

Insurance & Banking Subcommittee

Thursday, March 9, 2023
9:00 AM - 11:00 AM
Morris Hall (17 HOB)

Meeting Packet

Paul Renner
Speaker

Wyman Duggan
Chair

The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

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Meeting Agenda

Thursday, March 9, 2023
9:00 AM – 11:00 AM
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/HB 237 Legal Instruments by Civil Justice Subcommittee, Altman
- HB 337 Workers' Compensation Benefits for Posttraumatic Stress Disorder by McFarland
- HB 505 Insurance by Berfield
- HB 607 Money Services Businesses by Steele
- HB 881 My Safe Florida Home Program by LaMarca

V. Consideration of the following proposed committee substitute(s):

- PCS for HB 799 -- Property Insurance for Wind and Flood

VI. Closing Remarks

VII. Adjournment

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 237 Legal Instruments
SPONSOR(S): Civil Justice Subcommittee, Altman
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 286

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	17 Y, 0 N, As CS	Mawn	Jones
2) Insurance & Banking Subcommittee		Lloyd	Lloyd
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 117.285, F.S., specifically authorizes the use of remote online witnesses for the execution of estate planning documents, including wills, if specified requirements are met. Most of these documents do not require notarization, but all must be witnessed by either two attesting or subscribing witnesses. Section 117.285(5), F.S., enumerates additional requirements applicable when fewer than two witnesses are physically present with the principal. However, the term "witness" is undefined, creating ambiguity as to whether these requirements still apply when persons are physically present with the principal and therefore "witnessing" – that is, observing – the document's execution but not signing the document as an attesting or subscribing witness.

Section 697.07, F.S., authorizes a mortgage or separate instrument to provide for an assignment of rents of real property as security for repayment of the mortgage. If such an assignment is made, the mortgagee has a lien on the rents, allowing the mortgagee to collect rent payments from the mortgagor's tenants should the mortgagor default on mortgage payments. Similarly, s. 702.10, F.S., provides that, in a foreclosure action, the plaintiff may generally request that the court direct the mortgagor defendant to show cause why an order to make payments during the pendency of the foreclosure proceedings or vacate the premises should not be entered. However, courts have held that these sections are unenforceable against third parties who acquire real property subject to a mortgage lien without assuming the mortgage loan's obligations. Thus, the mortgagee may be unable to collect payments from the third party during the foreclosure action but may still be obligated under the mortgage contract to pay taxes on and insurance premiums for the subject property.

The Florida Supreme Court has long held that a junior lienholder may not foreclose a senior lienholder's lien. However, in 2021, the Fourth DCA decided *Wells Fargo Bank, N.A. v. Tan*, in which the court held that a junior lienholder can foreclose the lien of a senior lienholder if it serves the senior lienholder with process and the senior lienholder fails to appear or file responsive pleadings in court. The *Tan* court then applied s. 702.036, F.S., which provides that, where a mortgage lien is improperly foreclosed, the only remedy is a claim for monetary damages against the party responsible for the improper action if certain conditions are met, including that the mortgagee was properly served and a final judgment of foreclosure was entered.

CS/HB 237:

- Amends s. 117.201, F.S., to define "witness" as someone whose electronic signature is affixed to an electronic record to attest or subscribe to a principal's signature on such record.
- Amends ss. 697.07 and 702.10, F.S., to define "mortgagor" to include third parties who acquire title to or an interest in a mortgaged property, with exceptions. This may allow a mortgagee to collect payments from a third party who is not subject to the mortgage during a mortgage lien foreclosure.
- Amends s. 702.036, F.S., to provide that this section applies to final judgments of foreclosure of any lien and authorize the award of prevailing party attorney fees. This may disincentive a junior lienholder from attempting to foreclose a senior lienholder's lien after the *Tan* decision.

The bill does not appear to have a fiscal impact on state or local governments. The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Witnessing of Electronic Legal Documents

General Provisions

2019 CS/CS/HB 409 created Part II of ch.117, Florida Statutes, to authorize the online notarization of electronic documents if specified requirements are met. However, an online notary public's failure to comply with these requirements does not invalidate the notarial act or the electronic record; instead, such failure may be introduced for evidentiary purposes, including to establish ch. 117 violations or to prove fraud, forgery, or impersonation.[1]

Under this part, a notary public performing an online notarization must verify the principal's identity at the time the principal's signature is taken by using audio-video communication technology and record the entire audio-video conference session during which the electronic document is executed.[2] Identity verification must be by:

- Remote presentation of a government-issued identification credential;
- Credential analysis of each government-issued identification credential; and
- Identity proofing in the form of knowledge-based authentication or another method of identity proofing that conforms to statutory standards.[3]

Part II of ch. 117 also allows an online notary public to supervise the witnessing of electronic documents by the same audio-video communication technology used for online notarization.[4] The witness may be physically present with the principal or remote from the principal if the witness and principal use audio-video communication technology.[5] In either case, the online notary public must verify the witness's identity in the same manner as the principal's identity, and the witness must be present (whether in person or remotely) at the time the principal affixes the electronic signature and hear the principal make a statement to the effect that the principal has signed the electronic record.[6]

Application to Estate Planning Documents

Florida law specifically authorizes the use of remote online witnesses for estate planning document execution, including wills, if specified requirements are met.[7] Most of these documents do not require notarization, but all must be witnessed by either two attesting or subscribing witnesses, and Florida law enumerates additional requirements that apply when fewer than two such witnesses are physically present with the principal.[8] However, the term "witness" is undefined, creating ambiguity as to whether these additional requirements still apply when persons are physically present with the principal and therefore "witnessing" – that is, merely observing – the estate planning document's execution but not signing the document as an official attesting or subscribing witness.[9]

Assignment of Rents and Payments During Foreclosure

Assignment of Rents

[1] S. 117.265(9), F.S.
[2] S. 117.265(2), F.S.
[3] S. 117.265(4), F.S.
[4] S. 117.285, F.S.
[5] S. 117.285(1), F.S.
[6] S. 117.285(3), F.S.
[7] S. 117.285(5), F.S.
[8] *Id.*
[9] Real Property, Probate, & Trust Law Section of the Florida Bar ("RPPTL"), *White Paper: Amendment to Section 117.201, Florida Statutes, Clarifying Who is a "Witness for Purposes of Electronic Estate Planning Documents* (Jan. 2023).

Florida law authorizes a mortgage or separate instrument to provide for an assignment of rents of real property or any interest therein as security for the mortgage's repayment.[10] If such an assignment is made, the mortgagee has a lien[11] on the rents, which lien shall be perfected and effective against third parties upon recording of the mortgage or separate instrument in the public records of the county in which the real property is located.[12]

An assignment of rents is generally enforceable when the mortgagor defaults on mortgage payments and the mortgagee makes written demand for rents to the mortgagor.[13] The mortgagor must then turn over to the mortgagee all rents in his or her possession or control at the time of the written demand or collected thereafter ("collected rents").[14] Further, in the foreclosure action, upon the mortgagee's or mortgagor's application, the court may require the mortgagor to deposit the collected rents into the court registry or other court-designated depository.[15] The court may authorize the use of collected rents, before deposit into the court registry or other depository, to pay:

- The reasonable expenses solely to protect, preserve, and operate the real property, including real estate taxes and insurance;
- Escrow sums required by the mortgage or separate assignment of rents instrument; and
- The mortgagee.[16]

The court must require the mortgagor to account to the court and the mortgagee for the collected rents' receipt and use and may also impose other conditions on such use.[17]

All moneys received by the mortgagee under this section must be applied by the mortgagee in accordance with the mortgage, separate assignment of rents instrument, or promissory note, and the mortgagee must account to the mortgagor for such application.[18] Any undisbursed collected rents remaining in the mortgagor's possession, or in the court registry or other depository, must be disbursed at the foreclosure action's conclusion in accordance with the court's final judgment.[19]

Payments During Foreclosure Action

Florida law generally authorizes the plaintiff in a foreclosure action to request that the court enter an order directing the mortgagor defendant to show cause why an order to make payments during the pendency of the foreclosure proceedings or an order to vacate the premises should not be entered.[20] A mortgagor defendant's:

- Right to be heard at the hearing to show cause is waived if the mortgagor defendant, after being served with an order to show cause, engages in conduct that clearly shows that he or she has relinquished the right to be heard on that order; and
- Failure to file defenses or to appear at the hearing presumptively constitutes conduct that clearly shows that the mortgagor defendant has relinquished the right to be heard.[21]

[10] S. 697.07(1), F.S.
[11] A lien is a claim against property that evidences a debt, obligation, or duty. Fla. Jur. 2d Liens s. 37:1.
[12] S. 697.07(2), F.S.
[13] S. 697.07(3), F.S.
[14] *Id.*
[15] S. 697.07(4), F.S.
[16] *Id.*
[17] *Id.*
[18] S. 697.07(8), F.S.
[19] S. 697.07(5), F.S.
[20] S. 702.10(2), F.S.
[21] *Id.*

If the court finds that a mortgagor defendant has waived the right to be heard, the court may promptly enter an order requiring payment in the amount specified or an order to vacate the property.[22] However, if the court finds that a mortgagor defendant has not waived the right to be heard, the court must, at the hearing on the order to show cause, determine the probable validity of the underlying claim against the mortgagor defendant and his or her defenses, if any.[23] If the court determines that the plaintiff is likely to prevail in the foreclosure action, the court must order the mortgagor defendant to make payments to the plaintiff.[24] Under such an order:

- Payments are payable at such intervals and in such amounts provided for in the mortgage instrument before acceleration or maturity;
- The payment obligation commences from the date of the motion filed under s. 702.10(2), F.S.; and
- Payments must be credited against the mortgage obligation in accordance with the loan's terms but do not cure any default or constitute a waiver or any other defense to the foreclosure.[25]

Further, such court order:

- Must be served upon the mortgagor defendant no later than 20 days before the first payment is owed;
- May permit, but may not require, the plaintiff to take all appropriate steps to secure the premises during the pendency of the foreclosure action;
- Must provide that the plaintiff is entitled to possession of the premises upon the mortgagor defendant's failure to make the required payments unless, at the hearing, the court found good cause to order some other enforcement method;[26] and
- Must be stayed until the foreclosure action's completion if the mortgagor defendant files with the court a written undertaking executed by a court-approved surety[27] in an amount equal to the unpaid balance of the lien being foreclosed, including all principal, interest, unpaid taxes, and insurance premiums paid by the plaintiff.[28]

However, the provisions relating to payments during a foreclosure action do not apply to the foreclosure of an owner-occupied residence.[29] There is a rebuttable presumption that a residential property for which a homestead exemption[30] was granted according to the latest county property appraiser's assessment, before the filing of the foreclosure action, is an owner-occupied residential property.[31]

Application to Third Parties

Borrowers who default on their mortgage payments often default on other financial obligations, leading to the sale of the property through a foreclosure action or other sale.[32] For example, borrowers living in a homeowners', condominium, or cooperative association may default in paying association assessments; such assessments become a lien on the property, which if unsatisfied, may result in the association bringing a foreclosure action against the borrower.[33] Such borrowers may also file for bankruptcy, resulting in the property's sale by the bankruptcy trustee.[34]

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[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] Should payments not be made and the premises not be vacated in violation of the order, upon the filing of an affidavit with the clerk stating these facts, the clerk must issue to the sheriff a writ for possession. *Id.*
[27] A surety guarantees the performance or obligations of a second party (the principal - here, the mortgagor) to a third party (the obligee - here, the plaintiff) under a three-party contract. National Association of Security Bond Providers, *What are Surety Bonds*, https://www.nasbp.org/getabond/about-surety#:~:text=A%20surety%20bond%20is%20a,third%20party%20(the%20obligee) (last visited Feb. 14, 2023).
[28] *Id.*
[29] *Id.*
[30] A homestead exemption is a property tax break offered based on the assessed value of a home which is the homeowner's permanent residence and where the homeowner was living as of January 1 of the tax year in question. Art. X, s. 4, Fla. Const.
[31] *Id.*
[32] RPPTL, *White Paper*: *Proposal to Expand Applicability of § 697.07 and § 702.10 to Third Parties Who Acquire Properties Subject to a Mortgage* (Jan. 2023).
[33] For more on assessment liens, see ss. 718.116, 719.108, and 720.3085, F.S.
[34] For more on bankruptcy, see Chapters 7 and 13 of the federal Bankruptcy Code.

An investor may buy such properties for a low price because the investor takes title to the property subject to the existing mortgage lien. In other words, the investor is not obligated to pay on the mortgage, but, if the investor does not pay off the mortgage lien, the mortgagee may foreclose on the lien.[35] Some such investors may vigorously fight mortgage lien foreclosure actions where the property they purchased has a rent-paying tenant in order to maximize the rental income they can collect before the action's conclusion.[36] However, courts have held that ss. 697.07 and 702.10, F.S., are unenforceable against third parties who acquire real property subject to a mortgage lien without assuming the obligations of the existing mortgage loan. Thus, the mortgagee is unable to collect any payments from the third-party investor during the foreclosure action but is still obligated to pay taxes on and insurance premiums for the property.[37]

Finality of Mortgage Foreclosure Judgment

The Florida Supreme Court has long held that a junior lienholder may not foreclose a senior lienholder's lien.[38] If somehow a junior lienholder were to improperly include a senior lienholder as a party to its foreclosure suit and obtain a judgment purporting to extinguish the senior interest, such foreclosure would be void *ab initio* as to such lienholder.[39] Thus, a senior lienholder has traditionally been free to ignore a junior lienholder's foreclosure action, and whoever acquired the property through the junior lienholder's foreclosure action would take title the property subject to the senior lienholder's lien.

However, in 2021, the Fourth DCA decided *Wells Fargo Bank, N.A. v. Tan*, in which the court held that a junior lienholder can foreclose the lien of a senior lienholder if it serves the senior lienholder with process and the senior lienholder defaults.[40] The *Tan* court then applied s. 702.036, F.S., which provides that, where a mortgage lien is improperly foreclosed, the only remedy for the senior lienholder is a claim for monetary damages against the party responsible for the improper action if:

- The party seeking relief from the final judgment of foreclosure of the mortgage was properly served in the foreclosure lawsuit.
- The final judgment of foreclosure of the mortgage was entered as to the property.
- All applicable appeals periods have run as to the final judgment of foreclosure of the mortgage with no appeals having been taken or any appeals having been finally resolved.
- The property has been acquired for value, by a person not affiliated with the foreclosing lender or the foreclosed owner, at a time in which no lis pendens regarding the suit to set aside, invalidate, or challenge the foreclosure appears in the official records of the county where the property was located.

This Fourth DCA decision effectively changed the business expectations of Florida lenders by creating a significant risk that senior lienholders may have their liens foreclosed by junior lienholders if they do not litigate the dispute, which litigation may be costly.[41]

[35] RPPTL, *supra* note 32.
[36] *Id.*
[37] *Id.*; *Green Emerald Homes, LLC v. Residential Credit Opportunities Trust*, 256 So. 3d 211 (Fla. 2d DCA 2018).
[38] *Cone Bros. Const. Co., v. Moore*, 141 Fla. 420 (1940).
[39] *Id.*
[40] 320 So. 3d 782 (4th DCA 2021).
[41] RPPTL, *White Paper: Proposal to Clarify the Finality of Foreclosure Judgments – Revising § 702.036* (Jan. 2023).

Effect of Proposed Changes

Witnessing of Electronic Legal Documents

CS/HB 237 amends s. 117.201, F.S., to define "witness," when used as a noun in Part II of ch. 117, as someone whose electronic signature is affixed to an electronic record to attest or subscribe to a principal's signature on such record. This clarifies that the requirements set out in s. 117.285(5), F.S., apply when fewer than two persons who will affix their signature to the electronic document as an attesting or subscribing witness are physically present with the principal, regardless of how many other individuals may be physically present with the principal and observing the document's execution.

The bill also provides that this amendment applies retroactively to January 1, 2020, as it clarifies existing law.

