

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**BANKING AND INSURANCE**  
**Senator Simmons, Chair**  
**Senator Clemens, Vice Chair**

**MEETING DATE:** Tuesday, February 11, 2014

**TIME:** 2:00 —4:00 p.m.

**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Simmons, Chair; Senator Clemens, Vice Chair; Senators Benacquisto, Detert, Diaz de la Portilla, Hays, Lee, Margolis, Montford, Negron, Richter, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 708</b> Bean (Identical H 759, Compare H 471, H 565, H 633, H 743)	Insurance Claims; Adding mediators and neutral evaluators to the list of individuals or entities that the Department of Financial Services or the Office of Insurance Regulation may investigate for alleged improper conduct; providing that a claim for residential property insurance cannot be denied based on certain credit information; establishing a Claims Bill of Rights for residential property insurance policyholders; revising qualifications for mediators of personal injury claims, etc.  BI      02/11/2014 Fav/CS AP	Fav/CS Yeas 12 Nays 0
2	<b>SB 564</b> Richter (Similar H 7009)	Security for Public Deposits; Clarifying provisions relating to public deposits that are exempt from state security requirements; providing that a notice of the default or insolvency of a qualified public depository is not required if the Florida public deposits are acquired by another insured depository; providing that the depository institution acquiring the Florida public deposits is subject to certain requirements; providing that a protection from loss is effective when a public depositor does not comply with certain provisions under specified circumstances, etc.  BI      02/11/2014 Fav/CS AGG AP	Fav/CS Yeas 12 Nays 0

Other Related Meeting Documents

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/14  
Meeting Date

Topic SB 708

Bill Number SB 708  
*(if applicable)*

Name Steve Burgess

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Insurance Consumer Advocate

Address 400 W Monroe St  
*Street*  
Tallahassee FL 32399  
*City State Zip*

Phone 413 2829

E-mail Steve.burgess@floridarepo.com

Speaking:  For  Against  Information

Representing Insurance Consumer Advocate

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-14

Meeting Date

Topic Policyholder Bill

Bill Number 708  
*(if applicable)*

Name Jay Neal

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title CEO Pres.

Address 575 E Las Olas Blvd

Phone 954 366-2972

Street

Fort Lauderdale, FL 33301

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FAIR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2-11-14

Date

708

Bill Number

Name

Steve Geller

Phone

954-491-1120

Address

100 W. Cypress Creek Rd. Ste. 700

E-mail

Steve.Geller@jgmLaw.com

Street

FT. Lauderdale, FL 33309

Job Title

Lawyer

City

State

Zip

Speaking:

For

Against

Information

Appearing at request of Chair

Subject

Consumer bill of rights bill in current form

Representing

Florida Association of Public Insurance Adjustors (FAPIA)

Lobbyist registered with Legislature:

Yes

No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee:

Time:

from

.m.

to

.m.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/14

*Meeting Date*

Topic Insurance claims

Bill Number SB 708  
*(if applicable)*

Name Carolyn Johnson

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Policy Director

Address 136 S Bronough St

Phone 521-1235

*Street*

Tallahassee

E-mail cjohnson@flchamber.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing FL Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/14

Meeting Date

Topic ICA's Bill Bill Number SB 708 (if applicable)

Name Gary Farmer Amendment Barcode 657208 (if applicable)

Job Title Sen. Diaz de la Portilla

Address Phone 954-648-3903

City State Zip E-mail

Speaking: [X] For [ ] Against [ ] Information

Representing SELF

Appearing at request of Chair: [ ] Yes [X] No Lobbyist registered with Legislature: [ ] Yes [X] No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/14

Meeting Date

Topic Insurance Claims

Bill Number 708 (if applicable)

Name ~~XXXXXXXXXXXX~~ Bill Herckle

Amendment Barcode 657208 (if applicable) Diaz de la Portilla amendment

Job Title Legislative Director

Address 116 E. Jefferson St.

Phone 850-445-5347

Street Tallahassee FL 32301 City State Zip

E-mail tim.hurgesse@flfb.org

Speaking:  For  Against  Information

Representing National Federation of Independent Business

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/11/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB 708

Name Steve Burgess

Amendment Barcode 657208  
(if applicable)

Job Title Insurance Consumer Advocate

Address 400 N Monroe St

Phone 850-413-2829

Street  
Tallahassee FL 32399  
City State Zip

E-mail Steve.Burgess@myflorida.com

Speaking:  For  Against  Information

Representing Insurance Consumer Advocate

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/14

Meeting Date

Topic Property claims

Bill Number 708  
(if applicable)

Name Carolyn Johnson

Amendment Barcode 657208  
(if applicable)

Job Title Policy Director

Address \_\_\_\_\_  
Street

Phone 521-1235

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FL Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

# 657208

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/14

Meeting Date

Topic SB 708 - Section 5

Bill Number 708

Name Kimberly Salmon

Amendment Barcode 657208 (if applicable)

Job Title Lawyer

or bill if amend (if applicable)

Address 7650 W. Courtney Campbell Causeway

Phone (727) 599-4608 w/d

Street  
Tampa, FL 33607  
City State Zip

E-mail ksalmon@gspalaw.com

Speaking:  For  Against  Information

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
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2/11/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number 708  
(if applicable)

Name Jeff Grant

Amendment Barcode 657208  
(if applicable)

Job Title President / Bone Dry Restoration  
Owner

Address 1285 Smoke Rise Lane

Phone 850-878-6469

Tall. Fl 32317  
Street City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Association of Restoration Specialist

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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*Meeting Date*

Topic SB 708 Amendment

Bill Number SB 708  
*(if applicable)*

Name Steve Burgess

Amendment Barcode 686228  
*(if applicable)*

Job Title Insurance

Address 400 W Monroe St

Phone 850-413-2829

*Street*  
Tallahassee FL 32399  
*City State Zip*

E-mail Steve.Burgess@mfrindaco.com

Speaking:  For  Against  Information

Representing FL Insurance Consumer Advocate office

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/14

Meeting Date

Topic \_\_\_\_\_

Bill Number SB 708  
(if applicable)

Name Steve Burgess

Amendment Barcode 440546  
(if applicable)

Job Title Ins. Consumer Advocate

Address 400 N Monroe St  
Street

Phone 850-413-2829

Tallahassee FL 32399  
City State Zip

E-mail Steve.Burgess@myflorida  
cto.com

Speaking:  For  Against  Information

Representing Insurance Consumer Advocate office

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 708

INTRODUCER: Committee on Banking and Insurance and Senator Bean

SUBJECT: Insurance Claims

DATE: February 12, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 708 revises the law relating to property insurance claims. This bill gives the Department of Financial Services (DFS) the ability to investigate mediators and neutral evaluators in a manner similar to how it investigates agents and agencies. It allows the DFS and the Office of Insurance Regulation (OIR) to share information with other regulatory bodies while any investigation is ongoing. This bill gives the DFS increased power to take disciplinary action against mediators and neutral evaluators.

This bill prohibits insurers from denying claims or canceling an insurance policy or contract based on credit information available in the public record if the insurance policy or contract has been in effect for more than 90 days.

Current law allows a policyholder to assign the benefits of the policy to a third party, such as the party repairing the property. This bill provides that in order for a post-loss assignment to be valid, the assignment agreement must require the assignee to notify the insurance company within 48 hours, limit the assignment to contracted work to be performed, specify the estimated scope and price of work before it is performed, and prohibit the assignee from charging the policyholder more than the applicable deductible.

Insurance contracts often contain an appraisal provision allowing parties who agree that there is a covered loss to use an umpire to determine the amount of the loss. This bill allows parties to disqualify an umpire for specified conflicts of interest such as where the umpire is related to one of the parties or has been employed by one of the parties.

The bill creates a “Homeowner Claim Bill of Rights,” describing some of the rights held by insurance policyholders and requires the insurer to provide a copy to the policyholder within 14 days of a claim. It does not create a new civil cause of action.

This bill creates new requirements for agreements between insureds and providers of services needed to mitigate the damage caused by fire, water, or catastrophic events.

This bill is effective July 1, 2014.

## **II. Present Situation:**

### **Ability of the Department of Financial Services to Investigate Licensees**

The Department of Financial Services (DFS) is the agency charged with the regulation of insurance agents, insurance agencies, insurance adjusters,<sup>1</sup> insurance school officials, and insurance school instructors.<sup>2,3</sup> Section 626.601, Florida Statutes, allows the DFS to investigate licensed insurance agencies, agents, adjusters, service representatives, managing general agents, customer representatives, title insurance agents and agencies, continuing education course providers, instructors, school officials, and monitor groups. During the investigation, the DFS may contact the person being investigated and may inspect the person’s books and records.<sup>4</sup> Investigations may be initiated by the DFS independently or may be initiated based on a complaint received by the DFS.<sup>5</sup>

Section 626.601(6), F.S., provides that a complaint and any information obtained pursuant to an investigation by the DFS or the OIR are confidential and exempt from disclosure unless the DFS or OIR files an administrative complaint, emergency order, or consent order against the licensee. The DFS or OIR may disclose information to any law enforcement agency prior to the filing of an administrative complaint, consent order, or emergency order.

### **DFS Alternative Dispute Resolution Programs**

The DFS administers alternative dispute programs for various types of insurance. The DFS has mediation programs for property insurance<sup>6</sup> and automobile insurance<sup>7</sup> claims. The DFS has a neutral evaluation program, similar to mediation, for sinkhole insurance claims.<sup>8</sup> The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.<sup>9</sup>

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<sup>1</sup> See s. 624.317, F.S.

<sup>2</sup> See ss. 626.2816, 626.2817, F.S.

<sup>3</sup> Insurance schools provide instruction for students seeking licensure as insurance agents.

<sup>4</sup> See s. 626.601(1), (2), F.S.

<sup>5</sup> See s. 626.601(1), F.S.

<sup>6</sup> See s. 627.7015, F.S.

<sup>7</sup> See s. 626.745, F.S.

<sup>8</sup> See s. 627.7074, F.S.

