible, or any other thing of value in exchange for:

1. Allowing the contractor to conduct an inspection of the residential property owner's roof;

2. Making an insurance claim for damage to the residential property owner's roof.

(c) Offering, delivering, receiving, or accepting any compensation, inducement, or reward for the referral of any services for which property insurance proceeds are payable.

(d) Interpreting policy provisions or advising an insured regarding coverages or duties under the insured's property insurance policy or adjusting a property insurance claim on behalf of the insured, unless the contractor holds an

unencumbered license as a public adjuster pursuant to part VI of chapter 626.

(e) Providing an insured with an agreement authorizing repairs without providing a good faith estimate of the itemized and detailed cost of services and materials for repairs undertaken pursuant to a property insurance claim. A contractor does not commit a violation of this subsection if, as a result of the process of the insurer adjusting a claim, the actual cost of repairs differs from the initial estimate.

(3) Any contractor who violates this section shall be subject to disciplinary proceedings as set forth in s. 489.129. A contractor may receive up to a $10,000 fine for each violation of this section.

(4) For the purposes of this section:

(a) The actions of any person acting on behalf of a contractor, including a compensated employee or a nonemployee who is compensated for soliciting as defined in this section, shall be considered the actions of the contractor.

(b) Any person who engages in the actions prohibited by this section, but is not a contractor as defined in s. 489.105, is guilty of unlicensed contracting and shall be subject to the penalties set forth in s. 489.13. Notwithstanding s. 489.13(3), an unlicensed person who violates this section may be fined up to $10,000 for each violation.

(5) A contractor is prohibited from executing a contract related with a residential property owner to repair or replace a roof without including notice that the contractor is prohibited from engaging in the conduct set forth in paragraph (2)(b) of this section. If the contractor fails to include such notice, the residential property owner may void the contract within 10 days of executing it.

Between lines 188 and 189, insert:

Subsection (20) of section 626.854, Florida Statutes, is created to read:

626.854 "Public adjuster" defined; prohibitions.—

The legislature finds that it is necessary for the practice of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(20) The following acts by a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster are prohibited and shall result in discipline as applicable under chapter 626, part VI:

(a) Offering to a residential property owner a rebate, gift, gift card, cash, coupon, the waiver of any insurance deductible, or any other thing of value in exchange for:

1. Allowing a contractor, a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster to conduct an inspection of the residential property owner's roof;

2. Making an insurance claim for damage to the residential property owner's roof.

(b) Offering, delivering, receiving, or accepting any compensation, inducement, or reward for the referral of any services for which property insurance proceeds would be used for roofing repairs or replacement.

(c) Notwithstanding the fine set forth in s. 626.8698, any public adjuster or public adjuster apprentice maybe to subject to a fine not to exceed $10,000 per act for a violation of this subsection.

(d) Any person who engages in the actions prohibited by this subsection and is not a public adjuster or a public adjuster apprentice, or is not otherwise exempt from licensure, is guilty of the unlicensed practice of public adjusting and shall be:

1. Subject to all applicable penalties set forth in chapter 626, part VI.

2. Notwithstanding subparagraph 1, subject to a fine not to exceed $10,000 per act for a violation of this section.

T I T L E A M E N D M E N T

Remove line 2 and insert:

An act relating to insurance; creating s. 489.147, F.S.; providing definitions; prohibiting certain actions by contractors; providing for disciplinary proceedings; providing that the actions of any persons are the actions of a contractor; providing that certain actions constitute unlicensed contracting; prohibiting a contractor from executing a contract with a residential property owner unless certain notice is provided; providing that any contract executed in violation of this section is voidable; amending s. 624.316,

Remove line 22 and insert:

Domestic insurer; prohibiting certain actions by a public adjuster, public adjuster apprentice, and certain other persons; providing that certain actions constitute unlicensed practice of public adjusting; amending s. 627.351, F.S.; revising