Assignment of Rents and Payments During Foreclosure

Assignment of Rents

The bill amends s. 697.07, F.S., to define "mortgagee" as a person entitled to enforce an obligation secured by a mortgage and "mortgagor" as a person who grants a mortgage or a successor in ownership of the real property described in the mortgage. The bill also amends this section to:

- Allow the court to authorize the use of collected rents, before deposit into the court registry or other depository, to pay homeowners', condominium, or cooperative assessments that come due after the entry of the court's order.
- Specify that this section does not apply to a homeowners', condominium, or cooperative association that:
    - Takes title to the property through the foreclosure of its assessment lien, or a deed in lieu of foreclosure, if the title remains vested in the association and any rents collected are applied to the assessments owed; or
    - Collects rents from tenants in a parcel or unit where the owner is delinquent in paying assessments owed to the association.

This allows an assignment of rents provision to be enforceable against third party investors who buy or otherwise acquire title to real property subject to a mortgage lien without assuming the obligations of the existing mortgage loan but creates an exception for homeowners', condominium, and cooperative associations so that they can continue to collect assessments owed where they would otherwise be impacted by these changes.

Payments During Foreclosure Action

The bill amends s. 702.10, F.S., to define "mortgagor" as a person who grants a mortgage or a successor in ownership of the real property described in the mortgage but specifies that the term does not include a homeowners', condominium, or cooperative association that:

- Takes title to the property through the foreclosure of its assessment lien, or a deed in lieu of foreclosure, if the title remains vested in the association and any rents collected are applied to the assessments owed; or
- Collects rents from tenants in a parcel or unit where the owner is delinquent in paying assessments owed to the association.

This gives the mortgagee the ability to seek a court order to collect payments from third party investors who buy or otherwise take possession of real property subject to a mortgage lien without assuming the obligations of the existing mortgage loan. It also creates an exception for homeowners', condominium, and cooperative associations so that they can continue to collect assessments owed where they would be otherwise impacted by these changes.

Finality of Mortgage Foreclosure Judgment

The bill amends s. 702.036, F.S., to:

- Provide that it applies to final judgments of foreclosure of any lien, not just a mortgage lien; and
- Create a two-way attorney fee provision authorizing the prevailing party in an action based on the allegedly improper foreclosing of a senior lien to recover his or her attorney fees from the losing party.

These changes may disincentivize a junior lienholder from attempting to improperly foreclose the lien of a senior lienholder, whether or not the senior lien is a mortgage lien, thus preserving the business expectations of mortgage lenders and other senior lienholders in the State.

B. SECTION DIRECTORY:

Section 1: Amends s. 117.201, F.S., relating to definitions.
Section 2: Amends s. 697.07, F.S., relating to assignment of rents.
Section 3: Amends s. 702.036, F.S., relating to finality of mortgage foreclosure judgment.
Section 4: Amends s 702.10, F.S., relating to order to show cause; entry of final judgment of foreclosure; payment during foreclosure.
Section 5: Provides applicability.
Section 6: Provides an effective date of July 1, 2023.

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:

   The bill may have an indeterminate impact on local government expenditures to the extent it reduces litigation in the state court system.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may give mortgagees the ability to recover payments from third parties during a foreclosure action to help meet their financial obligations as to the mortgaged property while:

- Preventing third-party investors from benefitting financially from delaying foreclosure actions; and
- Protecting the ability of a homeowners', condominium, or cooperative association to recover assessments owed to the association even where such association would otherwise be impacted by these changes.

The bill may also preserve the business expectations of mortgage lenders and other senior lienholders in the State and reduce their litigation exposure by disincentivizing junior lienholders from attempting to improperly foreclose their liens, which could result in cost savings to mortgage lenders and other senior lienholders.

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:

Retroactivity

A retroactive law is a law "that looks backward or contemplates the past, affecting acts or facts that existed before the act came into effect."[42] In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.[43] A purely procedural or remedial law may apply retroactively, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.[44]

The bill provides that the amendment to s. 117.201, F.S., is intended to clarify existing law – in other words, that it is remedial in nature – and applies retroactively to January 1, 2020, the date the statute it intends to clarify took effect.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 14, 2023, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Restored the word "defendant" after mortgagor in s. 702.10, F.S., so that the phrase remains "mortgagor defendant" as it is under current law.
- Redefined "mortgagor" in ss. 697.07 and 702.10, F.S., to avoid using the term "mortgagor" in its own definition.
- Redefined "witness" in s. 117.201, F.S., to avoid using the term "witness" in its own definition.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

[42] Congressional Research Service, *Retroactive Legislation: A Primer for Congress*, Aug. 15, 2019, https://sgp.fas.org/crs/misc/IF11293.pdf (last visited Feb.14, 2023).
[43] A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).
[44] *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).

HB 337

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 337 Workers' Compensation Benefits for Posttraumatic Stress Disorder
SPONSOR(S): McFarland
TIED BILLS: **IDEN./SIM. BILLS:** SB 352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Fletcher	Lloyd
2) Constitutional Rights, Rule of Law & Government Operations Subcommittee			
3) Appropriations Committee			
4) Commerce Committee			

SUMMARY ANALYSIS

Workers' compensation laws require employers to pay medical and indemnity benefits if an employee suffers an accidental injury or death arising out of work performed in the course and scope of their employment. Employer-paid benefits for a nervous or mental injury are typically allowed only if an employee suffers a physical injury that triggers a mental injury.

The Legislature created statutory exceptions for certain first responders in 2018, making Posttraumatic Stress Disorder (PTSD) a compensable occupational disease for firefighters, paramedics, emergency medical technicians, and law enforcement officers who suffer from PTSD after experiencing certain types of qualifying events, even though they were not physically injured.

In 2022, the Legislature extended benefits to correctional officers who experience certain qualifying events and are subsequently diagnosed with PTSD due to their job duties.

The bill extends PTSD benefits to 911 public safety telecommunicators and those crime scene investigators, who are not classified as first responders, that are diagnosed with PTSD after experiencing certain qualifying events, like witnessing a death or grievous bodily injury, or verbally aiding a person who dies during a state of emergency because first responders cannot be dispatched.

The bill has an indeterminate, potentially significant, negative fiscal impact on local governments and an unknown, but likely small, impact on state government.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Diagnosis of Posttraumatic Stress Disorder

According to the American Psychiatric Association, Posttraumatic Stress Disorder (PTSD) is a psychiatric disorder that may occur in people who have experienced or witnessed a traumatic event, such as a natural disaster, serious accident, terrorist act, war, or rape; or people who have been threatened with death, sexual violence, or serious injury.[1] Exposure to an upsetting traumatic event may be indirect rather than first hand. PTSD can occur if a person learns of the violent death of a close family member or friend, or is repeatedly exposed to the horrible details of trauma.[2]

Symptoms of PTSD may begin shortly after the traumatic event, or may not appear until years after the event. For a person to be diagnosed with PTSD, symptoms must last for more than one month and must cause significant distress or interfere with the individual's daily functioning.[3]

Symptoms may include flashbacks, nightmares and severe anxiety, as well as uncontrollable thoughts about the event. This can lead to avoidance of any stimuli that recalls the traumatic events, negative thoughts about oneself or the world, and changes in emotional reactions to events, like being easily startled or having trouble sleeping or concentrating.[4]

Rates of PTSD are higher among veterans, police officers, firefighters, and emergency medical personnel.[5]

Florida Workers' Compensation System

Workers' compensation is a no-fault system that provides medical benefits and compensation for lost wages when an employee is injured or killed in the course of employment. Employers must secure coverage, and may do so by purchasing insurance from an authorized carrier, qualifying as a self-insurer, or purchasing coverage from the Florida Workers' Compensation Joint Underwriting Association, which is the state-sponsored insurer of last resort. In return for providing compensation, the employer is relieved of civil tort liability for workplace injuries, and may only be sued for intentional acts that result in injury or death.[6]

In addition to on-the-job injuries, employers may be required to pay compensation or furnish benefits if an occupational disease causes death or disablement.[7] In general, an occupational

[1] American Psychiatric Association, *What is Posttraumatic Stress Disorder (PTSD)?*, https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd, (last visited Mar. 6, 2023).
[2] *Id.*
[3] *Id.*
[4] Mayo Clinic, *Post-traumatic stress disorder (PTSD)*, https://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/symptoms-causes/syc-20355967 (last visited Mar. 6, 2023).
[5] Institutes of Public Health, *PTSD in First Responders*, https://institutesofhealth.org/ptsd-in-first-responders (last visited Mar. 6, 2023).
[6] Ss. 440.015, 440.09, 440.10, 440.38, and 627.313, F.S.
[7] S. 440.151(1), F.S.

disease is compensable if:

- A condition peculiar to the occupation causes the disease;
- Epidemiological studies show exposure to a specific substance involved, at the levels to which the employee was exposed, may cause the disease;
- The disease is the result of the *nature of the employment*, meaning the occupation presents a particular hazard of the disease or the incidence of the disease is substantially higher in the occupation than in the public;
- The disease is contracted during the course and scope of employment; and
- The nature of the employment is the *major contributing cause* of the disease, meaning the cause is more than 50% responsible for the disease as compared to all other causes combined, as demonstrated by medical evidence only.[8]

Benefits for Temporary and Permanent Disability

An employer must pay compensation or furnish benefits if an employee suffers a compensable injury or death "arising out of work performed in the course and scope of employment."[9]

Medical Benefits

Employees are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prostheses, for as long as the nature of the injury and process of recovery requires.[10]

Indemnity Benefits

Payments for lost wages, known as indemnity benefits, may be required if an injured employee is unable to work, as determined by an authorized treating medical provider, and typically begin on the eighth day after the employee loses time from work.[11] Indemnity benefits fall into four categories:

- **Permanent Total Disability** – In the case of total disability adjudged to be permanent (*i.e.*, the employee is unable to engage in any type of employment), the employer or its insurance carrier must pay two-thirds of the employee's average weekly wages until the employee reaches the age of 75.[12]
- **Temporary Total Disability** – In the case of disability total in character but temporary in quality, the employer or its insurance carrier must pay two-thirds of the employee's average weekly wages until the employee returns to work or reaches maximum medical improvement, but in no event more than 260 weeks (five years).[13]
- **Permanent Impairment** – Where an employee has reached maximum medical improvement, is able to return to work, but has a permanent, but partial, physical impairment, the Three-Member Panel[14] establishes and uses an impairment rating schedule which represents a percentage of disability to the body as a whole; a monetary

[8] Ss. 440.09, and 440.151, F.S.
[9] S. 440.09(1), F.S.
[10] S. 440.13(2)(a), F.S.
[11] Ss. 440.14(1), and 440.20(2)(a), F.S.
[12] S. 4401.15(1), F.S.
[13] S. 440.15(2)(a), F.S., limits disability benefits to 104 weeks (two years), but the Florida Supreme Court held that this limit was unconstitutional and directed that a prior limit of 260 weeks (five years) be reinstated. *See Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016).
[14] S. 440.13, F.S.

benefit is calculated based on the percentage of impairment.[15]

- **Temporary Partial Disability** – Where an employee may work with restrictions, the employer or its insurance carrier must pay 80% of the difference between his or her weekly earnings prior to injury and post-injury. Payments may be required for up to 260 weeks.[16]

The minimum payment is $20 per week and the maximum payment is 100 percent of the statewide average weekly wage, which is based on the average weekly wage paid by employers' subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity.[17] Payments to injured workers who earn more than the statewide average weekly wage are capped at the statewide average weekly wage that was in effect on the date of injury.[18]

General Rules of Compensability for Mental or Nervous Injuries

Mental or Nervous injuries may be compensable, but only if the injury is accompanied by a physical injury that requires medical treatment. Thus, if a workplace accident causes both a physical injury and a related mental or nervous injury, both may be compensable so long as the physical injury that requires medical treatment is the major contributing cause (at least 50 percent responsible) of the mental or nervous injury. A mental or nervous injury caused by "stress, fright, or excitement" is not compensable.[19]

As discussed above, an employee who is temporarily disabled by a workplace injury is eligible for up to 260 weeks of disability benefits, which typically results in payment of about two-thirds of the employee's regular wages, beginning on the eighth day after the employee loses time from work.[20] However, temporary disability benefits caused by a mental or nervous injury are limited to six months after a claimant reaches maximum medical improvement for the physical injury that triggered the mental or nervous injury.[21]

For employees who are not first responders, benefits for mental or nervous injuries: 1) may last no longer than six months from the date of the maximum medical improvement from the physical injury,[22] and 2) may not exceed the 1 percent limit on permanent psychiatric impairment benefits.[23]

Special Rules for First Responders

The 2007 Law

The Legislature recognized the unique occupational hazards associated with the work of first responders in 2007 by providing additional coverage for employment-related accidents and injuries of both paid and volunteer firefighters, emergency medical technicians and paramedics, and law enforcement officers.[24] The law relaxed certain standards to make it easier for first

[15] S 440.15(3), F.S.
[16] S 440.15(4), F.S.
[17] S. 440.12(2), F.S.
[18] *Id*.
[19] S. 440.093, F.S.
[20] *See supra* note 13.
[21] S. 440.093(3), F.S.
[22] S. 440.093, F.S.
[23] Ss. 440.14(3), and 440.15(3(c), F.S.
[24] Chapter 2007-87, Laws of Florida, created s. 112.1815, F.S.

responders to obtain workers' compensation benefits.

For mental and nervous injuries, lawmakers:

- Authorized medical benefits for first responders who did not suffer a physical injury but demonstrate, by clear and convincing evidence, that a mental or nervous injury arose out of employment;
- Authorized indemnity benefits (lost wages) for first responders who demonstrate that a mental or nervous injury arose out of a physical injury suffered during the course of employment; and
- Exempted first responders from limits that typically apply to temporary disability benefits for mental and nervous injuries.

For occupational diseases, lawmakers:

- Reduced the evidentiary burden for claims of occupational disease due to exposure to a specific toxic substance, requiring proof of causation by a preponderance of the evidence, rather than the clear and convincing evidentiary standard typically applied to such claims; and
- Eliminated the requirement that a first responder's claim of occupational disease be supported by epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.

Additionally, lawmakers:

- Created a presumption that any adverse reaction to a smallpox vaccination administered to a first responder is a compensable accident; and
- Required that permanent total supplemental benefits received by a first responder whose employer does not participate in the Social Security program shall not terminate when the first responder reaches age 62.

2018 Amendments

In 2018, the Legislature authorized medical benefits and compensation for lost wages for first responders who are diagnosed with PTSD (as described by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association).[25]

As a result, a first responder who experiences one of the following qualifying events need not suffer a physical injury to qualify for medical benefits and be compensated for lost wages:

- Seeing a deceased minor;
- Witnessing the death of a minor;
- Witnessing an injury to a minor who subsequently dies before or upon arrival at a hospital emergency department;
- Participating in the treatment of an injured minor who dies before or on arrival at a hospital emergency department;
- Transporting an injured minor who dies before or on arrival at a hospital emergency department;
- Seeing a decedent whose death was due to grievous bodily harm of a nature that shocks the conscience;
- Witnessing a death (including suicide) that involved grievous bodily harm of a nature that

[25] Chapter 2018-124, Laws of Florida, amended s. 112.1815, F.S.

shocks the conscience;
- Witnessing a homicide, whether criminal or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence;
- Witnessing an injury (including an attempted suicide) to a person who dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Participating in the treatment of an injury (including attempted suicide) to a person who dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or
- Transporting a person who was injured (including by attempted suicide) who dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

2022 Amendments

In 2022, the Legislature authorized medical benefits and compensation for lost wages for correctional officers who are diagnosed with PTSD. As a result, a correctional officer who experiences one of the following qualifying events need not suffer a physical injury to qualify for medical benefits and be compensated for lost wages:

- Being taken hostage by an inmate or trapped in a life-threatening situation as a result of an inmate's act;
- Directly witnessing a death (including a death due to suicide) of a person who suffered grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing an injury (including an attempted suicide) to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Participating in the physical treatment of an injury, or manually transporting a person who was injured (including by attempted suicide) who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing (three or more killings in a single incident), manslaughter, self-defense, misadventure, and negligence; or
- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience.[26]

Eligibility of First Responders and Correctional Officers for PTSD Benefits

To be eligible for workers' compensation benefits for PTSD, the above-mentioned first responders and correctional officers must demonstrate that they were acting within the scope of employment when they experienced a qualifying event,[27] that they were diagnosed with PTSD by the employer or carrier's authorized treating physician,[28] and that they reported the injury to their employer within 90 days of a qualifying event or the manifestation of PTSD, whichever is later.[29] If the employer or carrier denies benefits, the employee must file a claim for benefits within one year

[26] S. 112.18155, F.S.
[27] Ss. 112.1815(5) and 112.18155(2)(a)1, F.S.
[28] Ss. 112.1815(5)(a)2 and 112.18155(2)(b), F.S.
[29] Ss. 112.1815(5)(d) and 112.18155(5), F.S.

after the qualifying event or diagnosis of PTSD, whichever is later.[30]

Employing agencies are required to provide training related to mental health awareness, prevention, mitigation, and treatment.[31]

The Division of Workers' Compensation within the Department of Financial Services (DFS) adopted Rule 69L-3.009, F.A.C., to specify the types of injuries that qualify as grievous bodily harm of a nature that shocks the conscience. This rule is used to administer s. 112.1815, F.S., relating to specified first responders (for firefighters, paramedics, emergency medical technicians, and law enforcement officers). DFS has proposed a new rule to administer s. 112.1855, F.A.C., relating to correctional officers.