<sup>9</sup> See ss. 627.7015, 627.7074, and 627.745, F.S.

To qualify as a mediator for the property or automobile mediation programs, a person must possess graduate level degrees in specified areas, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for 4 years.<sup>10</sup> In addition, an applicant must complete a training program approved by the DFS.<sup>11</sup>

To qualify as a neutral evaluator for sinkhole insurance claims, a neutral evaluator must be a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution approved by the DFS and who is determined by the DFS to be fair and impartial.<sup>12</sup>

According to an analysis provided by the DFS,<sup>13</sup> the number of reported mediations and neutral evaluations is:

#### Mediations

FY 2012-13 – 3,966

FY 2011-12 – 3,323

FY 2010-11 – 3,489

#### Neutral Evaluations

FY 2012-13 – 1,867

FY 2011-12 – 2,681

FY 2010-11 – 2,245

The DFS does not have the explicit authority to investigate, remove, or discipline mediators and neutral evaluators.

### **Misrepresentations on Insurance Applications and Cancellation of Insurance Policies**

Section 627.409, F.S., provides recovery under an insurance policy may be prevented if a misrepresentation, omission, concealment of fact, or incorrect statement on an application for insurance (1) is fraudulent or is material either to the acceptance of the risk or to the hazard assumed by the insurer or (2) if the true facts had been known to the insurer, the insurer would not have issued the policy, would not have issued it at the same premium rate, would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss. If an insurer discovers a misrepresentation or omission after issuing the policy, it may deny coverage after a claim is made. In *Nationwide Mutual Fire Insurance Company v. Kramer*,<sup>14</sup> an insurer refused to pay a claim for a stolen automobile because the insureds did not disclose a previous bankruptcy filing. In *Kieser v. Old Line Insurance Company of America*,<sup>15</sup> an insurance company refused to pay a life insurance policy because the insured

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<sup>10</sup> See ss. 627.7015, 627.745(3), F.S.

<sup>11</sup> See ss. 627.7015, 627.745(3), F.S.

<sup>12</sup> See s. 627.706, F.S.

<sup>13</sup> See Department of Financial Services, *Senate Bill 708 Analysis* (February 4, 2014)(on file with the Committee on Banking and Insurance).

<sup>14</sup> 725 So.2d 1141 (Fla. 2<sup>d</sup> DCA 1998).

<sup>15</sup> 712 So.2d 1261 (Fla. 1<sup>st</sup> DCA 1998).

failed to disclose certain health conditions and failed to disclose that he was shopping for other life insurance policies. In *Universal Property and Casualty Insurance Company v. Johnson*,<sup>16</sup> an insurance company refused to pay a property insurance claim because the insureds failed to disclose prior criminal history. A misrepresentation from or an omission in an insurance application need not be intentional in order for the insurance company to deny recovery.<sup>17</sup>

Section 627.4133(2), F.S., requires notice to the insured before an insurer can cancel, nonrenew, or terminate any personal lines or commercial residential property insurance policy. The timing of the notice ranges from 10 days for nonpayment of premium to 120 days for certain policyholders.<sup>18</sup> After the policy has been in effect for 90 days, such a policy cannot be canceled unless that has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements with 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy.<sup>19</sup> According to the DFS, there are instances of insurance companies reviewing a policyholder's application for insurance after a claim has been filed and denying coverage based on misrepresentations about credit history.<sup>20</sup>

### **Assignment of Benefits**

An assignment is the transfer of the rights of one party under a contract to another party. Current law generally allows a policyholder to assign the benefits of the policy, such as the right to be paid, to another party, typically the party that repairs the damaged property. Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee can file a lawsuit against the insurer to recover the benefits. Section 627.422, F.S., governs assignability of insurance contracts and provides that a policy may or may not be assignable according to its terms. However, the general rule in Florida is that an assignment made after the loss (a post-loss assignment) is valid even if the contract states otherwise.<sup>21</sup> "A provision against assignment of an insurance policy does not bar an insured's assignment of an after-loss claim."<sup>22</sup>

### **Appraisal**

Property insurance contracts often contain "appraisal" provisions. Appraisal provisions are used when the parties agree that there is a covered loss but disagree as to the amount of the loss.<sup>23</sup> Such provisions typically provide that each party select an appraiser. The two appraisers jointly select an umpire. The two appraisers submit a report to the insurer. If the appraisers agree as to the amount of the loss, the insurer pays the claim. If they do not agree, the umpire resolves the

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<sup>16</sup> 114 So.3d 1031 (Fla. 1<sup>st</sup> DCA 2013).

<sup>17</sup> *Universal Property and Casualty Insurance Company*, 114 So.3d at 1035.

<sup>18</sup> See s. 627.4133(2), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> See Department of Financial Services, *Senate Bill 708 Analysis* (February 4, 2014)(on file with the Committee on Banking and Insurance).

<sup>21</sup> See *West Florida Grocery Company v. Teutonia Fire Insurance Company*, 77 So. 209, 211 (Fla. 1917)("The policy was assigned after loss, and it is a well-settled rule that the provision in a policy relative to the consent of the insurer to the transfer of an interest therein does not apply to an assignment after loss").

<sup>22</sup> See *Better Construction, Inc. v. National Union Fire Insurance Company of Pittsburgh*, 651 So.2d 141, 142 (Fla. 3d DCA 1995).

<sup>23</sup> See Fla.Jur. Insurance §3292.

dispute.<sup>24</sup> Current law does not limit or restrict who may act as an umpire and does not provide a method for either party to challenge whether an umpire is fair and impartial.

### **Homeowner Rights in Property Insurance Claims**

Property insurance policy holders have a number of rights pursuant to statute or rule. Section 627.70131, F.S., and rule 69O-166.24, Florida Administrative Code, require an insurer to review and acknowledge receipt of communication with respect to a claim within 14 days of receipt. Section 626.9541(1)(i), F.S., requires an insurer to affirm or deny full or partial coverage of claims or provide a written statement that the claim is being investigated upon the written request of the insured within 30 days after proof-of-loss statements have been completed. An insurer must pay or deny the claim within 90 days.<sup>25</sup>

The DFS provides services to insurers and consumers such as the mediation of property insurance claims<sup>26</sup> and neutral evaluation<sup>27</sup> of sinkhole claims. In addition, the DFS has a Division of Consumer Services that can assist consumers in the claims process.<sup>28</sup>

### **Emergency Mitigation Services**

Homeowners can experience significant damage to their homes in situations that require immediate action to prevent further damage. There are companies that provide services such as “drying” a structure after a loss caused by water. These companies are not regulated by the state. According to the DFS, consumers have no guarantee or protection in place to ensure their homes will be repaired by an accredited professional.<sup>29</sup>

## **III. Effect of Proposed Changes:**

### **Disclosure of Information Obtained During an Investigation**

Section 1 allows the DFS or the OIR to share information obtained during an investigation with other regulatory bodies in cases where no administrative complaint, emergency order, or consent order is filed. This will allow the DFS to share information with federal and state regulators during the course of an investigation. It will also allow the sharing of information with private regulatory bodies such as FINRA.<sup>30</sup> According to the DFS staff, there can be investigations where an agent is licensed in Florida and also licensed in another state. Being able to share information with other regulators can aid the investigation.<sup>31</sup>

<sup>24</sup> *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So.3d 578 (Fla.3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America*, 540 So.2d 162 (Fla. 3d DCA 1989), contain examples of appraisal provisions.

<sup>25</sup> See s. 627.70131, F.S.

<sup>26</sup> See s. 627.7015, F.S.

<sup>27</sup> See s. 627.7074, F.S.

<sup>28</sup> See <http://www.myfloridacfo.com/division/consumers/#.UvTI9vldUeE> (last accessed on February 7, 2014).

<sup>29</sup> See Department of Financial Services, *Senate Bill 708 Analysis* (February 4, 2014) at p. 4 (on file with the Committee on Banking and Insurance).

<sup>30</sup> FINRA is the “Financial Industry Regulatory Authority.” See <http://www.finra.org/AboutFINRA/>

<sup>31</sup> Interview with DFS staff, February 7, 2014.

## **Mediators and Neutral Evaluators**

Section 1 gives the DFS the authority to investigate mediators and neutral evaluators in the same manner it investigates agencies and agents. This bill allows the DFS to initiate investigations of neutral evaluators and mediators on its own authority or after a complaint is received. The DFS may require a neutral evaluator or mediator to open its books and records for inspection. The bill gives the DFS the authority to discipline mediators and neutral evaluators. Section 6 of this bill requires the DFS to adopt rules for the denial of application, suspension, and other penalties for mediators. Section 9 requires the DFS to adopt rules for certifying, denying certification, and revoking the certification as a neutral evaluator.

Section 9 provides that the DFS must deny an application for a neutral evaluator or suspend or revoke the approval of a neutral evaluator if there is a material misstatement, misrepresentation, or fraud in the attempt to obtain approval, a demonstrated lack of fitness and trustworthiness to act as a neutral evaluator, fraudulent or dishonest practices in the conduct of an evaluation or in the conduct of financial services business, or violations of statutes, DFS rules, or DFS orders. The DFS has similar power to discipline insurance agents and other regulated persons or entities.

Section 12 provides that the DFS must deny an application as a mediator or suspend or revoke the certification of a mediator if there is a material misstatement, misrepresentation, or fraud in the attempt to obtain approval or certification, a demonstrated lack of fitness and trustworthiness to act as a mediator, fraudulent or dishonest practices in the conduct of mediation or if the conduct of financial services business, or violations of statutes, DFS rules, DFS orders, or the Florida Rules for Certified and Court-Appointed Mediators. The DFS has similar power to discipline insurance agents and other regulated persons or entities.

Section 12 of the bill replaces the DFS mediator education, experience, and training program requirements. The bill provides that an individual with an active certification as a Florida Circuit Court Mediator is qualified to be a mediator for the DFS. An individual not certified as a Florida Circuit Court Mediator can be a DFS mediator if the person is an approved DFS mediator on July 1, 2014, and has conducted at least one DFS mediation from July 1, 2010 – July 1, 2014. This provision essentially grandfathers in current and active DFS mediators so they can continue to be DFS mediators, even if they are not certified as a Florida Circuit Court Mediator.

In order to become certified as a Florida Circuit Court Mediator, one must fulfil education requirements set by the Florida Supreme Court, complete a mediation training program certified by the Florida Supreme Court, and observe and conduct mediations under the supervision of a certified mediator.<sup>32</sup>

## **Misrepresentations on Insurance Applications and Cancellation of Insurance Policies**

Section 3 amends s. 627.409, F.S. The bill provides that if a residential property insurance policy or contract has been in effect for more than 90 days, a claim filed by the insured cannot be denied based on credit information available in the public record. The bill does not change the

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<sup>32</sup> See <http://www.flcourts.org/core/fileparse.php/283/urlt/HowToBecomeMediator.pdf> (last accessed February 7, 2014).

law relating to other types of insurance or other types of misrepresentations (such as a misrepresentation regarding health or criminal history).

Section 4 provides after a policy or contract has been in effect for more than 90 days, the insurer may not cancel or terminate the policy or contract based on credit information available in public records.

### **Assignment of Benefits**

Section 5 provides that an agreement assigning post-loss benefits for repair or replacement is valid only if the agreement:

- Requires the assignee to notify the insurance company within 48 hours of the assignment or as soon as practicable if the insurer is unavailable during the first 48 hours;
- Limits the assignment to the contracted work and is restricted to claims for damage to structures covered under the policy;
- Specifies the estimated scope and price of the work before it is performed;
- Prohibits the assignee from charging the policy owner for any portion of the repair beyond the deductible contained in the insurance policy;
- Prohibits a person performing any portion of the repair on behalf of the assignee from charging the policy owner;
- Prohibits the assignee from retaining insurance proceeds that are earmarked by the insurer for payment of work to be performed by vendors other than the assignee; and
- Requires the assignee to guarantee that the work performed conforms to the most recent, accepted industry standards.

### **Standards for Disqualification of an Appraisal Umpire**

Section 7 creates requirements for challenging the selection of an umpire when an appraisal provision is used to resolve a dispute. This bill allows an insurer or policyholder to challenge an umpire's impartiality and disqualify the proposed umpire only if:

- A familial relationship within the third degree exists between the umpire and a party or a representative of a party;
- The umpire has previously represented a party or a representative of a party in a professional capacity in the same or a substantially related matter;
- The umpire has represented another person in a professional capacity on the same or a substantially related matter that includes the claim or the same property, and the other person's interests are materially adverse to the interests of a party; or
- The umpire has worked as an employer or employee of a party within the preceding 5 years.

### **Homeowner Claims Bill of Rights**

Section 10 of this bill creates a "Homeowner Claims Bill of Rights." It requires an insurer issuing a personal lines residential property insurance policy to provide a copy of the Homeowner Claims Bill of Rights ("Bill of Rights") to a policyholder within 14 calendar days

after receiving an initial communication with respect to a claim unless the claim follows an event that is the subject of a declaration of state of emergency by the Governor.

This bill provides that the purpose of the Bill of Rights is to explain the rights of a residential property insurance policyholder who files a claim of loss. This bill further provides that the Bill of Rights does not create a civil cause of action by a policyholder or class of policyholders against an insurer.

This bill provides the exact language of the Bill of Rights. In summary, the Bill of Rights informs policyholders that they have the right to:

- Receive acknowledgment of the reported claim and necessary claim forms within 14 days after the claim is communicated to the insurance company.
- Receive confirmation that a claim is covered in full, partially covered, or denied, or receive a written statement that a claim is being investigated within 30 days.
- Receive full settlement payment for the claim or payment of the undisputed portion of the claim or the insurance company's denial of the claim within 90 days.
- Receive free mediation of the claim by the DFS under most circumstances and subject to certain restrictions.
- Receive a neutral evaluation of a disputed sinkhole claim covered by the policy.

The Bill of Rights informs consumers of services provided by the DFS, such as the Division of Consumer Services helpline.

The Bill of Rights advises policyholders to contact the insurance company before entering into any contract for repairs, to make and document emergency repairs that are necessary to prevent further damage, to read any contract that requires a payment of out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds, and to confirm that the contractor is licensed to do business in Florida.

This Bill of Rights informs policyholders that it does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an individual insurer.

### **Emergency Mitigation Services**

Section 11 provides conditions upon which an agreement for emergency mitigation services will be valid. The bill defines "emergency mitigation services" as the delivery of goods or services<sup>33</sup> that are needed to mitigate damage caused by fire, water, or catastrophic events when delay may exacerbate the damage to the covered property. An agreement for emergency mitigation services to which insurance proceeds may be applied is valid only if:

- The agreement specifies in writing the estimated scope and price of the work before it is performed;

---

<sup>33</sup> Services include the removal of contents, removal of water or other contaminants, cleaning, sanitizing, incidental demolition, or other treatment, including preventive activities.

- Any change from the original estimated scope and price of the work is preapproved by the policyholder; and
- The work is performed by an individual or company possessing a valid certification consistent with the most recent Standard and Reference Guide for Professional Water Damage Restoration, as developed by the Institute of Inspection, Cleaning and Restoration Certification and approved by the American National Standards Institute, or by a company that possesses a valid Division I license under chapter 489, which is providing services within the scope of that license.<sup>34</sup>

Section 13 of this bill provides an effective date of July 1, 2014.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DFS analysis does not indicate a fiscal impact on the department.

#### **VI. Technical Deficiencies:**

On line 12, the title should state that a policy or contract may not be cancelled based on certain credit information.

On line 35, the title should state that bill revises qualifications for mediators of specified motor vehicle insurance claims.

On line 141, the word “record” should be plural.

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<sup>34</sup> A Division 1 license includes general contractors, building contractors, and residential contractors. *See* s. 489.105(3), F.S.

Lines 365-371 refer to the “approval” of neutral evaluators. This is not necessary because the DFS certifies neutral evaluators.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 626.601, 627.3518, 627.409, 627.4133, 627.422, 627.7015, 627.706, 627.7074, and 627.745.

This bill creates the following sections of the Florida Statutes: 627.70151, 627.7142, and 627.715.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 11, 2014:**

The committee adopted an amendment providing that the Claims Bill of Rights must be distributed within 14 calendar days after receiving an initial communication with respect to a claim and providing that the Claims Bill of Rights must be provided to personal lines residential policyholders.

- B. **Amendments:**

None.

By Senator Bean

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1 A bill to be entitled  
 2 An act relating to insurance claims; amending s.  
 3 626.601, F.S.; adding mediators and neutral evaluators  
 4 to the list of individuals or entities that the  
 5 Department of Financial Services or the Office of  
 6 Insurance Regulation may investigate for alleged  
 7 improper conduct; amending s. 627.3518, F.S.;  
 8 conforming a cross-reference; amending s. 627.409,  
 9 F.S.; providing that a claim for residential property  
 10 insurance cannot be denied based on certain credit  
 11 information; amending s. 627.4133, F.S.; providing  
 12 that a policy or contract be cancelled based on  
 13 certain credit information; amending s. 627.422, F.S.;  
 14 providing for the assignment of property insurance  
 15 policy benefits; specifying requirements for the  
 16 assignment of post-loss benefits in a valid agreement  
 17 for services; amending s. 627.7015, F.S.; revising the  
 18 rule requirements relating to the property insurance  
 19 mediation program administered by the department;  
 20 creating s. 627.70151, F.S.; providing grounds for  
 21 challenging an umpire's impartiality in estimating the  
 22 amount of a property loss; amending s. 627.706, F.S.;  
 23 redefining the term "neutral evaluator"; amending s.  
 24 627.7074, F.S.; specifying grounds for denying,  
 25 suspending, or revoking approval of a neutral  
 26 evaluator; creating s. 627.7142, F.S.; establishing a  
 27 Claims Bill of Rights for residential property  
 28 insurance policyholders; providing that such bill of  
 29 rights does not provide a cause of action; creating s.

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30 627.715, F.S.; defining terms; providing requirements  
 31 for emergency mitigation repair agreements; requiring  
 32 an emergency mitigation contractor to be appropriately  
 33 certified or to possess a contracting license;  
 34 amending s. 627.745, F.S.; revising qualifications for  
 35 mediators of personal injury claims; providing grounds  
 36 for denying, suspending, or revoking the application  
 37 or approval of a mediator; providing an effective  
 38 date.

39  
 40 Be It Enacted by the Legislature of the State of Florida:

41  
 42 Section 1. Section 626.601, Florida Statutes, is amended to  
 43 read:

44 626.601 Improper conduct; investigation inquiry;  
 45 ~~fingerprinting.~~

46 (1) The department or office may, upon its own motion or  
 47 upon a written complaint signed by an ~~any~~ interested person and  
 48 filed with the department or office, inquire into the ~~any~~  
 49 alleged improper conduct of an approved, certified, or any  
 50 licensed insurance agency, agent, adjuster, service  
 51 representative, managing general agent, customer representative,  
 52 title insurance agent, title insurance agency, mediator, neutral  
 53 evaluator, continuing education course provider, instructor,  
 54 school official, or monitor group under this code. The  
 55 department or office may thereafter initiate an investigation of  
 56 ~~any~~ such individual or entity licensee if it has reasonable  
 57 cause to believe that the individual or entity licensee has  
 58 violated any provision of the insurance code. During the course

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59 of its investigation, the department or office shall contact the  
60 individual or entity licensee being investigated unless it  
61 determines that contacting such individual or entity person  
62 could jeopardize the successful completion of the investigation  
63 or cause injury to the public.

64 (2) In the investigation by the department or office of the  
65 alleged misconduct, the individual or entity licensee shall, if  
66 ~~whenever so~~ required by the department or office, open the  
67 individual's or entity's ~~cause his or her~~ books and records ~~to~~  
68 ~~be open~~ for inspection ~~for the purpose of such inquiries.~~

69 (3) ~~The~~ Complaints against an individual or entity any  
70 licensee may be informally alleged and are not required to  
71 include language need not be in any such language as is  
72 necessary to charge a crime on an indictment or information.