Currently, 911 public safety telecommunicators and civilian crime scene investigators are not eligible to receive workers' compensation benefits for PTSD under s. 112.1815, F.S.

Effect of the Bill

The bill makes 911 public safety telecommunicators and crime scene investigators eligible for workers' compensation benefits for PTSD, even if the employee has not suffered a physical injury, so long as the employee is diagnosed with PTSD by the employer or insurance carrier's authorized physician and the PTSD was caused by the employee experiencing one of the following qualifying events:

- Directly witnessing a death, including a death due to suicide, that involved grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing the death of a minor;
- Directly witnessing an injury, including an attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing an injury to a minor who subsequently dies before or upon arrival at a hospital emergency department;
- Verbally aiding a person seeking public safety assistance in the physical treatment of a minor who subsequently dies before or upon arrival at a hospital emergency department;
- Verbally aiding a person seeking public safety assistance in the physical treatment of a person who subsequently dies during a state of emergency declared by the Governor and the person's death occurs because first responders cannot be dispatched;
- Verbally aiding a person seeking public safety assistance in the physical treatment of an injury, including by attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence;
- Seeing for oneself a deceased minor;
- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that

[30] *Id.*
[31] Ss. 112.1815(6) and 112.18155(6), F.S.

shocks the conscience; or
- Seeing for oneself a decedent who is in an advanced stage of decomposition.

PTSD must be demonstrated by clear and convincing medical evidence.

The time for notice of injury is identical to the notice provision for first responders and correctional officers. Thus, 911 public safety telecommunicators or crime scene investigators may be eligible for benefits for PTSD, without suffering a physical injury, only if they report an injury within 90 days of a qualifying event or the manifestation of PTSD, whichever is later. If an employer or insurance carrier denies benefits, the employee must file a claim within one year after the qualifying event or diagnosis of PTSD, whichever is later.

Agencies that employ 911 public safety telecommunicators and crime scene investigators must provide training related to mental health awareness, prevention, mitigation, and treatment.

DFS must adopt a rule to specify the types of injuries an employee may witness that qualify as grievous bodily harm of a nature that shocks the conscience.

Existing law makes about 137,926 first responders eligible for workers' compensation benefits for PTSD; this includes 48,211 law enforcement officers,[32] 20,420 firefighters,[33] 35,543 emergency medical technicians,[34] and 33,752 paramedics.[35] About 28,929 correctional officers working for state, county, and private correctional agencies are covered as well.[36]

The bill extends benefits to about 198 licensed 911 public safety telecommunicators.[37]

The bill also extends benefits to an undetermined number of crime scene investigators; some may be sworn officers while some may be civilian employees of law enforcement agencies. Rosters maintained by the International Association for Identification, based in Hollywood, Florida, show 216 certified crime scene investigators in Florida.[38] The U.S. Bureau of Labor Statistics identifies 1,760 people working as forensic science technicians.[39]

B. SECTION DIRECTORY:

Section 1. Creates s. 112.18156, F.S., relating to 911 public safety telecommunicators and crime

[32] Florida Department of Law Enforcement, *2021 Criminal Justice Agency Profile Report*, https://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP.aspx (last visited Mar. 6, 2023) (reports 4241 officers working for state agencies; 22,322 law enforcement officers working for sheriff's offices; 1,870 working for schools, universities, and ports; and 19,778 working for municipal police departments).
[33] U.S. Bureau of Labor Statistics, *Occupational Employment and Wages, May 2021*, https://www.bls.gov/oes/current/oes332011.htm (last visited Mar. 6, 2023).
[34] Department of Health, License Verification, *Emergency Medical Technician*, https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders (last visited Mar. 6, 2023).
[35] Department of Health, License Verification, *Paramedic*, https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders (last visited Mar. 6, 2023).
[36] *See supra* note 31.
[37] Department of Health, License Verification, *911 public safety telecommunicator*, https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders (last visited Mar. 6, 2023).
[38] The Independent Association for Identification, *Crime Scene Certification*, https://www.theiai.org/crime_scene.php (last visited Mar. 6, 2023) (rosters identify 51 crime scene investigators, 113 crime scene analysts, and 52 senior crime scene analysts).
[39] *See supra* note 32.

scene investigators; special provisions for posttraumatic stress disorders.

Section 2. Declares that the bill fulfills an important state interest.

Section 3. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The majority of 911 public safety telecommunicators and crime scene investigators are municipal employees, rather than state employees, and are therefore not covered by the Risk Management Trust Fund (RMTF) for workers' compensation coverage.[40] However, the 12 state universities, Florida Department of Law Enforcement (FDLE), Florida Fish and Wildlife Conservation Commission (FWC), and Florida Department of Highway Safety and Motor Vehicles (FDHSMV) have dispatch units with 911 public safety telecommunicators and crime scene investigators.[41] While approximately 400-500 911 public safety telecommunicators are covered by the RMTF, the number of crime scene investigators are estimated to be low, as some crime scene investigators are law enforcement officers already covered under the current statute.[42] Accordingly, the RMTF may experience an unknown, but likely small, increase in workers' compensation claims as a result of the extension of PTSD benefits to 911 public safety telecommunicators and crime scene investigators.[43]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Municipalities, counties, and special districts likely would be required to pay more workers' compensation claims due to extension of PTSD benefits to 911 public safety telecommunicators and crime scene investigators.[44]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   Physicians who are authorized providers could experience an increase in patients and insurance carriers could experience an increase in claims.

D. FISCAL COMMENTS:

   The bill has an indeterminate, likely significant, negative fiscal impact on state and local

[40] Florida Department of Financial Services, Agency Analysis of 2023 House Bill 337, p. 1 (Mar. 6, 2023).
[41] *Id.*
[42] *Id.*
[43] *Id.* at p. 3.
[44] *Id.* at p. 2.

governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill extends workers' compensation benefits for PTSD to 911 public safety telecommunicators and crime scene investigators; however, an exemption may apply because all similarly situated state and local government employers of 911 public safety telecommunicators and crime scene investigators are required to provide workers' compensation benefits.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rulemaking authority to the Department of Financial Services, Division of Workers' Compensation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to workers' compensation benefits for posttraumatic stress disorder; creating s. 112.18156, F.S.; providing definitions; providing that posttraumatic stress disorder suffered by a 911 public safety telecommunicator or crime scene investigator is a compensable occupational disease under certain circumstances; specifying the evidentiary standard for demonstrating such disorder; specifying that benefits do not require a physical injury and are not subject to certain apportionment or limitations; providing requirements for benefits offered to a 911 public safety telecommunicator or crime scene investigator for posttraumatic stress disorder; specifying when a claim for posttraumatic stress disorder must be noticed; requiring certain employing agencies to provide specified mental health training; requiring the Department of Financial Services to adopt rules; declaring that the act fulfills an important state interest; providing an effective date.

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

Section 1. Section 112.18156, Florida Statutes, is created to read:

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

112.18156 911 public safety telecommunicators and crime scene investigators; special provisions for posttraumatic stress disorders.—

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

(a) "911 public safety telecommunicator" has the same meaning as in s. 401.465(1).

(b) "Advanced stage of decomposition" means the breaking down of soft tissue, skin, and hair, as well as muscle and connective tissue.

(c) "Crime scene investigator" means a forensic member of a law enforcement agency, government, or civilian crime laboratory whose primary responsibility is to document, identify, collect, or preserve forensic evidence relevant to a law enforcement, death, or natural disaster investigation, and whose primary responsibilities include, but are not limited to, collecting evidence such as fingerprints, footprints, tire tracks, blood and other biological fluids, fibers, and fire debris.

(d) "Directly witnessing" means to see or hear for oneself.

(e) "Mass killing" means three or more killings in a single incident.

(2) For purposes of this section and chapter 440, and notwithstanding ss. 440.093 and 440.151(2), posttraumatic stress disorder, as described in the Diagnostic and Statistical Manual

of Mental Disorders, Fifth Edition, published by the American Psychiatric Association, suffered by a 911 public safety telecommunicator or crime scene investigator is a compensable occupational disease within the meaning of s. 440.151 if both of the following apply:

(a) The posttraumatic stress disorder resulted from the 911 public safety telecommunicator or crime scene investigator acting within the course of his or her employment as provided in s. 440.091.

(b) The 911 public safety telecommunicator or crime scene investigator is examined and subsequently diagnosed with such disorder by a licensed psychiatrist who is an authorized treating physician as provided in chapter 440 due to one of the following events:

1. Directly witnessing a death, including a death due to suicide, that involved grievous bodily harm of a nature that shocks the conscience;

2. Directly witnessing the death of a minor;

3. Directly witnessing an injury, including an attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;

4. Directly witnessing an injury to a minor who subsequently dies before or upon arrival at a hospital emergency

department;

5. Verbally aiding a person seeking public safety assistance in the physical treatment of a minor who subsequently dies before or upon arrival at a hospital emergency department;

6. Verbally aiding a person seeking public safety assistance in the physical treatment of a person who subsequently dies during a state of emergency declared by the Governor and the person's death occurs because first responders cannot be dispatched;

7. Verbally aiding a person seeking public safety assistance in the physical treatment of an injury, including by attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;

8. Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence;

9. Seeing for oneself a deceased minor;

10. Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience; or

11. Seeing for oneself a decedent who is in an advanced stage of decomposition.

(3) The posttraumatic stress disorder must be demonstrated

by clear and convincing medical evidence.

(4) Benefits for a 911 public safety telecommunicator or crime scene investigator under this section:

(a) Do not require a physical injury to the 911 public safety telecommunicator or crime scene investigator.

(b) Are not subject to any of the following:

1. Apportionment due to a preexisting posttraumatic stress disorder.

2. Any limitation on temporary benefits under s. 440.093.

3. The 1-percent limitation on permanent psychiatric impairment benefits under s. 440.15(3).

(5) The time for notice of injury or death in cases of compensable posttraumatic stress disorder under this section is the same as in s. 440.151(6) and is measured from one of the qualifying events listed in paragraph (2)(b) or the diagnosis of the disorder, whichever is later. A claim under this section must be properly noticed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later.

(6) The employing agency of a 911 public safety telecommunicator or crime scene investigator must provide educational training related to mental health awareness, prevention, mitigation, and treatment.

(7) The Department of Financial Services shall adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience for the purposes of this

section.

Section 2. The Legislature determines and declares that this act fulfills an important state interest.

Section 3. This act shall take effect July 1, 2023.

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

HB 505

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 505 Insurance
SPONSOR(S): Berfield
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The bill makes the following changes regarding insurance:

- **Hurricane Modeling** – provides that a property insurer may use a weighted or straight average of two or more approved hurricane models in a rate filing.
- **Commission on Hurricane Loss Projection Methodology (Commission)** – provides that a designee of the Director of the Division of Emergency Management may be a member of the Commission in lieu of the Director.
- **Mitigation Credits in Residential Property Insurance Rate Filings** – allows residential property insurers to give mitigation credit for evaluation by, and compliance with, standards developed by an independent, not-for-profit, scientific research organization.
- **Automatic Withdrawal of Premium** – modifies the notice requirement for a change in the amount of premium by automatic bank withdrawal from an increase of any amount to increases greater than $10 and also changes the number of days' notice that must be given from 15 to 10 to match federal law.
- **Policy Documents** – revises notice requirements for certain limited-coverage automobile insurance policies.

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, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Commission on Hurricane Loss Projection Methodology

The Florida Commission on Hurricane Loss Projection Methodology (Commission) is a panel of experts created to provide "actuarially sophisticated guidelines as standards for projection of hurricane losses possible, given the current state of actuarial science."[1] The Commission consists of 12 members including the Director of the Division of Emergency Management (Director).[2] However, the Director has indicated that he is sometimes unavailable to attend the Commission's meetings and would like the discretion to send a designee to those meetings.

Effect of the Bill

The bill establishes that the Director may designate a full-time employee of the Division of Emergency Management to be a member of the Commission as a replacement for the Director.

Use of Hurricane Models in Residential Property Insurance Rate Filings

The law regarding the Office of Insurance Regulation's (OIR) review and approval of residential property insurance rate filings requires that a rate filing consider mitigation measures that policyholders undertake to reduce hurricane losses.[3] It sets forth the criteria under which OIR may disapprove rate filings, including disapproval of rates that it determines to be excessive, inadequate, or unfairly discriminatory.[4] The law also establishes criteria for the Commission's consideration, and approval, of hurricane loss models and prescribes how those models affect OIR's approval of property insurance rate filings.[5]

Effect of the Bill

The bill amends the parameters for OIR's approval or disapproval of rate filings by providing that, with respect to residential property insurance rate filings, the rate filing may use a modeling indication that is the weighted or straight average of two or more hurricane loss models found to be accurate or reliable by the Commission.

Mitigation Credits in Residential Property Insurance Rate Filings

Current law requires residential property insurers to include "positive and negative rate factors that reflect the manner in which building code enforcement in a particular jurisdiction addresses the risk of wind damage" in their rate filings that are filed with, and approved by, OIR.[6] Insurers utilize factors that statewide organizations develop to indicate how building code enforcement units evaluate risk in particular geographical areas.[7] However, these factors are often are flawed and not an accurate depiction of actual building code enforcement activity in a jurisdiction.

Since 2003, residential property insurers have been required to provide credits, discounts, and other rate differentials to reduce insurance premiums for properties with mitigation features.[8] Mitigation features are construction techniques used or items installed to protect a structure against windstorm

[1] S. 627.0628(1)(c), F.S.
[2] S. 627.0628(2)(b)4., F.S.
[3] S. 627.062(2)(j), F.S.
[4] S. 627.062(2)(b), F.S.
[5] Ss. 627.0628-627.06281, F.S.
[6] S. 627.0629(2)(b), F.S.
[7] *See, e.g.*, ISO Mitigation, *ISO's Building Code Effectiveness Grading Schedule (BCEGS)*, https://www.isomitigation.com/bcegs/ (last visited Mar. 1, 2023). BCEGS is a program that provides these rating factors.
[8] *See* s. 627.0629, F.S.

damage or loss.[9] Examples of mitigation features include hurricane shutters, a hip roof, or a specific type of roof covering.

Code-plus programs help property owners avoid or reduce damage caused by natural hazards and other risks by implementing additional levels of resilience to hazards beyond those required by building codes.[10] Presently, insurers are unable to submit rating plans for review and approval by OIR that include mitigation credits for those insureds that are evaluated by, and comply with, code-plus standards established by independent, not-for-profit, scientific research organizations.[11]

Effect of the Bill

The bill allows insurers to file a rating plan (plan) with OIR in which it offers additional windstorm mitigation credits based on standards established by an independent, not-for-profit, scientific research organization that meets the requirements of the rate filing statute.

Notification of Automatic Withdrawal of Insurance Premiums

Insurers issuing personal lines residential and commercial property policies are required to provide premium payment options for quarterly and semiannual payments. They may, but are not required to, offer monthly payment plans.[12] Insurers and policyholders may enter into automatic bank withdrawal agreements for paying insurance premiums.[13] Current law requires insurers to provide the policyholder with 15 days' advance written notice prior to any automatic bank withdrawal if the premium payment increases from the previous withdrawal period by any amount.

Federal law gives consumers the option of receiving notice of a change in an automatic bank withdrawal only when the withdrawal differs from the most recent withdrawal by more than an agreed-upon amount.[14] Federal law also only requires that a policyholder receive 10 days' notice as opposed to 15 days' notice before a change in the amount withdrawn.[15]

Effect of the Bill

The bill changes the written notice requirement of any increase in policy premiums to require the notice only if the increase in policy premiums results in the next automatic withdrawal being increased by more than $10. The bill also reduces the number of days' notice required before a change in a withdrawal from 15 days to 10 days to match federal law.

Limited Coverage Notice Requirements

Automobile insurance policies that do not contain coverage for bodily injury and property damage[16] must be stamped on the policy declarations page with the following language in a font larger than the largest font otherwise used in the declarations page (notice):

> THIS POLICY DOES NOT PROVIDE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE OR ANY OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH ANY FINANCIAL RESPONSIBILITY LAW.

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[9] *See id.*
[10] Whole Building Design Guide, *Code-Plus Program for Disaster Resistance*, https://www.wbdg.org/resources/code-plus-programs-disaster-resistance (last visited Mar. 1, 2023).
[11] *See, e.g.,* Insurance Institute of Business & Home Safety, https://ibhs.org/ (last visited Mar. 1, 2023).
[12] S. 627.4035(1)(a), F.S.
[13] S. 627.0665, F.S.
[14] 12 CFR 1005(10)(d).
[15] *Id.*
[16] S. 627.7276, F.S. These limited policies are typically issued to certain antique cars.

The stamping requirement is antiquated and prevents these types of policies from being delivered electronically.

Effect of the Bill

The bill eliminates the requirement that the notice be stamped on the declarations page of limited coverage automobile policies. Instead, the notice must accompany the declarations page and must be typed in a font at least as large as the font used in the declarations page. This change will allow these types of policies to be delivered electronically.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.062, F.S, relating to rate standards.

Section 2. Amends s. 627.0628, F.S., relating to Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.

Section 3. Amends s. 627.0629, F.S., relating to residential property insurance; rate filings.

Section 4. Amends s. 627.0665, F.S., relating to automatic bank withdrawal agreements; notification required.

Section 5. Amends s. 627.7276, F.S., relating to notice of limited coverage.

Section 6. Provides an effective date of July 1, 2023.

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 an unknown positive direct economic impact on the private sector through the application of mitigation credits to residential property insurance policies.

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 neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to insurance; amending s. 627.062, F.S.; revising requirements for residential property insurance rate filings; amending s. 627.0628, F.S.; authorizing a designee of the Director of Emergency Management to be a member of the Florida Commission on Hurricane Loss Projection Methodology; providing a requirement for such designee; amending s. 627.0629, F.S.; authorizing insurers to file with the Office of Insurance Regulation personal lines residential property insurance rating plans relating to windstorm mitigation construction standards; providing requirements for such filings; amending s. 627.0665, F.S.; revising the timeframe for notices from insurers to insureds of automatic bank withdrawal increases; specifying the increase threshold for such notices; amending s. 627.7276, F.S.; revising the requirements for the notice of certain automobile policies; providing an effective date.

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

Section 1. Paragraph (j) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

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

(2) As to all such classes of insurance:

(j) With respect to residential property insurance rate filings, the rate filing:

1. Must account for mitigation measures undertaken by policyholders to reduce hurricane losses.

2. May use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable pursuant to s. 627.0628.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 2. Paragraph (b) of subsection (2) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(2) COMMISSION CREATED.—

(b) The commission shall consist of the following 12 members:

1. The insurance consumer advocate.

2. The senior employee of the State Board of Administration responsible for operations of the Florida Hurricane Catastrophe Fund.

3. The Executive Director of the Citizens Property Insurance Corporation.

4. The Director of the Division of Emergency Management or the director's designee. The director's designee must be a full-time employee of the division.

5. The actuary member of the Florida Hurricane Catastrophe Fund Advisory Council.

6. An employee of the office who is an actuary responsible for property insurance rate filings and who is appointed by the director of the office.

7. Five members appointed by the Chief Financial Officer, as follows:

a. An actuary who is employed full time by a property and casualty insurer that was responsible for at least 1 percent of the aggregate statewide direct written premium for homeowner insurance in the calendar year preceding the member's appointment to the commission.

b. An expert in insurance finance who is a full-time member of the faculty of the State University System and who has a background in actuarial science.

c. An expert in statistics who is a full-time member of the faculty of the State University System and who has a background in insurance.

d. An expert in computer system design who is a full-time member of the faculty of the State University System.

e. An expert in meteorology who is a full-time member of the faculty of the State University System and who specializes in hurricanes.

8. A licensed professional structural engineer who is a full-time faculty member in the State University System and who has expertise in wind mitigation techniques. This appointment shall be made by the Governor.

Section 3. Subsection (9) is added to section 627.0629, Florida Statutes, to read:

627.0629 Residential property insurance; rate filings.—

(9) An insurer may file with the office a personal lines residential property insurance rating plan that provides justified premium discounts, credits, or other rate differentials based on windstorm mitigation construction standards developed by an independent, nonprofit scientific research organization, if such standards meet the requirements of this section. Such plan must describe the manner in which the insurer will document the existence of the mitigation features and premium discounts, credits, or other rate differentials created under such plan.

Section 4. Section 627.0665, Florida Statutes, is amended to read:

627.0665 Automatic bank withdrawal agreements; notification required.—Any insurer licensed to issue insurance in the state who has an automatic bank withdrawal agreement with

an insured party for the payment of insurance premiums for any type of insurance shall give the named insured at least 10 ~~15~~ days advance written notice of any increase in policy premiums which results in the next automatic bank withdrawal being increased by more than $10. Such notice must be provided before ~~prior to~~ any automatic bank withdrawal containing the ~~of an~~ increased premium.

Section 5. Section 627.7276, Florida Statutes, is amended to read:

627.7276 Notice of limited coverage.—

(1) An automobile policy that does not contain coverage for bodily injury and property damage must include a notice ~~be clearly stamped or printed to the effect~~ that such coverage is not included in the policy in the following manner:

"THIS POLICY DOES NOT PROVIDE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE OR ANY OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH ANY FINANCIAL RESPONSIBILITY LAW."

(2) This notice ~~legend~~ must accompany ~~appear on~~ the policy declarations ~~declaration~~ page ~~and on the filing back of the policy~~ and must be ~~printed~~ in a ~~contrasting color from that used on the policy and in~~ type size at least as large as ~~larger than~~ the ~~largest~~ type size used on the declarations page ~~in the text thereof, as an overprint or by a rubber stamp impression~~.

Section 6. This act shall take effect July 1, 2023.

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

INSURANCE & BANKING SUBCOMMITTEE

HB 505 by Rep. Berfield
Insurance

AMENDMENT SUMMARY
March 9, 2023

Amendment 1 by Rep. Berfield (Line 23): The amendment:

- Allows the Executive Director of Citizens Property Insurance to designate a person to serve on the Florida Commission on Hurricane Loss Projection Methodology in the executive director's place. The designee must be full-time employee with either actuarial science experience or senior operations management experience,
- Allows the electronic delivery of health insurance policy documents and removes requirements regarding paper insurance policy documents,
- Allows policyholders to type their intent to decline wind and contents coverage in their property insurance policies, rather than requiring them to write it in their own hand, as currently required, and
- Corrects a technical error made in a bill last year.

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 Berfield offered the following:

Amendment (with title amendment)

Remove lines 23-107 and insert:

Section 1. Paragraph (d) of subsection (2) of section 626.8411, Florida Statutes, is amended to read:

626.8411 Application of Florida Insurance Code provisions to title agents or agencies.—

(2) The following provisions of part I do not apply to title insurance agents or title insurance agencies:

(d) Section 626.172, except for paragraph (2)(e) ~~(f)~~ of that section, relating to agent in full-time charge.

Section 2. Paragraph (j) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(j) With respect to residential property insurance rate filings, the rate filing:

1. Must account for mitigation measures undertaken by policyholders to reduce hurricane losses.

2. May use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable pursuant to s. 627.0628.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 3. Paragraph (b) of subsection (2) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(2) COMMISSION CREATED.—

(b) The commission shall consist of the following 12 members:

1. The insurance consumer advocate.

2. The senior employee of the State Board of Administration responsible for operations of the Florida Hurricane Catastrophe Fund.

3. The Executive Director of the Citizens Property Insurance Corporation or the director's designee. The director's designee must be a full-time employee of the corporation with either actuarial science experience or senior operations management experience.

4. The Director of the Division of Emergency Management or the director's designee. The director's designee must be a full-time employee of the division.

5. The actuary member of the Florida Hurricane Catastrophe Fund Advisory Council.

6. An employee of the office who is an actuary responsible for property insurance rate filings and who is appointed by the director of the office.

7. Five members appointed by the Chief Financial Officer, as follows:

a. An actuary who is employed full time by a property and casualty insurer that was responsible for at least 1 percent of the aggregate statewide direct written premium for homeowner insurance in the calendar year preceding the member's appointment to the commission.

b. An expert in insurance finance who is a full-time member of the faculty of the State University System and who has a background in actuarial science.

c. An expert in statistics who is a full-time member of the faculty of the State University System and who has a background in insurance.

d. An expert in computer system design who is a full-time member of the faculty of the State University System.

e. An expert in meteorology who is a full-time member of the faculty of the State University System and who specializes in hurricanes.

8. A licensed professional structural engineer who is a full-time faculty member in the State University System and who has expertise in wind mitigation techniques. This appointment shall be made by the Governor.

Section 4. Subsection (9) is added to section 627.0629, Florida Statutes, to read:

627.0629 Residential property insurance; rate filings.—

(9) An insurer may file with the office a personal lines residential property insurance rating plan that provides justified premium discounts, credits, or other rate differentials based on windstorm mitigation construction standards developed by an independent, nonprofit scientific research organization, if such standards meet the requirements of this section. Such plan must describe the manner in which the

insurer will document the existence of the mitigation features and premium discounts, credits, or other rate differentials created under such plan.

Section 5. Section 627.0665, Florida Statutes, is amended to read:

627.0665 Automatic bank withdrawal agreements; notification required.—Any insurer licensed to issue insurance in the state who has an automatic bank withdrawal agreement with an insured party for the payment of insurance premiums for any type of insurance shall give the named insured at least 10 ~~15~~ days advance written notice of any increase in policy premiums which results in the next automatic bank withdrawal being increased by more than $10. Such notice must be provided before ~~prior to~~ any automatic bank withdrawal containing the ~~of an~~ increased premium.

Section 6. Section 1. Subsection (1) of section 627.421, Florida Statutes, is amended to read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed, delivered, or electronically transmitted to the insured or to the person entitled thereto not later than 60 days after the effectuation of coverage. Notwithstanding any other provision of law, an insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including,

but not limited to, policies, endorsements, notices, or documents, by electronic means in lieu of delivery by mail. Electronic transmission of a policy, related notices, and other documents for individual and group health insurance policies or certificates of coverage pursuant to parts VI and VII of this chapter, respectively; health maintenance contracts or certificates of coverage pursuant to part I of chapter 641; prepaid limited health service contracts pursuant to part I of chapter 636; and ~~for~~ commercial risks, including, but not limited to, workers' compensation and employers' liability, commercial automobile liability, commercial automobile physical damage, commercial lines residential property, commercial nonresidential property, farmowners insurance, and the types of commercial lines risks set forth in s. 627.062(3)(d), constitutes delivery to the insured or to the person entitled to delivery, unless the insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. ~~Electronic transmission shall include a notice to the insured or to the person entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to the insured or to the person entitled to delivery at his or her request.~~

Section 7. Paragraph (a) of subsection (2) and subsection (3) of section 627.712, Florida Statutes, are amended to read:

627.712 Residential windstorm coverage required; availability of exclusions for windstorm or contents.—

(2) A property insurer must make available, at the option of the policyholder, an exclusion of windstorm coverage.

(a) The coverage may be excluded only if:

1. When the policyholder is a natural person, the policyholder personally writes or types and provides to the insurer the following statement ~~in his or her own handwriting~~ and signs his or her name, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not."

2. When the policyholder is other than a natural person, the policyholder provides to the insurer on the policyholder's letterhead the following statement that must be signed by the policyholder's authorized representative and dated: "...(Name of entity)... does not want the insurance on its ...(type of structure)... to pay for damage from windstorms. ...(Name of entity)... will be responsible for these costs. ...(Name of entity's)... insurance will not."

(3) An insurer issuing a residential property insurance policy, except for a condominium unit owner policy or a tenant

policy, must make available, at the option of the policyholder, an exclusion of coverage for the contents. The coverage may be excluded only if the policyholder personally writes or types and provides to the insurer the following statement ~~in his or her own handwriting~~ and signs his or her signature, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my (home/mobile home) to pay for the costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not."

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

Remove lines 2-16 and insert:

An act relating to insurance; amending s. 626.8411, F.S.; correcting a cross reference; amending s. 627.062, F.S.; revising requirements for residential property insurance rate filings; amending s. 627.0628, F.S.; authorizing the appointment of two members of the Florida Commission on Hurricane Loss Projection Methodology; providing requirements for such designees; amending s. 627.0629, F.S.; authorizing insurers to file with the Office of Insurance Regulation personal lines residential property insurance rating plans relating to windstorm mitigation construction standards; providing requirements for such filings; amending s. 627.0665, F.S.; revising the timeframe for notices from insurers to insureds of

automatic bank withdrawal increases; specifying the increase threshold for such notices; amending s. 627.421, F.S.; allowing electronic delivery of insurance policy documents for certain health insurance policies, certificates of coverage, or contracts; eliminating requirements for paper delivery of certain insurance policies; amending s. 627.712, F.S.; allowing insurance policyholders to type the intent to decline certain coverage instead of handwriting it;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 607 Money Services Businesses
SPONSOR(S): Steele
TIED BILLS: **IDEN./SIM. BILLS:** SB 532

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

SUMMARY ANALYSIS

The Office of Financial Regulation's (OFR) Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. MSB applicants must submit fingerprints to the Florida Department of Law Enforcement (FDLE) for a state criminal history background check, and the fingerprints must be submitted to the Federal Bureau of Investigation (FBI) for a federal criminal history background check. The OFR must review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.

Access to the FBI's criminal history record information (CHRI) system is authorized for fingerprints pursuant to ch. 560, F.S. However, in order to gain access to CHRI data for applicants to the recently created Financial Technology Sandbox, FDLE sent correspondence to the FBI's Criminal Justice Information Law Unit (CJILU) to obtain an Originating Agency Identifier (ORI). The ORI validates legal authorization to obtain criminal justice information and identifies the specific agency requesting the information. CJILU responded to this request stating that the MSB licensing statute does not qualify for access to CHRI data because the terms "responsible person" and "control of a money services business", as used in that statute to specify persons who are required to submit fingerprints, are overly broad and, thus, do not sufficiently define the categories of people subject to the background check. To address this issue the Florida Legislature passed Chapter 2022-135, Laws of Florida, which created the term "control person" to replace the use of "officer" and "responsible person," as well as various other terms, throughout ch. 560 F.S. However, this new "control person" term was still too broad for CJILU's approval, and thus OFR still lacks the ORI approval from CJILU.

The CJILU acknowledged that MSB fingerprinting was previously approved by the CJILU, and that the FBI will continue to honor fingerprints submitted for MSB licensure. However, the CJILU has placed MSB fingerprinting on a grace period of unspecified length in order to allow Florida to amend MSB fingerprinting statutes such that the statutes specifically identify the categories of licensees or employees falling within the purview of the statutes; CJILU will not allow fingerprinting of additional categories of applicants (i.e., those applying under the Financial Technology Sandbox) during this grace period.