73 (4) The expense for ~~any~~ hearings or investigations  
74 conducted pursuant to under this section law, as well as the  
75 fees and mileage of witnesses, may be paid out of the  
76 appropriate fund.

77 (5) If ~~the department or office~~, after investigation, the  
78 department or office has reason to believe that an individual a  
79 licensee may have been found guilty of or pleaded guilty or nolo  
80 contendere to a felony or a crime related to the business of  
81 insurance in this or any other state or jurisdiction, the  
82 department or office may require the individual licensee to file  
83 with the department or office a complete set of his or her  
84 fingerprints, ~~which shall be~~ accompanied by the fingerprint  
85 processing fee specified set forth in s. 624.501. The  
86 fingerprints must shall be taken by an authorized law  
87 enforcement agency or other department-approved entity.

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88 (6) The complaint and ~~any~~ information obtained pursuant to  
89 the investigation by the department or office are confidential  
90 and ~~are~~ exempt from ~~the provisions of~~ s. 119.07, unless the  
91 department or office files a formal administrative complaint,  
92 emergency order, or consent order against the individual or  
93 entity licensee. ~~Nothing in~~ This subsection does not shall be  
94 ~~construed to~~ prevent the department or office from disclosing  
95 the complaint or such information as it deems necessary to  
96 conduct the investigation, to update the complainant as to the  
97 status and outcome of the complaint, or to share such  
98 information with a any law enforcement agency or other  
99 regulatory body.

100 Section 2. Subsection (9) of section 627.3518, Florida  
101 Statutes, is amended to read:

102 627.3518 Citizens Property Insurance Corporation  
103 policyholder eligibility clearinghouse program.—The purpose of  
104 this section is to provide a framework for the corporation to  
105 implement a clearinghouse program by January 1, 2014.

106 (9) The 45-day notice of nonrenewal requirement set forth  
107 in s. 627.4133(2)(b)5.b. ~~s. 627.4133(2)(b)4.b.~~ applies when a  
108 policy is nonrenewed by the corporation because the risk has  
109 received an offer of coverage pursuant to this section which  
110 renders the risk ineligible for coverage by the corporation.

111 Section 3. Section 627.409, Florida Statutes, is amended to  
112 read:

113 627.409 Representations in applications; warranties.—

114 (1) Any statement or description made by or on behalf of an  
115 insured or annuitant in an application for an insurance policy  
116 or annuity contract, or in negotiations for a policy or

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117 contract, is a representation and ~~is~~ not a warranty. Except as  
 118 provided in subsection (3), a misrepresentation, omission,  
 119 concealment of fact, or incorrect statement may prevent recovery  
 120 under the contract or policy only if any of the following apply:

121 (a) The misrepresentation, omission, concealment, or  
 122 statement is fraudulent or is material ~~either~~ to the acceptance  
 123 of the risk or to the hazard assumed by the insurer.

124 (b) If the true facts had been known to the insurer  
 125 pursuant to a policy requirement or other requirement, the  
 126 insurer in good faith would not have issued the policy or  
 127 contract, would not have issued it at the same premium rate,  
 128 would not have issued a policy or contract in as large an  
 129 amount, or would not have provided coverage with respect to the  
 130 hazard resulting in the loss.

131 (2) A breach or violation by the insured of a any warranty,  
 132 condition, or provision of a any wet marine or transportation  
 133 insurance policy, contract of insurance, endorsement, or  
 134 application ~~therefor~~ does not void the policy or contract, or  
 135 constitute a defense to a loss thereon, unless such breach or  
 136 violation increased the hazard by any means within the control  
 137 of the insured.

138 (3) For residential property insurance, if a policy or  
 139 contract has been in effect for more than 90 days, a claim filed  
 140 by the insured cannot be denied based on credit information  
 141 available in public record.

142 Section 4. Paragraph (b) of subsection (2) of section  
 143 627.4133, Florida Statutes, is amended to read:

144 627.4133 Notice of cancellation, nonrenewal, or renewal  
 145 premium.-

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146 (2) With respect to any personal lines or commercial  
 147 residential property insurance policy, including, but not  
 148 limited to, any homeowner's, mobile home owner's, farmowner's,  
 149 condominium association, condominium unit owner's, apartment  
 150 building, or other policy covering a residential structure or  
 151 its contents:

152 (b) The insurer shall give the first-named insured written  
 153 notice of nonrenewal, cancellation, or termination at least 100  
 154 days before the effective date of the nonrenewal, cancellation,  
 155 or termination. However, the insurer shall give at least 100  
 156 days' written notice, or written notice by June 1, whichever is  
 157 earlier, for any nonrenewal, cancellation, or termination that  
 158 would be effective between June 1 and November 30. The notice  
 159 must include the reason ~~or reasons~~ for the nonrenewal,  
 160 cancellation, or termination, except that:

161 1. The insurer shall give the first-named insured written  
 162 notice of nonrenewal, cancellation, or termination at least 120  
 163 days before ~~prior to~~ the effective date of the nonrenewal,  
 164 cancellation, or termination for a first-named insured whose  
 165 residential structure has been insured by that insurer or an  
 166 affiliated insurer for at least 5 years before ~~a 5-year period~~  
 167 ~~immediately prior to~~ the date of the written notice.

168 2. If cancellation is for nonpayment of premium, at least  
 169 10 days' written notice of cancellation accompanied by the  
 170 reason therefor must be given. As used in this subparagraph, the  
 171 term "nonpayment of premium" means failure of the named insured  
 172 to discharge when due her or his obligations for paying the  
 173 premium in connection with the payment of premiums on a policy  
 174 or an any installment of such premium, whether the premium is

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 175 payable directly to the insurer or its agent or indirectly under  
 176 a ~~any~~ premium finance plan or extension of credit, or failure to  
 177 maintain membership in an organization if such membership is a  
 178 condition precedent to insurance coverage. The term also means  
 179 the failure of a financial institution to honor an insurance  
 180 applicant's check after delivery to a licensed agent for payment  
 181 of a premium, even if the agent has previously delivered or  
 182 transferred the premium to the insurer. If a dishonored check  
 183 represents the initial premium payment, the contract and all  
 184 contractual obligations are void ab initio unless the nonpayment  
 185 is cured within the earlier of 5 days after actual notice by  
 186 certified mail is received by the applicant or 15 days after  
 187 notice is sent to the applicant by certified mail or registered  
 188 mail. ~~and~~ If the contract is void, any premium received by the  
 189 insurer from a third party must be refunded to that party in  
 190 full.

191 3. If ~~such~~ cancellation or termination occurs during the  
 192 first 90 days the insurance is in force and the insurance is  
 193 canceled or terminated for reasons other than nonpayment of  
 194 premium, at least 20 days' written notice of cancellation or  
 195 termination accompanied by the reason therefor must be given  
 196 unless there has been a material misstatement or  
 197 misrepresentation or a failure to comply with the underwriting  
 198 requirements established by the insurer.

199 4. After a policy or contract has been in effect for more  
 200 than 90 days, the insurer may not cancel or terminate the policy  
 201 or contract based on credit information available in public  
 202 records.

203 ~~5.4.~~ The requirement for providing written notice by June 1

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 204 of any nonrenewal that would be effective between June 1 and  
 205 November 30 does not apply to the following situations, but the  
 206 insurer remains subject to the requirement to provide such  
 207 notice at least 100 days before the effective date of  
 208 nonrenewal:

209 a. A policy that is nonrenewed due to a revision in the  
 210 coverage for sinkhole losses and catastrophic ground cover  
 211 collapse pursuant to s. 627.706.

212 b. A policy that is nonrenewed by Citizens Property  
 213 Insurance Corporation, pursuant to s. 627.351(6), for a policy  
 214 that has been assumed by an authorized insurer offering  
 215 replacement coverage to the policyholder is exempt from the  
 216 notice requirements of paragraph (a) and this paragraph. In such  
 217 cases, the corporation must give the named insured written  
 218 notice of nonrenewal at least 45 days before the effective date  
 219 of the nonrenewal.

220  
 221 After the policy has been in effect for 90 days, the policy may  
 222 not be canceled by the insurer unless there has been a material  
 223 misstatement, a nonpayment of premium, a failure to comply with  
 224 underwriting requirements established by the insurer within 90  
 225 days after the date of effectuation of coverage, ~~or~~ a  
 226 substantial change in the risk covered by the policy, ~~or if~~ the  
 227 cancellation is for all insureds under such policies for a given  
 228 class of insureds. This paragraph does not apply to individually  
 229 rated risks that have ~~having~~ a policy term of less than 90 days.

230 ~~6.5.~~ Notwithstanding any other provision of law, an insurer  
 231 may cancel or nonrenew a property insurance policy after at  
 232 least 45 days' notice if the office finds that the early

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233 cancellation of some or all of the insurer's policies is  
 234 necessary to protect the best interests of the public or  
 235 policyholders and the office approves the insurer's plan for  
 236 early cancellation or nonrenewal of some or all of its policies.  
 237 The office may base such finding upon the financial condition of  
 238 the insurer, lack of adequate reinsurance coverage for hurricane  
 239 risk, or other relevant factors. The office may condition its  
 240 finding on the consent of the insurer to be placed under  
 241 administrative supervision pursuant to s. 624.81 or to the  
 242 appointment of a receiver under chapter 631.

243 ~~7.6-~~ A policy covering both a home and a motor vehicle may  
 244 be nonrenewed for any reason applicable to ~~either~~ the property  
 245 or motor vehicle insurance after providing 90 days' notice.

246 Section 5. Section 627.422, Florida Statutes, is amended to  
 247 read:

248 627.422 Assignment of policies.—A policy may be assignable,  
 249 or not assignable, as provided by its terms.