The bill revises the term "control person" to create a more definite list of individuals who are subject to required fingerprinting to better meet the requirements of federal law while also ensuring appropriate consumer protection.

The bill has no fiscal impact on the state, local governments, or the private sector.

The bill has an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] The Division of Consumer Finance within the OFR licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S.

An MSB is any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as the following:[2]

- *Payment instrument seller*: A payment instrument seller sells, issues, provides, or delivers payment instruments.[3]
- *Foreign currency exchanger*: A foreign currency exchanger exchanges, for compensation, currency[4] of the United States or a foreign government to currency of another government.[5]
- *Check casher*: A check casher sells, issues, provides, or delivers currency[6] in exchange for payment instruments[7] received, except travelers checks.[8]
- *Money transmitter*: A money transmitter receives currency,[9] monetary value,[10] or payment instruments[11] for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.[12]

An MSB may engage in deferred presentment transactions, commonly known as "payday loans", by filing a declaration of intent to engage in deferred presentment transactions with the OFR.[13] A money transmitter or payment instrument seller may engage in the activities authorized for check cashers and foreign currency exchangers without paying additional licensing fees.[14] State and federally chartered depository institutions, such as banks and credit unions, are exempt from licensure as an MSB.[15]

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[1] S. 20.121(3)(a)2., F.S.
[2] S. 560.103(23), F.S.
[3] S. 560.103(30) and (34), F.S. The term "payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. S. 560.103(29), F.S.
[4] The term "currency" means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. S. 560.103(12), F.S.
[5] S. 560.103(18), F.S.
[6] Definition of "currency", *supra* note 4.
[7] Definition of "payment instrument", *supra* note 3.
[8] S. 560.103(6) and (34), F.S.
[9] Definition of "currency", *supra* note 4.
[10] The term "monetary value" means a medium of exchange, whether or not redeemable in currency. S. 560.103(22), F.S.
[11] Definition of "payment instrument", *supra* note 3.
[12] S. 560.103(24), F.S.
[13] S. 560.403, F.S.
[14] S. 560.204(2), F.S.
[15] S. 560.104, F.S.

An applicant for an MSB license must submit the following to the OFR:

- An application;[16]
- A nonrefundable application fee;[17]
- A copy of the applicant's written anti-money laundering program required by federal law;[18] and
- Fingerprints for the following individuals:[19]
  - A person who holds the title of president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, or compliance officer for a money services business.[20]
  - A person who holds any of the officer positions named in the money services business's governing documents.[21]
  - A person who holds any position named by the money services business's liability insurance coverage for directors and officers, if the business has such coverage.[22]
  - A director of the money services business's board of directors.[23]
  - A person who directs the affairs of a money services business or who participates in, or has authority to participate in, the major policy making functions of a money services business, regardless of whether the person has an official title or receives a salary or other compensation.[24]
  - For a money services business that is a corporation, all shareholders that, directly or indirectly, own 25 percent or more or that have the power to vote 25 percent or more of a class of voting securities.[25]
  - For a money services business that is a partnership, all general partners, and those limited or special partners that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the partnership's capital.[26]
  - For a money services business that is a limited liability company, all managers, and those members that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the limited liability company's capital.[27]

Fingerprints are not required if the applicant is a publicly traded corporation.[28]

If fingerprints are required, the fingerprints must be submitted for live-scan processing.[29] Live-scan is a device that electronically takes fingerprints and other information and uploads that information to the Florida Department of Law Enforcement (FDLE) who, in turn, sends the fingerprints to the Federal Bureau of Investigation (FBI) for a fingerprint background check.[30] The fingerprints may be submitted through a third-party vendor authorized by FDLE to provide live-scan fingerprinting.[31] FDLE must conduct the state criminal history background check, and a federal criminal history background check must be conducted through the FBI.[32]

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[16] S. 560.141(1)(a), F.S.
[17] Ss. 560.141(1)(b) and 560.143, F.S.
[18] S. 560.141(d), F.S.
[19] Ss. 560.141(c) and 560.127, F.S.
[20] S. 560.103(10)(a), F.S.
[21] S. 560.103(10)(b), F.S.
[22] S. 560.103(10)(c), F.S.
[23] S. 560.103(10)(d), F.S.
[24] S. 560.103(10)(e), F.S.
[25] S. 560.103(10)(f), F.S.
[26] S. 560.103(10)(g), F.S
[27] S. 560.103(10)(h), F.S
[28] S. 560.141(1)(c)6., F.S.
[29] S. 560.141(1)(c), F.S.
[30] Florida Live Scan, https://livescanflorida.com/#:~:text=LiveScan%20is%20a%20device%20that,for%20a%20fingerprint%20background%20check. (last visited Feb. 27, 2023).
[31] S. 560.141(1)(c)1., F.S.
[32] S. 560.141(1)(c)2., F.S.

The costs of fingerprint processing, including the cost of retaining the fingerprints, must be borne by the person subject to the background check.[33] The OFR must review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.[34]

An MSB license must be renewed every two years.[35]

Once licensed, an MSB is required to report any change in control persons.[36] If any person, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in an MSB, such person or group must submit a new application for licensure at least 30 days before such purchase or acquisition.[37] Such a change of control application is not required where the person or group of persons has previously complied with applicable licensing provisions, provided that they are currently affiliated with the MSB, or where the person or group of persons is currently licensed with the OFR as an MSB.[38] A change of control application must be accompanied by the payment of an initial licensing fee[39] and a fee per branch or authorized vendor[40], up to a maximum of $20,000.[41]

As previously mentioned, when fingerprinting is required, the fingerprints must be submitted to FDLE for a state and federal criminal history background check. The federal background check is conducted through the FBI's criminal history record information (CHRI) system. Federal law Pub. L. 92-544 authorizes the exchange of CHRI data with officials of state and local governmental agencies for licensing and employment purposes.[42] One of the primary purposes for enacting Pub. L. 92-544 was to establish a national policy with adequate sanctions and administrative safeguards regarding the dissemination of the FBI's CHRI data to state and local governments for non-criminal justice licensing and employment purposes.[43] The FBI, with the assistance of the United States Department of Justice, has determined the parameters of Pub. L. 92-544.[44] The criteria for granting access to the FBI's CHRI data are as follows:

- The state's statute requiring fingerprinting must exist as a result of a legislative enactment;
- It must require the fingerprinting of applicants who are to be subjected to a national criminal history background check;
- It must, expressly ("submit to the FBI") or by implication ("submit for a national check"), authorize the use of FBI records for the screening of applicants;
- It must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding over breadth;
- It must not be against public policy; and
- It may not authorize receipt of the CHRI data by a private entity.

Access to the FBI's CHRI data is authorized for fingerprints pursuant to ch. 560, F.S. However, in order to gain access to CHRI data for applicants to the recently created Financial Technology Sandbox under s. 559.952, F.S., created in the 2020 legislative session,[45] FDLE sent correspondence to the FBI's

[33] S. 560.141(1)(c)4., F.S.
[34] S. 560.141(1)(c)5., F.S.
[35] Ss. 560.141(2) and 560.142, F.S.
[36] S. 560.126(3), F.S.
[37] S. 560.126(3)(a), F.S.; r. 69v-560.201(4), F.A.C.
[38] S. 560.126(3)(c), F.S.; r. 69v-560.201(6), F.A.C.
[39] Fees are determined by whether the MSB is licensed under Part II or Part III of Chapter 560. Initial licensing fees under Part II licenses require a $375 license application fee per § 560.143(1)(a). Part III licenses require a $188 license application fee per § 560.143(b).
[40] Both the per branch fee and the authorized vendor fee are $38. § 560.143(1)(c); § 560.143(1)(d).
[41] Ss. 560.126(3) and 560.143(1), F.S.
[42] 20 C.F.R. § 20.33.
[43] Federal Bureau of Investigation, *Testimony of Dennis Lormel Before the House Financial Services Committee (Mar. 06, 2001)*, https://archives.fbi.gov/archives/news/testimony/fbis-perspective-on-criminal-history-record-information-checks-on-individuals-conducting-insurance-business (last visited Feb. 27, 2023).
[44] Email from Heather R. Postlethwait, FBI Office of the General Counsel, to Nathan Pate, Florida Department of Law Enforcement, RE: ORI Request - Florida Office of Financial Regulation (Mar. 22, 2021).
[45] Ch. 2020-161, Laws of Fla.

Criminal Justice Information Law Unit (CJILU) to obtain an Originating Agency Identifier (ORI). The ORI validates legal authorization to obtain criminal justice information and identifies the specific agency requesting the information. CJILU reviewed s. 559.952, F.S., which derives its fingerprinting authority from s. 560.141, F.S.

CJILU responded to this request stating that s. 560.141, F.S., does not qualify for access to CHRI data because the terms "responsible person" and "control of a money services business" as used in s. 560.141, F.S., are overly broad and, thus, do not sufficiently define the categories of people subject to the background check.[46] In 2022, the Legislature passed a bill to address this issue by creating the term "control person" to replace the use of "officer" and "responsible person" throughout ch. 560 F.S.[47] This solution sought to address the concerns of CJILU by narrowing the scope of applicable parties. However, CJILU found that the revised statute was still too broad.

The CJILU acknowledged that MSB fingerprinting was previously approved by the CJILU and that the FBI will continue to honor fingerprints submitted for MSB licensure.[48] However, the CJILU has placed MSB fingerprinting on a grace period of unspecified length in order to allow Florida to amend MSB fingerprinting statutes such that the statutes specifically identify the categories of licensees or employees falling within the purview of the statutes. CJILU will not allow fingerprinting of additional categories of applicants (i.e., those applying under the Financial Technology Sandbox) during this grace period.[49]

Effect of the Bill

The bill amends the term "control person" to identify the specific categories of licensees or employees falling within the purview of the statute.

The bill requires the following MSB-related "control persons" to be fingerprinted for the background check:

- A person who holds any of the officer, manager, or managing member positions named in the money services business's governing documents.[50]
- A director of the money service's business's board of directors.
- A person with a 25% or greater transferable interest in a money services business that is either a corporation or foreign corporation.[51]
- A person with a 25% or greater transferable interest in a money services business that is either a limited partnership, limited liability limited partnership, foreign limited partnership, or foreign limited liability limited partnership.[52]
- A person with a 25% or greater transferable interest in a money services business that is either a limited liability company or a foreign limited liability company.[53]

The bill provides an effective date of July 1, 2023.

[46] Email from Heather R. Postlethwait, *supra* note 44.
[47] Chapter 2022-135, Laws of Fla.
[48] *Id*.
[49] *Id*.
[50] Governing documents is defined as including bylaws, articles of incorporation or organization, partnership agreements, shareholder agreements, and management or operating agreements
[51] As defined in s. 607.01401
[52] As defined in s. 620.1102
[53] As defined in s. 605.0102

B. SECTION DIRECTORY:

Section 1. Amends s. 560.103, F.S., relating to definitions.

Section 2. Provides an effective date of July 1, 2023.

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:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to money services businesses; amending s. 560.103, F.S.; revising the definition of the term "control person" for purposes of ch. 560, F.S.; defining the term "governing documents"; providing an effective date.

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

Section 1. Subsection (10) of section 560.103, Florida Statutes, is amended to read:

560.103 Definitions.—As used in this chapter, the term:

(10) "Control person" means any of the following:

(a) A person who holds the title of president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, or compliance officer for a money services business.

(b) A person who holds any of the officer, manager, or managing member positions named in the money services business's governing documents. As used in this paragraph, the term "governing documents" includes bylaws, articles of incorporation or organization, partnership agreements, shareholder agreements, and management or operating agreements.

(c) ~~A person who holds any position named by the money services business's liability insurance coverage for directors~~

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

~~and officers, if the business has such coverage.~~

~~(d)~~ A director of the money services business's board of directors.

~~(e) A person who directs the affairs of a money services business or who participates in, or has authority to participate in, the major policymaking functions of a money services business, regardless of whether the person has an official title or receives a salary or other compensation.~~

(d)~~(f)~~ For a money services business that is a corporation or a foreign corporation, as those terms are defined in s. 607.01401, each person who is a 25 percent or greater interest holder as that term is defined in s. 607.01401(44)(a)~~, all shareholders that, directly or indirectly, own 25 percent or more or that have the power to vote 25 percent or more of a class of voting securities~~.

(e)~~(g)~~ For a money services business that is a limited partnership, limited liability limited partnership, foreign limited partnership, or foreign limited liability limited partnership as those terms are defined in s. 620.1102, each person who has a 25 percent or greater transferable interest as that term is defined in s. 620.1102 ~~all general partners, and those limited or special partners that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the partnership's capital~~.

(f)~~(h)~~ For a money services business that is a limited

liability company or a foreign limited liability company, as those terms are defined in s. 605.0102, each person who is a 25 percent or greater interest holder as that term is defined in s. 605.0102(31)(f)~~, all managers, and those members that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the limited liability company's capital~~.

Section 2. This act shall take effect July 1, 2023.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 881 My Safe Florida Home Program
SPONSOR(S): LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** SB 748

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

SUMMARY ANALYSIS

The My Safe Florida Home (MSFH) Program was created in 2006, within the Department of Financial Services (DFS), with the intent that the Program provide inspectors to perform inspections of site-built, single-family, residential properties (inspections), and mitigation grants (grants) to eligible applicants. The purpose of the inspections is to determine: what mitigation measures are needed; what premium discounts might be available; and what improvements to existing residential properties were needed to reduce the properties' susceptibility to hurricane damage.

The purpose of the grants is to retrofit single-family homes to make them less vulnerable to hurricane damage. To be eligible for a grant, certain criteria had to be met, including having a homestead exemption and a maximum insured value of $300,000. Improvements that could be made using grant funds included opening protection, exterior doors, including garage doors, and secondary water barrier for roofs. The MSFH received $250 million in appropriations for the Fiscal Year 2006-2007, but was not funded again until 2022.

During the 2022D Session, the Legislature renewed the funding for the MSFH Program by appropriating $150 million in nonrecurring funds from General Revenue for the 2022-2023 fiscal year. Between May 2022 and February 2023, 16,724 mitigation inspections were completed and 2,979 grant applications were approved. The Legislature also changed the eligibility criteria for grants to allow for homeowners with homes valued up to $500,000.

This bill makes various changes to the statutory framework for the MSFH Program, including changes to inspection and grant eligibility requirements, program management, and technical, conforming, and statutory structure. The bill requires that eligible properties be homesteaded. The bill also allows owners of townhomes to be eligible for inspections and grants.

The bill removes the designation of a specific portion of the grant funds for low-income recipients, but increases the overall grant award for low-income recipients from $5,000, to $10,000. The bill makes the MSFH Program statewide instead of limited to homes in the wind-borne debris region. The bill also eliminates two types of home improvements from the list of those home improvements for which MSFH Program grant funds may be used because they are no longer recognized by the Florida Building Code.

The bill has no impact on local or state government revenues or expenditures. DFS has filed an amended legislative budget request for MSFH Program funding needs. It will likely have a positive direct economic impact on the private sector.

The bill is effective on July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2006, the Legislature created the My Safe Florida Home (MSFH) Program within the Department of Financial Services (DFS), with the intent that the Program provide trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties (mitigation inspections), and grants to eligible applicants, subject to funding availability.[1] The MSFH Program was to "develop and implement a comprehensive and coordinated approach for hurricane damage mitigation."[2] The MSFH program allowed DFS to undertake a public outreach and advertising campaign to inform consumers of the availability, and benefits, of the mitigation inspections and grants.[3] It required the development of brochures for distribution to general contractors, roofing contractors, and real estate brokers and sales associates to explain the benefits of residential hurricane damage mitigation to homeowners.[4]

Hurricane Mitigation Inspections

The purpose of the mitigation inspections was to determine:

- What mitigation measures were needed;
- What insurance premium discounts might have been available; and
- What improvements to existing residential properties were needed to reduce the properties' susceptibility to hurricane damage.[5]

The mitigation inspections were to include, at a minimum:

- A report that summarized the results and identified recommended improvements the homeowner could take to mitigate hurricane damage.
- A range of cost estimates regarding the recommended mitigation improvements.
- Insurer-specific information regarding premium discounts correlated to current and recommended hurricane mitigation improvements.[6]

DFS was required to maintain a list of hurricane mitigation inspectors who were authorized to conduct the mitigation inspections for the MSFH Program.[7] DFS entered contracts to provide mitigation inspections with wind certification entities who, at a minimum used hurricane mitigation inspectors who:

- Were certified building inspectors;
- Were licensed as general or residential contractors;
- Were licensed and professional engineers and had passed the appropriate equivalency test of the building code training program;
- Were licensed as a professional architect; or
- Had at least two years of experience in residential construction or residential building inspection and had received specialized training in hurricane mitigation procedures.[8]

Mitigation Grants

The purpose of the mitigation grants was to retrofit single-family homes to make them less vulnerable to hurricane damage.[9] To be eligible for a grant, the following criteria must have been met:

[1] S. 215.5586, F.S.
[2] *Id.*
[3] S. 215.5586(3), F.S.
[4] S. 215.5586(7), F.S.
[5] S. 215.5586(1)(a), F.S.
[6] *Id.*
[7] S. 215.55186(6), F.S.
[8] S. 215.5586(1)(b), F.S.
[9] S. 215.5586(2), F.S.

- The homeowner must have had a homestead exemption on the home to be retrofitted;
- The home must have had an insured value of $300,000 or less, unless the homeowner was classified as a low-income person;
- The home must have undergone an acceptable hurricane mitigation inspection after May 1, 2007;
- The home must have been located in the "wind-borne debris region" as defined in the International Building Code; and
- The building permit application for initial construction of the home must have been made before March 1, 2002.[10]

In addition, the homeowner had to match the grant award on a dollar-for-dollar basis up to $10,000, for the actual cost of the mitigation project, and the state's contribution could not exceed $5,000.[11] Low-income homeowners were eligible for grants of up to $5,000, and were not required to provide a matching amount to receive a grant.[12] Matching fund grants were also available to local governments and nonprofit entities for projects to reduce hurricane damages to single-family homes.[13]

Grants could be used on previously-inspected existing structures or on rebuilds.[14] If recommended by a hurricane mitigation inspection, grants could be used for the following improvements:

- Opening protection.
- Upgrading exterior doors, including garage doors.
- Bracing gable ends.
- Reinforcing roof-to-wall connections.
- Improving the strength of roof-deck attachments.
- Upgrading roof coverings from code to code plus.
- Installing secondary water barrier for roofs.[15]

DFS was required to issue an annual report on the activities of the MSFH Program that accounted for the use of any appropriated state funds, the number of inspections requested and performed, the number of grant applications received, and the number and value of grants approved.[16]

The MSFH Program was appropriated $250 million in Fiscal Year 2006-07.[17] As of May 2009, approximately $93 million in MSFH grants were allocated to 32,000 homes, and approximately 400,000 homes received a MSFH home inspection.[18] DFS requested that Risk Management Solutions (RMS), conduct an impact analysis of the MSFH program, and RMS released a report of the impact analysis on May 14, 2009 (report).[19] In the report, RMS concluded that the MSFH grants were beneficial to the State of Florida, individual homeowners, and the insurance industry.[20] RMS indicated that the predicted reduction in loss as a result of the grant projects completed far exceeded the grant money spent.[21] While the MSFH Program was never repealed from law, additional funding was not provided until May 2022.

[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Rebuilds were defined as site-built, single-family dwellings under construction to replace homes that were destroyed or significantly damaged by hurricanes and deemed unlivable by a regulatory authority. S. 215.5586(2)(e), F.S.
[15] S. 215.5586(2)(e), F.S.
[16] S. 215.5586(10), F.S.
[17] Risk Management Solutions, *Analyzing the Effects of the My Safe Florida Home Program on Florida Insurance Risk*, May 14, 2009, https://www.ipcc.ch/apps/njlite/srex/njlite_download.php?id=5036 (last visited Mar. 2, 2023).
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

2022 Renewal of the MSFH Program

During the 2022D Special Session, the Legislature passed a property insurance bill (SB 2-D), in which it renewed the funding for the MSFH Program by appropriating $150 million in nonrecurring funds from General Revenue (GR) to DFS for the Program for the 2022-2023 fiscal year. The funds appropriated were allocated as follows:

- $115 million for mitigation grants.
- $25 million for hurricane mitigation inspections.
- $4 million for education and consumer awareness.
- $1 million for public outreach for contractors and estate brokers and sales associates.
- $5 million for administrative costs.

SB 2-D reappropriated any unexpended balance of funds from the appropriation remaining on June 30, 2023, to DFS for the 2023-2024 fiscal year to be used for the MSFH Program. The appropriation will expire on October 1, 2024. SB 2-D gave DFS the authority to adopt emergency rules to implement the MSFH Program.

SB 2-D made additional modifications to the MSFH Program. It required that an application for a mitigation grant include a provision that requires an applicant to make his or her home available for inspection once a mitigation project is completed. The bill changed the monetary limits for eligibility for mitigation grants so that homes with an insured value of $500,000, or less, qualify for the program.

SB 2-D required that homes that receive mitigation grants have undergone home mitigation inspections after July 1, 2008, and have received permits for initial construction before January 1, 2008. The homeowner must also match grant funds on the basis of $1 from the homeowner for every $2 provided by the state up to a maximum state contribution of $10,000 towards the actual cost of the mitigation project undertaken on the eligible home.

The bill enhanced the reporting requirements for DFS under the MSFH Program by requiring that the report include the following received by homeowners from insurers as a result of the mitigation funded by the program:

- The average annual amount of insurance premium discounts; and
- The total annual amount of insurance premium discounts.

2022 MSFH Program Implementation

Following the passage of SB 2-D, DFS procured a vendor to administer the MSFH Program, qualified inspectors to conduct mitigation inspections, and qualified contractors who agreed to provide mitigation repairs and retrofitting under the grant portion of the Program.[22] DFS compiled a list of approved vendors that homeowners participating in the MSFH Program may choose for inspections and mitigation work.[23]

On November 18, 2022, a web-based application for homeowners to request mitigation inspections and grant funds went live.[24] Between May 26, 2022 and February 28, 2023, 16,724 mitigation inspections were completed and 2,979 grant applications were approved.[25]

Inspectors completing mitigation inspections under the MSFH Program must complete the Uniform Mitigation Verification Inspection Form (Inspection Form), as revised by the Office of Insurance Regulation on January 12, 2023.[26] The mitigation inspection report provided to the homeowner includes the completed Inspection Form, as well as the information already required by statute,[27] including:

[22] Florida Department of Financial Services, Agency Analysis of 2023 House Bill 881, p. 1 (Mar. 1, 2023).
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] S. 215.5586(1)(a), F.S.

- A summary of the results of the mitigation inspection identifying recommended improvements a homeowner may undertake;
- A range of cost estimates regarding the recommended improvements; and
- Estimated property insurance premium discounts based on the mitigation measures the homeowner has completed.[28]

Effect of the bill

The bill makes various changes to the statutory framework for the MSFH Program, including inspection and grant eligibility requirement changes; program management changes; and technical, conforming, and statutory-restructuring changes.

Inspection and Grant Eligibility Requirements

The bill limits single-family home eligibility for mitigation inspections to homesteaded properties.[29] The bill allows owners of townhomes to apply for mitigation inspections and grants by including townhomes in the relevant definition of single-family, residential property.[30]

The bill removes the designation of a specific portion of the grant funds for low-income recipients without reducing funding, but increases the overall grant award for low-income recipients from $5,000 to $10,000. The bill broadens geographic eligibility to include otherwise in eligible homes outside the wind-borne debris region. This makes the program statewide.[31]

The bill removes outdated elements from the home improvements list for which MSFH Program grant funds may be used.[32] Those home improvements are no longer recognized by the Florida Building Code.

Project Management

The bill requires home inspectors to be licensed, in addition to certified, to conform with other statutory chapters. The bill revises home inspector training/experience requirements. The bill gives DFS the authority and a direction to establish objective, reasonable criteria for prioritizing inspection applications. The bill removes the requirement that the Legislative Budget Commission (LBC) review and approve all MSFH Program contracts valued at $1 million or more.[33]

Technical, Conforming, and Statutory Restructuring Changes

The bill clarifies that hurricane mitigation inspectors conducting mitigation inspections for the MSFH Program must undergo a level II background check, which is a fingerprint-based background check. It consolidates statutory language related to education and consumer awareness, and public outreach for contractors, real estate brokers, and sales associates. It also makes other technical and conforming changes.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.5586, F.S., relating to My Safe Florida Home Program.

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[28] Department of Financial Services, *supra* note 26, at 2.
[29] This requirement was already in place for the grant portion of the MSFH Program under S. 215.5586(2), F.S.
[30] Under s. 481.203(16), F.S., a townhouse is defined as a single-family dwelling unit not exceeding three stories in height which is constructed in a series or group of attached units with property lines separating such units.
[31] *See* Fiscal Comments.
[32] These elements are bracing of gable ends and upgrading of roof coverings from code to code plus.
[33] The LBC is composed of seven members of the House of Representatives and seven members of the Senate. It meets at least quarterly throughout the year and its powers and duties include:
- Reviewing and approving or disapproving budget amendments recommended by the Governor or Chief Justice of the Florida Supreme Court.
- Developing the long-range financial outlook described in s. 19, Art. III of the State Constitution.
- Exercising all other powers and performing all other duties prescribed by the Legislature. S. 11.910(6), F.S.

Section 2. Reenacts s. 215.5588, F.S., relating to Florida Disaster Recovery.

Section 3. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that homes that participate in the MSFH Program receive mitigation credits under their insurance policies and are less exposed to risk as a result of mitigation retrofitting using grant funds, the MSFH Program will have a positive direct economic impact on homeowners. Hurricane mitigation contractors may also see an increase in project activity.

D. FISCAL COMMENTS:

The bill increases the number of homeowners that are eligible for the MSFH Program, but does not include an appropriation beyond the $150 million in nonrecurring funds from GR to DFS appropriated in May 2022. Without additional funds being appropriated for the MSFH Program, the expanded eligibility may cause funds to run out earlier than originally expected. However, DFS has submitted an amended legislative budget request to ask Legislature for an additional $100 million for the mitigation grants portion of the MSFH Program.[34] DFS anticipates that the $115 million allocated for the mitigation grants will be exhausted within the 2022-2023 fiscal year without the additional funding.[35]

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:

[34] DFS Legislative Budget Request, *Expenditures by Issue and Appropriation Category*, http://floridafiscalportal.state.fl.us/Document.aspx?ID=25277&DocType=PDF (last visited Mar. 2, 2023).
[35] *Id.*

None.

B. RULE-MAKING AUTHORITY:

DFS has existing rulemaking authority regarding the MSFH Program. However, the bill provides DFS with additional authority and a direction to establish objective, reasonable criteria for prioritizing inspection applications. It is unclear if DFS is given sufficient guidelines to implement this authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the My Safe Florida Home Program; amending s. 215.5586, F.S.; providing that licensed, rather than certified, inspectors are to provide hurricane mitigation inspections on site-built, single-family, residential properties that have been granted a homestead exemption; specifying that townhouses are included in such properties; revising the information provided to homeowners as part of a hurricane mitigation inspection; revising the hurricane mitigation inspectors that may be selected by the Department of Financial Services to provide hurricane mitigation inspections; deleting a provision requiring the department to implement a certain quality assurance program; authorizing the department to establish specified criteria for prioritizing inspection applications; revising the criteria for mitigation grant eligibility for homeowners; deleting a provision that subjects mitigation projects to random reinspection for a specified timeframe; revising the improvements for which mitigation grants may be used; revising the amount low-income homeowners may receive from the department under the grant program; deleting a provision authorizing low-income homeowners to use grant funds for specified purposes;

deleting a requirement that the department establish specified criteria for prioritizing grant applications; authorizing, rather than requiring, the program to develop and distribute certain brochures to specified persons; deleting a provision requiring certain contracts entered into by the department to be reviewed and approved by the Legislative Budget Commission; requiring the department to develop a certain quality assurance and reinspection program; revising the contents of the annual report the department is required to deliver to the Legislature; conforming provisions to changes made by the act; making technical changes; reenacting s. 215.5588(3), F.S., relating to the Florida Disaster Recovery Program, to incorporate the amendments made to s. 215.5586, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 215.5586, Florida Statutes, is amended to read:

215.5586 My Safe Florida Home Program.—There is established within the Department of Financial Services the My Safe Florida Home Program. The department shall provide fiscal

accountability, contract management, and strategic leadership for the program, consistent with this section. This section does not create an entitlement for property owners or obligate the state in any way to fund the inspection or retrofitting of residential property in this state. Implementation of this program is subject to annual legislative appropriations. It is the intent of the Legislature that the My Safe Florida Home Program provide licensed ~~trained and certified~~ inspectors to perform inspections for owners of site-built, single-family, residential properties and grants to eligible applicants as funding allows. The program shall develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that may include the following:

(1) HURRICANE MITIGATION INSPECTIONS.—

(a) Licensed ~~Certified~~ inspectors are to provide home ~~home-retrofit~~ inspections of site-built, single-family, residential properties for which a homestead exemption has been granted, ~~property may be offered~~ to determine what mitigation measures are needed, what insurance premium discounts may be available, and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. The term "single-family, residential property" includes those properties defined as townhouses in s. 481.203.

(b) The Department of Financial Services shall contract with wind certification entities to provide hurricane mitigation

inspections. The inspections provided to homeowners, at a minimum, must include:

1. A home inspection and report that summarizes the results and identifies recommended improvements a homeowner may take to mitigate hurricane damage.

2. A range of cost estimates regarding the recommended mitigation improvements.

3. ~~Insurer-specific~~ Information regarding estimated premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

(c) ~~(b)~~ To qualify for selection by the department as a wind certification entity to provide hurricane mitigation inspections, the entity must ~~shall~~, at a minimum, meet the following requirements:

1. Use hurricane mitigation inspectors who are licensed or certified as:

a. ~~Are certified as~~ A building inspector under s. 468.607;

b. ~~Are licensed as~~ A general, building, or residential contractor under s. 489.111;

c. ~~Are licensed as~~ A professional engineer under s. 471.015 ~~and who have passed the appropriate equivalency test of the building code training program as required by s. 553.841~~;

d. ~~Are licensed as~~ A professional architect under s. 481.213; or

e. A home inspector under s. 468.8314 and who have completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which training must include hurricane mitigation techniques and compliance with the uniform mitigation verification form and completion of a proficiency exam ~~Have at least 2 years of experience in residential construction or residential building inspection and have received specialized training in hurricane mitigation procedures~~. ~~Such training may be provided by a class offered online or in person.~~

2. Use hurricane mitigation inspectors who also~~:~~

~~a.~~ have undergone drug testing and a level II background screening. The department may conduct criminal record checks of inspectors used by wind certification entities. Inspectors must submit a set of ~~the~~ fingerprints to the department for state and national criminal history checks and must pay the fingerprint processing fee set forth in s. 624.501. The fingerprints must ~~shall~~ be sent by the department to the Department of Law Enforcement and forwarded to the Federal Bureau of Investigation for processing. The results must ~~shall~~ be returned to the department for screening. The fingerprints must ~~shall~~ be taken by a law enforcement agency, designated examination center, or other department-approved entity~~; and~~

~~b. Have been certified, in a manner satisfactory to the department, to conduct the inspections~~.

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

3. Provide a quality assurance program including a reinspection component.

~~(c) The department shall implement a quality assurance program that includes a statistically valid number of reinspections.~~

(d) An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only a single application for that home.

(e) The owner of a site-built, single-family, residential property for which a homestead exemption has been granted may apply for and receive an inspection without also applying for a grant pursuant to subsection (2) and without meeting the requirements of paragraph (2)(a).

(f) The department may establish objective, reasonable criteria for prioritizing inspection applications, consistent with the requirements of this section.

(2) MITIGATION GRANTS.—Financial grants shall be used to encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage.