250 (1) Subject to its ~~terms relating to~~ assignability, a any  
 251 life or health insurance policy, under the terms of which the  
 252 beneficiary may be changed only upon the ~~sole~~ request of the  
 253 policyowner, may be assigned ~~either~~ by pledge or transfer of  
 254 title, by an assignment executed by the policyowner alone and  
 255 delivered to the insurer, regardless of whether ~~or not~~ the  
 256 pledgee or assignee is the insurer. Any such assignment entitles  
 257 ~~shall entitle~~ the insurer to deal with the assignee as the owner  
 258 or pledgee of the policy in accordance with the terms of the  
 259 assignment, until the insurer has received at its home office  
 260 written notice of termination of the assignment or pledge or  
 261 written notice by or on behalf of some other person claiming

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262 some interest in the policy in conflict with the assignment.

263 (2) The assignment of post-loss benefits is restricted for  
 264 a residential property insurance policy. An agreement purporting  
 265 to assign post-loss benefits for repair or replacement is valid  
 266 only if the agreement:

267 (a) Requires the assignee to notify the insurance company  
 268 within 48 hours of the assignment. If the contact information  
 269 for the insurer is unavailable for the first 48 hours, the  
 270 assignee shall contact the company as soon as practicable;

271 (b) Limits the assignment to the contracted work to be  
 272 performed and is restricted to claims for damage to structures  
 273 covered under the policy;

274 (c) Specifies the estimated scope and price of the work  
 275 before it is performed;

276 (d) Prohibits the assignee from charging the policyowner  
 277 for any portion of the repair or replacement beyond the  
 278 applicable deductible contained in the insurance policy;

279 (e) Prohibits a person performing any portion of the repair  
 280 or replacement on behalf of the assignee from charging the  
 281 policyowner;

282 (f) Prohibits the assignee from retaining insurance  
 283 proceeds that are earmarked by the insurer for payment of work  
 284 to be performed by vendors other than the assignee; and

285 (g) Requires the assignee to guarantee that the work  
 286 performed for the loss event conforms to the most recent,  
 287 accepted industry standards.

288 Section 6. Paragraph (b) of subsection (4) of section  
 289 627.7015, Florida Statutes, is amended to read:

290 627.7015 Alternative procedure for resolution of disputed

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291 property insurance claims.-

292 (4) The department shall adopt by rule a property insurance  
293 mediation program to be administered by the department or its  
294 designee. The department may also adopt special rules which are  
295 applicable in cases of an emergency within the state. The rules  
296 shall be modeled after practices and procedures set forth in  
297 mediation rules of procedure adopted by the Supreme Court. The  
298 rules shall provide for:

299 (b) Qualifications, denial of application, suspension,  
300 revocation, and other penalties for ~~of~~ mediators as provided in  
301 s. 627.745 and ~~in~~ the Florida Rules for ~~of~~ Certified and Court-  
302 Appointed Court Appointed Mediators, ~~and for such other~~  
303 ~~individuals as are qualified by education, training, or~~  
304 ~~experience as the department determines to be appropriate.~~

305 Section 7. Section 627.70151, Florida Statutes, is created  
306 to read:

307 627.70151 Appraisal; conflicts of interest.-An insurer that  
308 offers residential coverage as defined in s. 627.4025, or a  
309 policyholder that uses an appraisal clause in a property  
310 insurance contract to establish a process for using an impartial  
311 umpire to estimate or evaluate the amount of loss, may challenge  
312 an umpire's impartiality and disqualify the proposed umpire only  
313 if:

314 (1) A familial relationship within the third degree exists  
315 between the umpire and a party or a representative of a party;

316 (2) The umpire has previously represented a party or a  
317 representative of a party in a professional capacity in the same  
318 or a substantially related matter;

319 (3) The umpire has represented another person in a

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320 professional capacity on the same or a substantially related  
321 matter that includes the claim or the same property, and the  
322 other person's interests are materially adverse to the interests  
323 of a party; or

324 (4) The umpire has worked as an employer or employee of a  
325 party within the preceding 5 years.

326 Section 8. Paragraph (c) of subsection (2) of section  
327 627.706, Florida Statutes, is amended to read:

328 627.706 Sinkhole insurance; catastrophic ground cover  
329 collapse; definitions.-

330 (2) As used in ss. 627.706-627.7074, and as used in  
331 connection with any policy providing coverage for a catastrophic  
332 ground cover collapse or for sinkhole losses, the term:

333 (c) "Neutral evaluator" means a professional engineer or a  
334 professional geologist who has completed a course of study in  
335 alternative dispute resolution designed or approved by the  
336 department for use in the neutral evaluation process, ~~and~~ who is  
337 determined by the department to be fair and impartial, and who  
338 is not otherwise ineligible for certification under s. 627.7074.

339 Section 9. Subsections (7) and (18) of section 627.7074,  
340 Florida Statutes, are amended to read:

341 627.7074 Alternative procedure for resolution of disputed  
342 sinkhole insurance claims.-

343 (7) Upon receipt of a request for neutral evaluation, the  
344 department shall provide the parties a list of certified neutral  
345 evaluators. The department shall allow the parties to submit  
346 requests to disqualify evaluators on the list for cause.

347 (a) The department shall disqualify neutral evaluators for  
348 cause based only on any of the following grounds:

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349 1. A familial relationship within the third degree exists  
 350 between the neutral evaluator and either party or a  
 351 representative of either party ~~within the third degree~~.

352 2. The proposed neutral evaluator has, in a professional  
 353 capacity, previously represented either party or a  
 354 representative of either party, in the same or a substantially  
 355 related matter.

356 3. The proposed neutral evaluator has, in a professional  
 357 capacity, represented another person in the same or a  
 358 substantially related matter and that person's interests are  
 359 materially adverse to the interests of the parties. The term  
 360 "substantially related matter" means participation by the  
 361 neutral evaluator on the same claim, property, or adjacent  
 362 property.

363 4. The proposed neutral evaluator has, within the preceding  
 364 5 years, worked as an employer or employee of any party to the  
 365 case.

366 (b) The department shall deny an application for, or  
 367 suspend or revoke its approval of, a neutral evaluator if the  
 368 department finds that any of the following grounds exist:

369 1. Lack of one or more of the qualifications specified in  
 370 this section for approval or certification.

371 2. Material misstatement, misrepresentation, or fraud in  
 372 obtaining or attempting to obtain approval or certification.

373 3. Demonstrated lack of fitness or trustworthiness to act  
 374 as a neutral evaluator.

375 4. Fraudulent or dishonest practices in the conduct of an  
 376 evaluation or in the conduct of financial services business.

377 5. Violation of any provision of this code or of a lawful

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378 order or rule of the department, or aiding, instructing, or  
 379 encouraging another party in committing such a violation.

380 ~~(c)(b)~~ The parties shall appoint a neutral evaluator from  
 381 the department list and promptly inform the department. If the  
 382 parties cannot agree to a neutral evaluator within 14 business  
 383 days, the department shall appoint a neutral evaluator from the  
 384 list of certified neutral evaluators. The department shall allow  
 385 each party to disqualify two neutral evaluators without cause.  
 386 Upon selection or appointment, the department shall promptly  
 387 refer the request to the neutral evaluator.

388 ~~(d)(e)~~ Within 14 business days after ~~the~~ referral, the  
 389 neutral evaluator shall notify the policyholder and the insurer  
 390 of the date, time, and place of the neutral evaluation  
 391 conference. The conference may be held by telephone, if feasible  
 392 and desirable. The neutral evaluator shall make reasonable  
 393 efforts to hold the conference within 90 days after the receipt  
 394 of the request by the department. Failure of the neutral  
 395 evaluator to hold the conference within 90 days does not  
 396 invalidate either party's right to neutral evaluation or to a  
 397 neutral evaluation conference held outside this timeframe.

398 (18) The department shall adopt rules of procedure for the  
 399 neutral evaluation process and for certifying, denying  
 400 certification, suspending certification, and revoking the  
 401 certification of a neutral evaluator.

402 Section 10. Section 627.7142, Florida Statutes, is created  
 403 to read:

404 627.7142 Homeowner Claims Bill of Rights.—An insurer  
 405 issuing a residential property insurance policy in this state  
 406 must provide a Claims Bill of Rights to a policyholder within 14



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465 1. Contact your insurance company before entering  
 466 into any contract for repairs to confirm any managed  
 467 repair policy provisions or optional preferred  
 468 vendors.

469 2. Make and document emergency repairs that are  
 470 necessary to prevent further damage. Keep the damaged  
 471 property, if feasible, keep all receipts, and take  
 472 photographs of damage before and after any repairs.

473 3. Carefully read any contract that requires you  
 474 to pay out-of-pocket expenses or a fee that is based  
 475 on a percentage of the insurance proceeds that you  
 476 will receive for repairing or replacing your property.

477 4. Confirm that the contractor you choose is  
 478 licensed to do business in Florida. You can verify a  
 479 contractor's license and check to see if there are any  
 480 complaints against him or her by calling the Florida  
 481 Department of Business and Professional Regulation.  
 482 You should also ask the contractor for references from  
 483 previous work.

484 5. Require all contractors to provide proof of  
 485 insurance before beginning repairs.

486 6. Take precautions if the damage requires you to  
 487 leave your home, including securing your property and  
 488 turning off your gas, water, and electricity, and  
 489 contacting your insurance company and provide a phone  
 490 number where you can be reached.

491  
 492 Section 11. Section 627.715, Florida Statutes, is created  
 493 to read:

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

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494 627.715 Emergency mitigation services; agreements.-

495 (1) As used in this section, the term "emergency mitigation  
 496 services" means the delivery of goods or services that are  
 497 needed to mitigate damage caused by fire, water, or catastrophic  
 498 events when delay may exacerbate the damage to the covered  
 499 property. Services include the removal of contents, removal of  
 500 water or other contaminants, cleaning, sanitizing, incidental  
 501 demolition, or other treatment, including preventive activities.