(a) For a homeowner, including an owner of a townhouse as defined in s. 481.203, to be eligible for a grant, the following criteria must be met:

1. The homeowner must have been granted a homestead

exemption on the home under chapter 196.

2. The home must be a dwelling with an insured value of $500,000 or less. Homeowners who are low-income persons, as defined in s. 420.0004(11), are exempt from this requirement.

3. The home must undergo ~~have undergone~~ an acceptable hurricane mitigation inspection as provided in subsection (1) ~~after July 1, 2008~~.

4. ~~The home must be located in the "wind-borne debris region" as that term is defined in the Florida Building Code.~~

~~5.~~ The building permit application for initial construction of the home must have been made before January 1, 2008.

5.~~6.~~ The homeowner must agree to make his or her home available for inspection once a mitigation project is completed.

An application for a grant must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only a single application and must have attached documents demonstrating the applicant meets the requirements of this paragraph.

(b) All grants must be matched on the basis of $1 provided by the applicant for $2 provided by the state up to a maximum state contribution of $10,000 toward the actual cost of the mitigation project.

(c) The program shall create a process in which

contractors agree to participate and homeowners select from a list of participating contractors. All mitigation must be based upon the securing of all required local permits and inspections and must be performed by properly licensed contractors. ~~Mitigation projects are subject to random reinspection of up to at least 5 percent of all projects.~~ Hurricane mitigation inspectors qualifying for the program may also participate as mitigation contractors as long as the inspectors meet the department's qualifications and certification requirements for mitigation contractors.

(d) Matching fund grants shall also be made available to local governments and nonprofit entities for projects that will reduce hurricane damage to single-family, site-built, owner-occupied, residential property. The department shall liberally construe those requirements in favor of availing the state of the opportunity to leverage funding for the My Safe Florida Home Program with other sources of funding.

(e) When recommended by a hurricane mitigation inspection, grants may be used for the following improvements:

1. Opening protection.

2. Exterior doors, including garage doors.

3. ~~Brace gable ends.~~

~~4.~~ Reinforcing roof-to-wall connections.

4.~~5.~~ Improving the strength of roof-deck attachments.

~~6. Upgrading roof covering from code to code plus.~~

5.~~7.~~ Secondary water barrier for roof.

The department may require that improvements be made to all openings, including exterior doors and garage doors, as a condition of reimbursing a homeowner approved for a grant. The department may adopt, by rule, the maximum grant allowances for any improvement allowable under this paragraph.

(f) Grants may be used on a previously inspected existing structure or on a rebuild. A rebuild is defined as a site-built, single-family dwelling under construction to replace a home that was destroyed or significantly damaged by a hurricane and deemed unlivable by a regulatory authority. The homeowner must be a low-income homeowner as defined in paragraph (g), must have had a homestead exemption for that home before ~~prior to~~ the hurricane, and must be intending to rebuild the home as that homeowner's homestead.

(g) Low-income homeowners, as defined in s. 420.0004(11), who otherwise meet the requirements of paragraphs (a), (c), (e), and (f) are eligible for a grant of up to $10,000 ~~$5,000~~ and are not required to provide a matching amount to receive the grant. ~~Additionally, for low-income homeowners, grant funding may be used for repair to existing structures leading to any of the mitigation improvements provided in paragraph (c), limited to 20 percent of the grant value.~~ The program may accept a certification directly from a low-income homeowner that the

homeowner meets the requirements of s. 420.0004(11) if the homeowner provides such certification in a signed or electronically verified statement made under penalty of perjury.

(h) ~~The department shall establish objective, reasonable criteria for prioritizing grant applications, consistent with the requirements of this section.~~

~~(i)~~ The department shall develop a process that ensures the most efficient means to collect and verify grant applications to determine eligibility and may direct hurricane mitigation inspectors to collect and verify grant application information or use the Internet or other electronic means to collect information and determine eligibility.

(3) EDUCATION, ~~AND~~ CONSUMER AWARENESS, AND OUTREACH.—

(a) The department may undertake a statewide multimedia public outreach and advertising campaign to inform consumers of the availability and benefits of hurricane inspections and of the safety and financial benefits of residential hurricane damage mitigation. The department may seek out and use local, state, federal, and private funds to support the campaign.

(b) The program may develop brochures for distribution to general contractors, roofing contractors, and real estate brokers and sales associates who are licensed under part I of chapter 475 which provide information on the benefits to homeowners of residential hurricane damage mitigation. Contractors are encouraged to distribute the brochures to

homeowners at the first meeting with a homeowner who is considering contracting for home or roof repair or contracting for the construction of a new home. Real estate brokers and sales associates are encouraged to distribute the brochure to clients before the purchase of a home. The brochures may be made available electronically.

(4) FUNDING.—The department may seek out and leverage local, state, federal, or private funds to enhance the financial resources of the program.

(5) RULES.—The Department of Financial Services shall adopt rules pursuant to ss. 120.536(1) and 120.54 to govern the program; implement the provisions of this section; including rules governing hurricane mitigation inspections and grants, mitigation contractors, and training of inspectors and contractors; and carry out the duties of the department under this section.

(6) HURRICANE MITIGATION INSPECTOR LIST.—The department shall develop and maintain as a public record a current list of hurricane mitigation inspectors authorized to conduct hurricane mitigation inspections pursuant to this section.

(7) ~~PUBLIC OUTREACH FOR CONTRACTORS AND REAL ESTATE BROKERS AND SALES ASSOCIATES.—The program shall develop brochures for distribution to general contractors, roofing contractors, and real estate brokers and sales associates licensed under part I of chapter 475 explaining the benefits to~~

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

~~homeowners of residential hurricane damage mitigation. The program shall encourage contractors to distribute the brochures to homeowners at the first meeting with a homeowner who is considering contracting for home or roof repairs or contracting for the construction of a new home. The program shall encourage real estate brokers and sales associates licensed under part I of chapter 475 to distribute the brochures to clients prior to the purchase of a home. The brochures may be made available electronically.~~

~~(8)~~ CONTRACT MANAGEMENT.—

(a) The department may contract with third parties for grants management, inspection services, contractor services for low-income homeowners, information technology, educational outreach, and auditing services. Such contracts are ~~shall be~~ considered direct costs of the program and are ~~shall~~ not ~~be~~ subject to administrative cost limits~~, but contracts valued at $1 million or more shall be subject to review and approval by the Legislative Budget Commission~~. The department shall contract with providers that have a demonstrated record of successful business operations in areas directly related to the services to be provided and shall ensure the highest accountability for use of state funds, consistent with this section.

(b) The department shall implement a quality assurance and reinspection program that determines whether initial inspections and home improvements are completed in a manner consistent with

the intent of the program. The department may use valid random sampling in order to perform the quality assurance portion of the program.

(8) ~~(9)~~ INTENT.—It is the intent of the Legislature that grants made to residential property owners under this section shall be considered disaster-relief assistance within the meaning of s. 139 of the Internal Revenue Code of 1986, as amended.

(9) ~~(10)~~ REPORTS.—The department shall make an annual report on the activities of the program that shall account for the use of state funds and indicate the number of inspections requested, the number of inspections performed, the number of grant applications received, the number and value of grants approved, and the estimated average annual amount of insurance premium discounts and total estimated annual amount of insurance premium discounts homeowners received from insurers as a result of mitigation funded through the program. The report must ~~shall~~ be delivered to the President of the Senate and the Speaker of the House of Representatives by February 1 of each year.

Section 2. For the purpose of incorporating the amendments made by this act to section 215.5586, Florida Statutes, in a reference thereto, subsection (3) of section 215.5588, Florida Statutes, is reenacted to read:

215.5588 Florida Disaster Recovery Program.—

(3) Up to 78 percent of these funds may be used to

complement the grants awarded by the Department of Financial Services under s. 215.5586 and fund other eligible disaster-related activities supporting housing rehabilitation, hardening, mitigation, and infrastructure improvements at the request of the local governments in order to assist the State of Florida in better serving low-income homeowners in single-family housing units, including, but not limited to, condominiums. Up to 20 percent of the funds may be used to provide inspections and mitigation improvements to multifamily units receiving rental assistance under projects of the United States Department of Housing and Urban Development or the Rural Development Division of the United States Department of Agriculture.

Section 3. This act shall take effect July 1, 2023.

INSURANCE & BANKING SUBCOMMITTEE

HB 881 by Rep. LaMarca
My Safe Florida Home Program

AMENDMENT SUMMARY
Thursday March 9, 2023

Amendment 1 by Rep. LaMarca (Line 72): The amendment:

- Removes a proposed change in eligibility for the program and maintains current law regarding townhomes,
- Deletes proposed authority for the Department of Financial Services to define and apply criteria to prioritize inspection applications for funding, and
- Adds the Citizens Property Insurance Corporation to the proposed list of entities that may receive program brochures for redistribution.

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 LaMarca offered the following:

Amendment (with title amendment)

Remove lines 72-249 and insert:

hurricane damage.

(b) The Department of Financial Services shall contract with wind certification entities to provide hurricane mitigation inspections. The inspections provided to homeowners, at a minimum, must include:

1. A home inspection and report that summarizes the results and identifies recommended improvements a homeowner may take to mitigate hurricane damage.

2. A range of cost estimates regarding the recommended mitigation improvements.

3. ~~Insurer-specific~~ Information regarding estimated premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

(c) ~~(b)~~ To qualify for selection by the department as a wind certification entity to provide hurricane mitigation inspections, the entity must ~~shall~~, at a minimum, meet the following requirements:

1. Use hurricane mitigation inspectors who are licensed or certified as:

a. ~~Are certified as~~ A building inspector under s. 468.607;

b. ~~Are licensed as~~ A general, building, or residential contractor under s. 489.111;

c. ~~Are licensed as~~ A professional engineer under s. 471.015 ~~and who have passed the appropriate equivalency test of the building code training program as required by s. 553.841~~;

d. ~~Are licensed as~~ A professional architect under s. 481.213; or

e. A home inspector under s. 468.8314 and who have completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which training must include hurricane mitigation techniques and compliance with the uniform mitigation verification form and completion of a proficiency exam ~~Have at least 2 years of experience in residential construction or residential building inspection and~~

~~have received specialized training in hurricane mitigation procedures~~. ~~Such training may be provided by a class offered online or in person.~~

2. Use hurricane mitigation inspectors who also~~:~~

~~a.~~ have undergone drug testing and a level II background screening. The department may conduct criminal record checks of inspectors used by wind certification entities. Inspectors must submit a set of ~~the~~ fingerprints to the department for state and national criminal history checks and must pay the fingerprint processing fee set forth in s. 624.501. The fingerprints must ~~shall~~ be sent by the department to the Department of Law Enforcement and forwarded to the Federal Bureau of Investigation for processing. The results must ~~shall~~ be returned to the department for screening. The fingerprints must ~~shall~~ be taken by a law enforcement agency, designated examination center, or other department-approved entity~~; and~~

~~b. Have been certified, in a manner satisfactory to the department, to conduct the inspections~~.

3. Provide a quality assurance program including a reinspection component.

~~(c) The department shall implement a quality assurance program that includes a statistically valid number of reinspections.~~

(d) An application for an inspection must contain a signed or electronically verified statement made under penalty of

perjury that the applicant has submitted only a single application for that home.

(e) The owner of a site-built, single-family, residential property for which a homestead exemption has been granted may apply for and receive an inspection without also applying for a grant pursuant to subsection (2) and without meeting the requirements of paragraph (2)(a).

(2) MITIGATION GRANTS.—Financial grants shall be used to encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage.

(a) For a homeowner to be eligible for a grant, the following criteria must be met:

1. The homeowner must have been granted a homestead exemption on the home under chapter 196.

2. The home must be a dwelling with an insured value of $500,000 or less. Homeowners who are low-income persons, as defined in s. 420.0004(11), are exempt from this requirement.

3. The home must undergo ~~have undergone~~ an acceptable hurricane mitigation inspection as provided in subsection (1) ~~after July 1, 2008~~.

4. ~~The home must be located in the "wind-borne debris region" as that term is defined in the Florida Building Code.~~

~~5.~~ The building permit application for initial construction of the home must have been made before January 1, 2008.

5.~~6.~~ The homeowner must agree to make his or her home available for inspection once a mitigation project is completed.

An application for a grant must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only a single application and must have attached documents demonstrating the applicant meets the requirements of this paragraph.

(b) All grants must be matched on the basis of $1 provided by the applicant for $2 provided by the state up to a maximum state contribution of $10,000 toward the actual cost of the mitigation project.

(c) The program shall create a process in which contractors agree to participate and homeowners select from a list of participating contractors. All mitigation must be based upon the securing of all required local permits and inspections and must be performed by properly licensed contractors. ~~Mitigation projects are subject to random reinspection of up to at least 5 percent of all projects.~~ Hurricane mitigation inspectors qualifying for the program may also participate as mitigation contractors as long as the inspectors meet the

department's qualifications and certification requirements for mitigation contractors.

(d) Matching fund grants shall also be made available to local governments and nonprofit entities for projects that will reduce hurricane damage to single-family, site-built, owner-occupied, residential property. The department shall liberally construe those requirements in favor of availing the state of the opportunity to leverage funding for the My Safe Florida Home Program with other sources of funding.

(e) When recommended by a hurricane mitigation inspection, grants may be used for the following improvements:

1. Opening protection.

2. Exterior doors, including garage doors.

3. ~~Brace gable ends.~~

~~4.~~ Reinforcing roof-to-wall connections.

4.~~5.~~ Improving the strength of roof-deck attachments.

~~6. Upgrading roof covering from code to code plus.~~

5.~~7.~~ Secondary water barrier for roof.

The department may require that improvements be made to all openings, including exterior doors and garage doors, as a condition of reimbursing a homeowner approved for a grant. The department may adopt, by rule, the maximum grant allowances for any improvement allowable under this paragraph.

(f) Grants may be used on a previously inspected existing structure or on a rebuild. A rebuild is defined as a site-built, single-family dwelling under construction to replace a home that was destroyed or significantly damaged by a hurricane and deemed unlivable by a regulatory authority. The homeowner must be a low-income homeowner as defined in paragraph (g), must have had a homestead exemption for that home before ~~prior to~~ the hurricane, and must be intending to rebuild the home as that homeowner's homestead.

(g) Low-income homeowners, as defined in s. 420.0004(11), who otherwise meet the requirements of paragraphs (a), (c), (e), and (f) are eligible for a grant of up to $10,000 ~~$5,000~~ and are not required to provide a matching amount to receive the grant. ~~Additionally, for low-income homeowners, grant funding may be used for repair to existing structures leading to any of the mitigation improvements provided in paragraph (e), limited to 20 percent of the grant value.~~ The program may accept a certification directly from a low-income homeowner that the homeowner meets the requirements of s. 420.0004(11) if the homeowner provides such certification in a signed or electronically verified statement made under penalty of perjury.

(h) ~~The department shall establish objective, reasonable criteria for prioritizing grant applications, consistent with the requirements of this section.~~

~~(i)~~ The department shall develop a process that ensures the most efficient means to collect and verify grant applications to determine eligibility and may direct hurricane mitigation inspectors to collect and verify grant application information or use the Internet or other electronic means to collect information and determine eligibility.

(3) EDUCATION, ~~AND~~ CONSUMER AWARENESS, AND OUTREACH.—

(a) The department may undertake a statewide multimedia public outreach and advertising campaign to inform consumers of the availability and benefits of hurricane inspections and of the safety and financial benefits of residential hurricane damage mitigation. The department may seek out and use local, state, federal, and private funds to support the campaign.

(b) The program may develop brochures for distribution to Citizens Property Insurance Corporation, general contractors, roofing contractors, and real estate brokers and sales associates who are licensed under part I of chapter 475 which provide information on the benefits to homeowners of residential hurricane damage mitigation. Citizens Property Insurance Corporation is encouraged to distribute the brochure to policyholders of the Corporation.