502 (2) For residential property insurance, an agreement for  
 503 emergency mitigation services to which insurance proceeds may be  
 504 applied is valid only if:

505 (a) The agreement specifies in writing the estimated scope  
 506 and price of the work before it is performed;

507 (b) Any change from the original estimated scope and price  
 508 of the work is preapproved by the policyholder; and

509 (c) The work is performed by an individual or company  
 510 possessing a valid certification consistent with the most recent  
 511 Standard and Reference Guide for Professional Water Damage  
 512 Restoration, as developed by the Institute of Inspection,  
 513 Cleaning and Restoration Certification and approved by the  
 514 American National Standards Institute, or by a company that  
 515 possesses a valid Division I license under chapter 489, which is  
 516 providing services within the scope of that license. A company  
 517 is considered to be certified for the purposes of this paragraph  
 518 if the company representative who possesses a valid  
 519 certification personally supervises the emergency mitigation  
 520 services performed.

521 Section 12. Present subsections (3) through (5) of section  
 522 627.745, Florida Statutes, are amended, and a new subsection (4)

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

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523 is added to that section, to read:

524 627.745 Mediation of claims.—

525 (3)(a) The department shall approve mediators to conduct  
526 mediations pursuant to this section.

527 (a) All mediators must file an application under oath for  
528 approval as a mediator.

529 (b) To qualify for approval as a mediator, an individual a  
530 person must meet one of the following qualifications:

531 1. Possess active certification by the Florida Supreme  
532 Court as a circuit court mediator. A certified circuit court  
533 mediator in a lapsed, suspended, sanctioned, or decertified  
534 status is not eligible to participate in the mediation program a  
535 masters or doctorate degree in psychology, counseling, business,  
536 accounting, or economics, be a member of The Florida Bar, be  
537 licensed as a certified public accountant, or demonstrate that  
538 the applicant for approval has been actively engaged as a  
539 qualified mediator for at least 4 years prior to July 1, 1990.

540 2. Be an approved department mediator as of July 1, 2014,  
541 and have conducted at least one mediation on behalf of the  
542 department within the 4 years immediately preceding that the  
543 date. the application for approval is filed with the department,  
544 have completed a minimum of a 40-hour training program approved  
545 by the department and successfully passed a final examination  
546 included in the training program and approved by the department.  
547 The training program shall include and address all of the  
548 following:

549 a. Mediation theory.

550 b. Mediation process and techniques.

551 c. Standards of conduct for mediators.

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552 ~~d. Conflict management and intervention skills.~~

553 ~~e. Insurance nomenclature.~~

554 (4) The department shall deny an application, or suspend or  
555 revoke its approval of a mediator, or the certification of a  
556 neutral evaluator to serve as a mediator, if the department  
557 finds that any of the following grounds exists:

558 (a) Lack of one or more of the qualifications specified in  
559 this section for approval or certification.

560 (b) Material misstatement, misrepresentation, or fraud in  
561 obtaining or attempting to obtain approval or certification.

562 (c) Demonstrated lack of fitness or trustworthiness to act  
563 as a mediator or neutral evaluator.

564 (d) Fraudulent or dishonest practices in the conduct of  
565 mediation or neutral evaluation or in the conduct of financial  
566 services business.

567 (e) Violation of this code, of a lawful order or rule of  
568 the department, or of the Florida Rules for Certified and Court-  
569 Appointed Mediators, or the aiding, instructing, or encouraging  
570 of another to commit such violation.

571 (5)(4) The department shall ~~must~~ adopt rules to administer  
572 this section, including rules of procedure for claims mediation,  
573 taking into consideration a system that which:

574 (a) Is fair.

575 (b) Promotes settlement.

576 (c) Avoids delay.

577 (d) Is nonadversarial.

578 (e) Uses a framework for modern mediating technique.

579 (f) Controls costs and expenses of mediation.

580 (6)(5) Disclosures and information divulged in the

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581 mediation process are not admissible in any subsequent action or  
582 proceeding relating to the claim or to the cause of action  
583 giving rise to the claim. A person demanding mediation under  
584 this section may not demand or request mediation after a suit ~~is~~  
585 ~~filed~~ relating to the same facts already mediated is filed.

586 Section 13. This act shall take effect July 1, 2014.



440546

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2014	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment**

Delete lines 263 - 266

and insert:

(2) For a residential property insurance policy, an agreement purporting to assign post-loss benefits for repair or replacement is a valid assignment only if the agreement:



686228

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2014	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment**

Delete lines 405 - 409  
and insert:  
issuing a personal lines residential property insurance policy  
in this state must provide a Claims Bill of Rights to a  
policyholder within 14 calendar days after receiving an initial  
communication with respect to a claim, unless the claim follows  
an event that is the subject of a declaration of a state of  
emergency by the Governor. The purpose



657208

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/11/2014	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Diaz de la Portilla) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 246 - 287.

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

And the title is amended as follows:

Delete lines 13 - 17

and insert:

certain credit information; amending s. 627.7015,  
F.S.; revising the

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/14  
Meeting Date

Topic Security for Public Deposits

Bill Number SB 564  
(if applicable)

Name Kenneth Pratt

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title SVP of Governmental Affairs

Address 1001 Thomasville Road, Ste 201  
Street

Phone 850-224-2265

Tallahassee FL 32301  
City State Zip

E-mail kpratt@floridabankers.com

Speaking:  For  Against  Information

Representing Florida Bankers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/14  
Meeting Date

Topic SB 564

Bill Number SB 564  
*(if applicable)*

Name Logan McFaddin

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director of Leg. Affairs

Address 400 N Monroe St  
*Street*  
Tallahassee FL 32309  
*City State Zip*

Phone 913-2529

E-mail logan.mcfaddin@myfloridaleg.com

Speaking:  For  Against  Information

Representing CFO Attwater

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 564

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Security for Public Deposits

DATE: February 11, 2014

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			AGG	
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 564 amends the Florida Security for Public Deposits Act (act), which authorizes local and state governmental units (public depositors) to place public deposits in qualified public depositories (QPD). Public deposits are funds in excess of amounts required to meet disbursement needs or expenses, and QPDs are banks, savings banks, or savings associations that meet specific criteria under the act. The QPDs must secure public deposits in accordance with the act and the collateral requirements and pledging levels established rule of the Chief Financial Officer. The bill provides the following changes to the act:

- Reduces and streamlines reporting requirements.
- Reduces the two highest collateral-pledging levels for public deposits, which would ease regulatory burden for small and moderate sized QPDs.
- Provides protection from loss for a public depositor that fails to comply with a ministerial reporting requirement if the defaulting or insolvent QPD had classified, reported, and collateralized their account as public deposits.
- Repeals the Qualified Public Depository Oversight Board, which has been inactive since holding an initial meeting in December 2001, due to liability concerns of the board members.
- Revises and updates terminology and practices.

## II. Present Situation:

### Public Deposit Program

The Florida Security for Public Deposits Act (act) provides the framework for the protection of public deposits.<sup>1</sup> Under the act, the Chief Financial Officer (CFO)<sup>2</sup> of the State of Florida is responsible for designating financial institutions as qualified public depositories (QPD).<sup>3</sup> Unless exempted by the act, all public deposits must be placed in a QPD.<sup>4</sup> Public deposits include, but are not limited to, time deposit accounts, demand deposit accounts, and nonnegotiable certificates of deposit.<sup>5</sup> To provide protection of public deposits, each QPD is required to pledge collateral at a level commensurate with the amount of public deposits held and a measure of its financial stability, as determined by the CFO. Eligible collateral includes securities, Federal Home Loan Bank letters of credit, and cash.<sup>6</sup>

On a monthly basis, the QPDs provide the CFO with reports regarding the public deposits held.<sup>7</sup> The CFO determines the financial stability of each QPD based on nationally recognized financial rating services information and established performance guidelines. The most financially stable depositories, as determined through these measures, are required to pledge collateral equal to 25 percent of the public deposits held.<sup>8</sup> The CFO has authority to require a 125 percent collateral pledging level for any QPD with a decreased capital account, a violation of the act, or evidence of factors such as unsound management practices or unstable market conditions that may affect the QPD's solvency. The least financially stable QPDs must withdraw from the public deposits program and return public deposits in an orderly fashion, or enter into an alternative deposit agreement and deposit collateral amounts equal to 200 percent of public deposits held into an account designated by the CFO and restrict its public deposits. The Department of Financial Services (DFS) rules set forth collateral requirements and numerical parameters (a quarterly average financial ranking scale of 0 to 100) for the entry, withdrawal, and collateral pledging levels.<sup>9</sup>

The CFO may demand payment under a letter of credit or direct a custodian to deposit or transfer collateral and proceeds of securities not previously credited upon the occurrence of one or more triggering events, such as a QPD's insolvency or a determination by the CFO that an immediate danger to public health, safety, or welfare exists.<sup>10</sup> When the CFO has determined that a default or insolvency has occurred, the CFO must notify all public depositors and provide instructions

---

<sup>1</sup> Chapter 280, F.S.

<sup>2</sup> The CFO is the agency head of the Department of Financial Services (s. 20.121, F.S.)

<sup>3</sup> A qualified public depository is a bank, savings bank, or savings association that is organized under the laws of the United States or any state or territory of the United States, has a principal place of business or branch office in this state authorized to receive deposits, has federally-insured deposits, has procedures and practices that accurately report and collateralize public deposits, meets the requirements of the act, and has been designated as a qualified public depository by the CFO. (see s. 280.02(26), F.S.)

<sup>4</sup> Section 280.03, F.S.

<sup>5</sup> Section 280.02(23), F.S.

<sup>6</sup> Section 280.13, F.S.

<sup>7</sup> Section 280.16, F.S.

<sup>8</sup> Section 280.04, F.S.

<sup>9</sup> See also Rules 69C-2.006 and 69C-2.024, F.A.C.

<sup>10</sup> For a complete list of events that may trigger a demand of payment, see s. 280.041(6), F.S.

on the filing of claims.<sup>11</sup> The losses are satisfied, first, through any applicable deposit insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD. The CFO covers any remaining losses by assessment against other QPDs.

### **Recordkeeping and Reporting Requirements**

Public depositors and QPDs are subject to recordkeeping and reporting requirements. In addition to the monthly report to the CFO regarding deposits held, each QPD must submit federal Call or Thrift Financial Reports and an annual report to the CFO. Each QPD is also required to provide each public depositor specified information to allow a reconciliation of account information.<sup>12</sup>

For each public deposit account, a public depositor is required to execute a form prescribed by the CFO for identification of each public deposit account and obtain acknowledgment of receipt on the form from the QPD at the inception of the account. The public depositor is required to maintain the current public deposit identification and acknowledgment form because the form is mandatory for filing a claim with the CFO upon default or insolvency of a QPD. If a public depositor does not comply with the requirements of governmental units on each public deposit account, the protection form loss provided in s. 280.18, Florida Statutes, is not effective as to that public deposit account. Each public depositor must confirm annually that public deposit information has been provided by each qualified public depository and reconciles with the public depositor's records.<sup>13</sup>

### **Qualified Public Depository Oversight Board**

In 2001, The Legislature created the Qualified Public Depository Oversight Board (board).<sup>14</sup> The purpose of the six-member board is to represent the interests of all QPDs in safeguarding the integrity of the program and preventing loss assessments that could be imposed upon the default or insolvency of a QPD.<sup>15</sup> The CFO is required to initiate the selection of board representation on July 31 of each year and as vacancies occur.<sup>16</sup>

## **III. Effect of Proposed Changes:**

### **Definitions**

The bill removes the word "immediately" from the definition of "alternative participation agreement" in s. 280.02(2), F.S. Currently, a QPD with a financial condition ranking of 15 or less must either "immediately" withdraw from the public deposits program or enter into a restricted alternative participation agreement. In practice, however, a QPD can take several

---

<sup>11</sup> Section 280.085, F.S.

<sup>12</sup> Section 280.16(1), F.S.

<sup>13</sup> Section 280.17(5), F.S.

<sup>14</sup> Chapter 2001-230, Laws of Fla.

<sup>15</sup> Section 280.071, F.S.

<sup>16</sup> After categorizing QPDs into three groups according to asset size, the CFO is to identify two QPDs in each grouping that have the greatest shares of contingent liability and notify the six identified QPDs. Each of the six QPDs is to provide to the CFO within 30 days a board member and alternate selection, or if declined, the CFO must notify the Florida Bankers Association, which shall select a member and alternate.

months or longer to withdraw from the program depending on the time needed for certificates of deposits to mature or other contractually required banking services for a public depositor. The CFO also publishes notice in the Florida Administrative Register the names of any QPD that elects to withdraw from the program as a safeguard to allow any unidentified public depositors of such QPD to withdraw their public deposits.<sup>17</sup>

The bill amends the definition of the term, “average monthly balance” in s. 280.02(4), F.S., to remove the qualifier “before deducting deposit insurance” from the calculation of a QPD’s average monthly balance of public deposits held during any 12-calendar months. Currently, a QPD’s collateral requirement involves several factors, but is typically a function of its average daily balance, or uninsured public deposits multiplied by its collateral pledging level.<sup>18</sup> However, the most financially stable QPDs, while only required to pledge 25 percent of their “average monthly balance” of public deposits, must include deposit insurance in their collateral calculation. Accordingly, this requirement may negatively affect QPDs with public deposits that are covered by Federal Deposit Insurance Corporation (FDIC) deposit insurance.<sup>19</sup> For example, a QPD that has averaged \$4 million in gross public deposits (with all such deposits covered by FDIC insurance), has a collateral requirement of \$1 million (i.e., \$4 million average monthly balance times 25 percent, instead of the act’s minimum collateral requirement of \$100,000.<sup>20</sup>

The bill amends the term, “capital account,” in s. 280.02(6), F.S., to add “tangible equity capital” as an alternative term to reflect the current bank regulatory environment more accurately. Tangible equity reflects the total equity capital of a QPD, minus intangible assets such as goodwill, and is calculated from an institution’s quarterly call report (also known as reports of condition and income). The bill also amends the term, “capital account,” to remove a reference to the Thrift Financial Report, which was filed previously by savings banks and savings and loan associations. With the enactment of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Office of Thrift Supervision (formerly the primary federal regulator for savings banks and savings and loans associations), was merged into other federal banking agencies on July 21, 2011.<sup>21</sup> Subsequently, the Office of the Comptroller of the Currency has assumed primary federal regulatory responsibility over savings banks and savings and loans associations, as well as nationally chartered banks. In addition, effective with the first quarterly report of 2012, savings banks or savings and loans associations no longer use the Thrift Financial Report.<sup>22</sup> Instead, these institutions file the same Consolidated Reports of Condition and Income (call report) referenced in s. 280.16(6), F.S., and filed by all insured commercial banks.

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<sup>17</sup> Section 280.11, F.S.

<sup>18</sup> See the act’s definition of “average daily balance” in s. 280.02(3), F.S., which excludes deposit insurance in determining collateral amounts at the 125 percent pledging level for newer or less financially stable QPDs.

<sup>19</sup> The FDIC insurance covers all deposit accounts, including checking and savings accounts, money market deposit accounts and certificates of deposit. The standard insurance amount is \$250,000 per depositor, per insured bank, for each account ownership category. The FDIC regulations (12 C.F.R. s. 330.15) govern the insurance coverage of public unit accounts. For deposit insurance purposes, the term “public unit” includes a state, county, municipality, or any “political subdivision” of the public unit.

<sup>20</sup> Section 280.04(2)(e), F.S.

<sup>21</sup> 12 U.S.C. s 5412-5413.

<sup>22</sup> Agency Information Collection Activities; Submission for OMB Review; Joint Comment Request, 76 FR 39,981 (July 7, 2011).

The bill eliminates a clause within the definition of “public deposit” regarding a requirement of banks, savings banks, and savings association to maintain reserves. Reserve requirements are the amount of funds that a depository institution must hold in reserve against specified deposit liabilities, and are determined in the definition of “public deposit,” as the Federal Reserve no longer requires depository institutions to maintain reserves against certain types of bank accounts, whether such accounts involve public deposits or not. Since December 27, 1990, the reserve requirement for “nonpersonal time deposits” has been 0 percent. Nonpersonal time deposits are defined, in part, as “[a] time deposit, including a money market deposit accounts (MMDA) or any other savings deposit, representing funds in which any beneficial interest is held by a depositor which is not a natural person.”<sup>23</sup> Governmental units are not considered to be natural persons by the Federal Reserve,<sup>24</sup> so a QPD has a 0 percent reserve requirement for a governmental unit’s certificates of deposit (CD), savings accounts, or MMDA. The elimination of the reserve requirement provides consistency with the act’s current definition of “public deposit,” which includes nonnegotiable CDs, as well as clarity that it includes public moneys held in savings accounts and MMDAs.

### **Exemptions from Chapter 280, F.S.**

Current law exempts a number of moneys and public deposits from the requirements and protections of the act. One exemption involves public deposits “which are fully secured under federal regulations.”<sup>25</sup> In 1998, this exemption was added to address public deposit accounts of a Florida governmental unit that was required to be collateralized under both state law and federal regulation.<sup>26</sup> However, the U.S. Department of Housing and Urban Development (HUD) requires public housing authorities to collateralize their public deposits with HUD-approved investments, which generally only allow certain eligible collateral such as U.S. Treasury and agency securities.<sup>27</sup> This has resulted in some QPDs having to collateralize local housing authorities’ public deposits under both Florida and federal programs. This 1998 provision has created ambiguity among the industry about whether depositing public funds with any depository institution, whether a QPD or not, with FDIC deposit insurance (a matter of federal regulation) was sufficient to qualify for this exemption. Accordingly, the DFS has expressed that adding the phrase “pursuant to a collateral requirement” would provide clarification as to the actual intent of the exemption.

### **Collateral Pledge Levels**

The bill reduces the numerical parameters for the current 125 percent and 200 percent pledge levels to 110 percent and 150 percent, respectively, in s. 280.04, F.S. The DFS indicates that if these adjustments are adopted, Florida would still have the highest pledge level (150 percent) among the states with centrally administered public deposit programs, thus ensuring the safety of

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<sup>23</sup> See also 12 C.F.R. s. 204.2(f).

<sup>24</sup> Board of Governors of the Federal Reserve Requirements, Regulation D, defines “natural person” as either an individual or a sole proprietorship, and does not include a corporation owned by an individual, a partnership or other association. 12 C.F.R. §204.2(g).

<sup>25</sup> Section 280.03(3)(e), F.S.

<sup>26</sup> Chapter 1998-409, Laws of Fla.

<sup>27</sup> See HUD Public and Indian Housing Notice 02-13; see also Notice PIH 96-33.

public deposits.<sup>28</sup> The DFS recommendation to reduce the program's two highest collateral pledging levels (125 percent and 150 percent) is in response to concerns of the Office of Financial Regulation (OFR) and a number of small and moderate-sized QPDs impacted by these two pledge levels. According to the DFS, the OFR has indicated that the 200 percent pledge level may magnify the difficulties for a struggling bank by either forcing it to return some or all public deposits to its governmental unit customers or by adversely impacting a bank's liquidity. Additionally, the experience of the DFS with QPD failures throughout the public deposit program's history has been that the collateral valuations for failed QPDs has not been impacted by such failures themselves, and that there have not been material, concurrent collateral valuation declines due to any broader financial market disruptions.

The bill amends s. 280.051, F.S., to make conforming changes to the current definition of "capital accounts" (which the bill renames as "tangible equity capital") and clarifies that failure to execute a "collateral control agreement" prior to the use of a custodian is a grounds for suspension or disqualification. Currently, this section and the DFS rule use the term "public depository pledge agreement,"<sup>29</sup> but the DFS renamed this form to "Collateral Control Agreement" in 2001.<sup>30</sup>

Current law requires the CFO to notify all public depositories (who have complied with s. 280.17, F.S.) in the event of a QPD's default or insolvency. The bill provides an exception to this notice requirement in s. 280.085, F.S., if another bank, savings bank, or savings association acquires a defaulting or insolvent QPD's public deposits.