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

Remove lines 7-17 and insert:

granted a homestead exemption; revising the information provided to homeowners as part of a hurricane mitigation inspection; revising the hurricane mitigation inspectors that may be selected by the Department of Financial Services to provide hurricane mitigation inspections; deleting a provision requiring the department to implement a certain quality assurance program; revising the criteria for

PCS for HB 799

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 799 Property Insurance for Wind and Flood
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	Lloyd

SUMMARY ANALYSIS

Windstorm Coverage: Residential property insurers must provide credits, discounts, other rate differentials, or appropriate reductions in deductibles to reduce insurance premiums for such mitigation measures, including construction techniques or items installed to protect a structure against windstorm damage or loss. Wind uplift is the upward-acting pressure on the parts of a roof caused by wind traveling across the roof. When wind uplift exceeds the limits of a building system design, a roof deck could detach from a supporting structure. Engineers and builders follow the applicable building code for each jurisdiction to attempt to prevent wind uplift damage.

The bill establishes that, in addition to mitigation measures to reduce hurricane losses, an insurer's rate filing, which must be approved by the Office of Insurance Regulation. Residential rate filings must allow for appropriate discounts for mitigation measures that reduce the potential for windstorm losses. The bill also adds wind uplift prevention to the list of fixtures or construction techniques for which an actuarially reasonable discount, credit, or other rate differential, or appropriate reduction in deductibles, must be included in a rate filing for residential property insurance.

Flood Coverage: In December 2022, the Legislature mandated that Citizens Property Insurance Corporation (Citizens) require personal lines residential policyholders and applicants to purchase and maintain flood insurance coverage that is at least equivalent to the coverage provided by the National Flood Insurance Program. Citizens has expressed concerns with the ability to implement the flood coverage requirements because of the way in which dwelling value is calculated for issuance of policies. The bill makes technical changes to the statutory language establishing when certain Citizens policyholders must obtain flood coverage so that Citizens can implement the flood coverage requirements. This does not change flood coverage requirements enacted in December 2022.

Property insurance policies generally do not include flood coverage. Damage from flooding, including flooding from hurricane-generated storm surge, is not covered under a standard commercial, standard homeowners, condominium owners, or renters insurance policy. However, some property insurers include language in property insurance policies providing windstorm coverage that requires that an insured or applicant maintain flood coverage in order for the windstorm coverage to be valid, if a claim is made for windstorm damage.

The bill establishes that, if the insurer requires an insured or applicant to have flood coverage when the insurer issues a policy containing wind coverage, the insurer must verify that the insured or applicant has flood coverage. If the insurer fails to verify that the insured or applicant has flood coverage, the insurer may not issue a policy containing wind coverage. The bill also establishes that a master flood policy issued to someone other than the insured or applicant, and that includes the insured or applicant as an intended third-party beneficiary is acceptable proof of flood coverage.

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

The bill is effective on July 1, 2023, except as otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Windstorm Coverage

Background

APPROVAL OF INSURANCE RATE FILINGS

In general, insurers must file a copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes to these documents, for approval by the Office of Insurance Regulation (OIR).[1] OIR must review insurers' rate filings to determine whether rates are excessive, inadequate, or unfairly discriminatory.[2] In doing so, OIR must consider factors including, but not limited to, the following:

- Past and prospective loss experience in and out of Florida.
- Past and prospective expenses.
- Degree of competition among insurers for particular risk to be insured.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits allowed or returns to policyholders, members or subscribers in Florida.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors.
- Conflagration and catastrophe hazards, if applicable.
- Projected hurricane losses.
- Projected flood losses.
- Reasonable margin for underwriting profit and contingencies.

Rate filings must also account for factors that should result in premium discounts or credited for policyholders. A residential property insurance rate filing must account for mitigation measures that policyholders undertake to reduce hurricane losses.[3]

MITIGATION CREDITS IN RESIDENTIAL PROPERTY INSURANCE RATE FILINGS

Residential property insurers must provide credits, discounts, other rate differentials, or appropriate reductions in deductibles to reduce insurance premiums for properties with mitigation features.[4] Mitigation features are construction techniques used or items installed to protect a structure against windstorm damage or loss.[5] These features must be accounted for in residential property insurance rate filings submitted to OIR for approval.[6] Such features include, but are not limited to, measures that enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to foundation strength, or appropriate protection, window, door, and skylight strength.[7] Examples of items that might be installed to protect a structure include hurricane shutters, a hip roof, or a specific type of roof covering.

WIND UPLIFT

[1] S. 627.062(2)(a), F.S.
[2] S. 627.062(1), F.S.
[3] S. 627.062(2)(j), F.S.
[4] *See* s. 627.0629, F.S.
[5] *See id.*
[6] S. 627.0629(1), F.S.
[7] *Id.*

Wind uplift is the upward-acting pressure on the parts of a roof caused by wind traveling across the roof.[8] It is a force measure in pounds per square foot and occurs when the pressure below a roof exceeds the pressure above it.[9] Wind uplift can intensify during high winds, as air enters a building, causing an increase in the air pressure below the roof, while the speed of wind over the roof reduces the pressure above the roof.[10] When wind uplift exceeds the limits of a building system design, a roof deck could detach from a supporting structure.[11] Engineers and builders follow the applicable building code for each jurisdiction to attempt to prevent wind uplift.[12] The standards vary based on building location and likelihood of exposure to high winds.[13]

Effect of the Bill

The bill establishes that, in addition to mitigation measures to reduce hurricane losses, an insurer's rate filing must allow for appropriate discounts for mitigation measures that policyholders undertake to reduce the potential for windstorm losses.

The bill also adds wind uplift prevention to the list of fixtures or construction techniques for which an actuarially reasonable discount, credit, or other rate differential, or appropriate reduction in deductibles, must be included in a rate filing for residential property insurance.

Flood Coverage

Citizens Property Insurance Corporation

BACKGROUND

Until December 2022 Citizens Property Insurance Corporation (Citizens) could not require a policyholder or applicant to obtain flood insurance as a condition of coverage from Citizens if a policyholder or applicant signed a form affirming that Citizens does not provide flood insurance coverage, and that, if the policyholder or applicant did not obtain flood coverage in addition to a policy from Citizens, the risk was not covered for flood damage.[14] A Citizens policyholder who did not obtain flood coverage and executed such a form, and who made a claim for water damage against Citizens, had the burden of proving the damage was not caused by flooding.[15] Additionally, Citizens could deny coverage to a policyholder or applicant who refuses to execute the form.[16]

Under s. 627.715, F.S., authorized insurers may issue personal lines residential flood coverage. Such coverage includes, but is not limited to, standard flood insurance, which is equivalent to that provided by the National Flood Insurance Program (NFIP), and preferred and customized flood insurance, which provide additional coverage from that provided by standard flood coverage.[17]

A bill passed on December 2022 (SB 2-A) mandated that Citizens require personal lines residential policyholders and applicants to purchase and maintain flood insurance coverage that is at least equivalent to the coverage provided by the NFIP. The policyholder or applicant must execute a form affirming that Citizens does not provide flood insurance and that if the policyholder or applicant does not obtain flood insurance, his or her risk will not be eligible for coverage from Citizens. Citizens may

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[8] Certified Commercial Property Inspectors Association, *How Wind Uplift can Affect a Commercial Building's Roof*, https://ccpia.org/how-wind-uplift-can-affect-a-commercial-buildings-roof/ (last visited Mar. 6, 2023).
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.* Changes to Florida's treatment of wind load were made in the 7th edition of the Florida Building Code in 2020. *See* Wind Loads- Impacts from ASCE 7-16 (June 2020), https://floridabuilding.org/fbc/thecode/2020_7edition/ASCE_7-16_Fact_Sheet_final_2_column_format052820final.pdf (last visited Mar. 6, 2023).
[14] S. 627.351(6)(aa), F.S. (2021).
[15] *Id.*
[16] *Id.*
[17] Current NFIP personal lines flood policies have limits of $250,000 per claim.

deny coverage to a personal lines residential policyholder or applicant who refuses to purchase and maintain flood insurance.

SB 2-A implemented the purchase of flood coverage by personal lines residential policyholders and applicants as follows:

- Policyholders whose Citizens' policies do not provide wind coverage are not required to purchase flood coverage as a condition of maintaining their Citizens' policies.
- All policyholders whose property insured by Citizens is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:
  - At the time of initial policy issuance for all new policies issued by Citizens on or after April 1, 2023.
  - By the time of policy renewal for all personal lines residential policies renewing on or after July 1, 2023.
- All other policyholders must have flood coverage in place for policies effective on or after:
  - January 1, 2024, for property valued at $600,000 or more.
  - January 1, 2025, for property valued at $500,000 or more.
  - January 1, 2026, for property valued at $400,000 or more.
  - January 1, 2027, for all other personal lines residential property insured by Citizens.

Citizens has expressed concerns with the ability to implement the flood coverage requirements for the policyholders who must have flood coverage in place on or after January 1, 2024, because of the way in which dwelling value is calculated for issuance of policies.[18]

EFFECT OF THE BILL

The bill makes technical changes to the statutory language establishing when certain Citizens policyholders must obtain flood coverage so that Citizens can implement the flood coverage requirements. It does not change the flood coverage requirements that were signed into law in December 2022.

Flood Coverage Required by Windstorm Policies

BACKGROUND

Property insurance policies generally do not include flood coverage. Damage from flooding, including flooding from hurricane-generated storm surge, is not covered under a standard commercial policy, including a Commercial Package Policy or a Business Owners Policy.[19] Standard homeowners, condominium owners, and renters insurance policies do not provide flood coverage, including damage from storm surge.[20] However, some property insurers include language in property insurance policies providing windstorm coverage that requires that an insured or applicant maintain flood coverage in order for the windstorm coverage to be valid if a claim is made for windstorm damage. Compliance with this requirement may be problematic if an insurance agent has not made an insured or applicant aware of it at the time a property insurance policy is purchased.

EFFECT OF THE BILL

For residential and commercial property insurance policies issued or renewed on or after October 1, 2023, the bill establishes that if the insurer requires an insured or applicant to have flood coverage when the insurer issues a policy containing wind coverage, the insurer must verify that the insured or applicant has flood coverage at the time of policy issuance or renewal. If the insurer fails to verify that

[18] Current law used the phrase "property valued at . . .," but Citizens issues policies based on the replacement cost of a structure or unit (e.g. single-family home or condominium).
[19] Insurance Information Institute, *Does my Business Need Flood Insurance?*, https://www.iii.org/article/does-my-business-need-flood-insurance (last visited Mar. 7, 2023).
[20] Insurance Information Institute, *Hurricane Insurance FAQ: What Your Insurance Does–and does not–Cover*, https://www.iii.org/article/hurricane-insurance-faq (last visited Mar. 7, 2023).

the insured or applicant has flood coverage, the insurer may not issue a policy containing wind coverage.

Prior to issuing a policy containing wind coverage, but after verifying that the insured or applicant has flood coverage, the insurer must obtain a written acknowledgment from the insured or applicant that he or she understands that the policy containing wind coverage requires that the insured or applicant maintain flood coverage.

In addition to flood coverage directly obtained by the insured or applicant, the bill establishes that a master flood policy issued to someone other than the insured or applicant, but that covers the insured or applicant as an intended third-party beneficiary is acceptable proof of flood coverage.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.062, F.S., relating to rate standards.

Section 2. Amends s. 627.0629, F.S., relating to residential property insurance; rate filings.

Section 3. Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 4. Creates s. 627.7155, F.S., relating to wind and flood coverage in residential and commercial property insurance policies.

Section 5. Provides an effective date of July 1, 2023, except as otherwise provided.

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 will have a positive direct economic impact on the private sector if rates are reduced due to the consideration required by the bill.

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 neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to property insurance for wind and flood; amending s. 627.062, F.S.; requiring residential property insurance rate filings to account for windstorm mitigation measures undertaken by policyholders; amending s. 627.0629, F.S.; requiring wind uplift prevention to be included in windstorm damage mitigation techniques for residential property insurance rate filings; amending s. 627.351, F.S.; making technical changes to flood insurance requirements for Citizens Property Insurance Corporation; creating s. 627.7155, F.S., requiring property insurers to verify coverage for the peril of flood in certain circumstances; prohibiting issuance of coverage for the peril of wind in certain circumstances; requiring an acknowledgement; specifying a type of acceptable proof of coverage; providing an effective date.

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

Section 1. Paragraph (j) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

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

(j) With respect to residential property insurance rate filings, the rate filing must account for mitigation measures undertaken by policyholders to reduce hurricane losses and windstorm losses.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 2. Subsection (1) of section 627.0629, Florida Statutes, is amended to read:

627.0629 Residential property insurance; rate filings.—

(1) It is the intent of the Legislature that insurers provide savings to consumers who install or implement windstorm damage mitigation techniques, alterations, or solutions to their properties to prevent windstorm losses. A rate filing for residential property insurance must include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The fixtures or construction techniques must include, but are not limited to, fixtures or construction techniques that enhance wind uplift prevention, roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door,

and skylight strength. Credits, discounts, or other rate differentials, or appropriate reductions in deductibles, for fixtures and construction techniques that meet the minimum requirements of the Florida Building Code must be included in the rate filing. The office shall determine the discounts, credits, other rate differentials, and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation, which may be used by insurers in rate filings.

Section 3. Effective upon becoming law, paragraph (aa) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(aa) Except as otherwise provided in this paragraph, the corporation shall require the securing and maintaining of flood insurance as a condition of coverage of a personal lines residential risk. The insured or applicant must execute a form approved by the office affirming that flood insurance is not provided by the corporation and that if flood insurance is not secured by the applicant or insured from an insurer other than the corporation and in addition to coverage by the corporation, the risk will not be eligible for coverage by the corporation. The corporation may deny coverage of a personal lines residential risk to an applicant or insured who refuses to secure and maintain flood insurance. The requirement to purchase

flood insurance shall be implemented as follows:

1. Except as provided in subparagraphs 2. and 3., all personal lines residential policyholders must have flood coverage in place for policies effective on or after:

a. January 1, 2024, for a structure or unit that has a dwelling replacement cost of ~~property valued at~~ $600,000 or more.

b. January 1, 2025, for a structure or unit that has a dwelling replacement cost of ~~property valued at~~ $500,000 or more.

c. January 1, 2026, for a structure or unit that has a dwelling replacement cost of ~~property valued at~~ $400,000 or more.

d. January 1, 2027, for all other personal lines residential property insured by the corporation.

2. All personal lines residential policyholders whose property insured by the corporation is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:

a. At the time of initial policy issuance for all new personal lines residential policies issued by the corporation on or after April 1, 2023.

b. By the time of the policy renewal for all personal lines residential policies renewing on or after July 1, 2023.

3. Policyholders whose policies issued by the corporation

do not provide coverage for the peril of wind are not required to purchase flood insurance as a condition for maintaining their policies with the corporation.

The flood insurance required under this paragraph must meet, at a minimum, the coverage available from the National Flood Insurance Program or the requirements of subparagraphs s. 627.715(1)(a)1., 2., and 3.

Section 4. Effective October 1, 2023, section 627.7155, Florida Statutes, is created, to read:

627.7155 Wind and flood coverage in residential and commercial property insurance policies.— For residential and commercial property insurance policies issued or renewed on or after October 1, 2023:

(1) If a residential or commercial property insurer requires that an insured or applicant have coverage for the peril of flood when the insurer issues a policy covering the peril of wind, the insurer must verify that the insured or applicant has coverage for the peril of flood at the time the policy is issued or renewed. If the insurer fails to verify that the insured or applicant has coverage for the peril of flood, the insurer may not issue or renew a policy containing coverage for the peril of wind. Prior to issuance of coverage for the peril of wind under this subsection and upon verification of coverage for the peril of flood, the insurer must obtain a

written acknowledgment from the applicant or insured that the applicant or insured understands that the policy covering the peril of wind requires that coverage for the peril of flood must be maintained by the applicant or insured.

(2) In addition to coverage for the peril of flood directly secured by the applicant or insured, a master flood policy that is issued to someone other than the applicant or insured and includes the applicant or insured as an intended or third-party beneficiary under the master flood policy is acceptable proof of coverage for the peril of flood for the purposes of this section.

Section 5. Except as otherwise provided, this act shall take effect July 1, 2023.