The bill also provides that any bank, savings bank, or savings association that acquires some or all of a defaulted or insolvent QPD is subject to s. 280.10(1), F.S. This change provides certainty that any non-QPD bank that acquires a failed QPD would automatically be subject to the act. Current law provides that in the event that a QPD is merged into, acquired by, or consolidated with a non-QPD bank, savings bank, or savings association, the resulting institution automatically becomes a QPD, and assumes the former institution's contingent liability and public deposits, and must provide notice to the CFO regarding its decision to remain or withdraw in the program.

### **Reporting Requirements**

The bill also removes the call reporting requirement in s. 280.16(1)(e), F.S. Currently, depository institutions are required under federal law to submit their call reports to the Federal Financial

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<sup>28</sup> Email from Logan McFaddin, Director of Legislative Affairs, Department of Financial Services, (February 3, 2014) (on file with Senate Committee on Banking and Insurance).

<sup>29</sup> Rule 69C-2.009(1)(b), F.A.C.; Public Depository Pledge Agreement - Form DI4-1001 (revised March 1997).

<sup>30</sup> Form DFS-J1-1001, Revised June 2001. DFS Collateral Management, at [https://apps8.fldfs.com/CAP\\_Web/PublicDeposits/intro\\_definitions.aspx](https://apps8.fldfs.com/CAP_Web/PublicDeposits/intro_definitions.aspx) (last visited February 7, 2014).

Institutions Examination Council (FFIEC)<sup>31</sup>, and these reports are available at the FFIEC's website.<sup>32</sup>

The bill streamlines certain annual reporting requirements for public depositors. The bill eliminates the requirement in s. 280.17(5), F.S., for public depositors to obtain confirmation directly from their QPDs for purposes of preparing annual reports to the CFO.

The bill revises s. 280.17, F.S., by creating an exception to the requirements a public depositor must comply with in order to maintain protection from loss due to a failed QPD. The bill allows a public depositor that fails to comply with form reporting requirements to be eligible for protection from loss from a failed QPD if the QPD classified, reported, and collateralized the account as public deposits. Currently, public depositors are required to submit annually to the CFO a public deposit identification and deposit form, which s. 280.17(8), F.S., currently requires as a condition for protection from loss to public depositors. In the event of a QPD's default or insolvency, the DFS is required to coordinate with the OFR or the receiver of the QPD (generally, the FDIC) to "ascertain the amount of funds of each public depositor on deposit at such depository and the amount of deposit insurance applicable to such deposits."<sup>33</sup> Additionally, the act provides that the CFO must validate claims on public deposits accounts. However, the current form requirement may lead to situations where a governmental unit is denied access to the program's protection simply due to an inadvertent form filing oversight.

### **Qualified Public Depository Oversight Board**

The bill repeals the Qualified Public Depository Oversight Board and provides technical, conforming changes relating to the repeal. According to a recent report issued by the Auditor General, the board has been largely inactive since its creation.<sup>34</sup> The report notes that while a board was appointed and an initial meeting was held in December 2001, the DFS staff stated that the board members had questioned the liability of the represented QPDs in carrying out decisions affecting competitor QPDs and voiced their reluctance to participate in making recommendations as part of their responsibility. Subsequent to this initial meeting, no further board meetings have taken place.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>31</sup> 12 U.S.C. § 324 (State member banks); 12 U.S.C. §1817 (State nonmember banks); 12 U.S.C. §161 (National banks); and 12 U.S.C. §1464 (Savings associations). The FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller, of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB), along with advisory state agency representatives.

<sup>32</sup> The FFIEC Central Data Repository's Public Data Distribution Website at <https://cdr.ffiec.gov/public/> (last visited February 8, 2014).

<sup>33</sup> Section 280.08, F.S.

<sup>34</sup> Office of the Auditor General, *Operational Audit of the Department of Financial Services Public Deposit Program*, Report No. 2010-049 (Nov. 2009).

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The reduction of the two highest collateral pledge levels may have a positive impact on small and moderate sized qualified-public depositories. Additionally, the streamlining and clarification of reporting and other compliance requirements may result in an indeterminate, minor reduction in administrative costs.

**C. Government Sector Impact:**

Public depositories that fail to comply with the reporting requirements for identification of their money as public deposits would not lose their protection from loss if a failed qualified public depository had nonetheless classified, reported, and collateralized the money as public deposits.

Local governments and other units of Florida government that are subject to the act would no longer be required to request bank account confirmation data from their qualified public depositories. The estimated administrative cost of such requests is negligible.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 280.02, 280.03, 280.04, 280.05, 280.051, 280.085, 280.10, 280.11, 280.16, and 280.17.

This bill repeals the following section of the Florida Statutes: 280.071.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 11, 2014:**  
The CS provides technical changes.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Richter

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1 A bill to be entitled  
 2 An act relating to security for public deposits;  
 3 amending s. 280.02, F.S.; revising definitions;  
 4 amending s. 280.03, F.S.; clarifying provisions  
 5 relating to public deposits that are exempt from state  
 6 security requirements; amending s. 280.04, F.S.;  
 7 lowering the collateral-pledging level for public  
 8 deposits; amending s. 280.05, F.S.; conforming  
 9 provisions to changes made by the act; amending s.  
 10 280.051, F.S.; updating terms; repealing s. 280.071,  
 11 F.S., relating to the qualified public depository  
 12 oversight board; amending s. 280.085, F.S.; providing  
 13 that a notice of the default or insolvency of a  
 14 qualified public depository is not required if the  
 15 Florida public deposits are acquired by another  
 16 insured depository; amending s. 280.10, F.S.;  
 17 providing that the depository institution acquiring  
 18 the Florida public deposits is subject to certain  
 19 requirements; amending s. 280.11, F.S.; conforming  
 20 provisions to changes made by the act; amending s.  
 21 280.16, F.S.; deleting obsolete provisions; revising  
 22 provisions relating to required reports and forms;  
 23 amending s. 280.17, F.S.; deleting obsolete  
 24 provisions; deleting a provision requiring public  
 25 depositories to request confirmation information from  
 26 qualified public depositories by a certain date;  
 27 providing that a protection from loss is effective  
 28 when a public depositor does not comply with certain  
 29 provisions under specified circumstances; providing an

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30 effective date.  
 31  
 32 Be It Enacted by the Legislature of the State of Florida:  
 33  
 34 Section 1. Section 280.02, Florida Statutes, is reordered  
 35 and amended to read:  
 36 280.02 Definitions.—As used in this chapter, the term:  
 37 (1) "Affiliate" means an entity that is related through a  
 38 parent corporation's controlling interest. The term also  
 39 includes a ~~any~~ financial institution holding company or a ~~any~~  
 40 subsidiary or service corporation of such holding company.  
 41 (2) "Alternative participation agreement" means an  
 42 agreement of restrictions that a qualified public depository  
 43 completes as an alternative to ~~immediately~~ withdrawing from the  
 44 public deposits program due to financial condition.  
 45 (3) "Average daily balance" means the average daily balance  
 46 of public deposits held during the reported month. The average  
 47 daily balance shall ~~must~~ be determined by totaling, by account,  
 48 the daily balances held by the depositor and ~~then~~ dividing the  
 49 total by the number of calendar days in the month. Deposit  
 50 insurance is then deducted from each account balance and the  
 51 resulting amounts are totaled to obtain the average daily  
 52 balance.  
 53 (4) "Average monthly balance" means the average monthly  
 54 balance of public deposits held, ~~before deducting deposit~~  
 55 ~~insurance~~, by the depository during any 12 calendar months. The  
 56 average monthly balance of the previous 12 calendar months shall  
 57 ~~must~~ be determined by adding the average daily balance ~~before~~  
 58 ~~deducting deposit insurance~~ for the reported month and the

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59 average daily balances ~~before deducting deposit insurance~~ for  
60 the 11 months preceding that month and dividing the total by 12.

61 (5) "Book-entry form" means that securities are not  
62 represented by a paper certificate but represented by an account  
63 entry on the records of a depository trust clearing system or,  
64 in the case of United States Government securities, a Federal  
65 Reserve Bank.

66 ~~(26)(6)~~ "Tangible equity capital" ~~"Capital account"~~ means  
67 total equity capital, as defined on the balance-sheet portion of  
68 the Consolidated Reports of Condition and Income or ~~(call~~  
69 ~~report) or the Thrift Financial Report~~, less intangible assets,  
70 as submitted to the regulatory banking authority.

71 (7) "Collateral-pledging level" ~~for qualified public~~  
72 ~~depositories,~~ means the percentage of collateral required to be  
73 pledged by a qualified public depository as provided under ~~in~~ s.  
74 280.04 ~~by a financial institution~~.

75 (8) "Current month" means the month immediately following  
76 the month for which the monthly report is due from qualified  
77 public depositories.

78 (9) "Custodian" means the Chief Financial Officer or a any  
79 bank, savings association, or trust company that:

80 (a) Is organized and existing under the laws of this state,  
81 any other state, or the United States;

82 (b) Has executed all forms required under this chapter or  
83 any rule adopted hereunder;

84 (c) Agrees to be subject to the jurisdiction of the courts  
85 of this state, or of the courts of the United States which are  
86 located within this state, for the purpose of any litigation  
87 arising out of this chapter; and

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88 (d) Has been approved by the Chief Financial Officer to act  
89 as a custodian.

90 (10) "Default or insolvency" includes, without limitation,  
91 the failure or refusal of a qualified public depository to pay a  
92 ~~any~~ check or warrant drawn upon sufficient and collected funds  
93 by a any public depositor or to return a any deposit on demand  
94 or at maturity together with interest as agreed; the issuance of  
95 an order by a any supervisory authority restraining such  
96 depository from making payments of deposit liabilities; or the  
97 appointment of a receiver for such depository.

98 ~~(11) "Effective date of notice of withdrawal or order of~~  
99 ~~discontinuance" pursuant to s. 280.11(3) means that date which~~  
100 ~~is set out as such in any notice of withdrawal or order of~~  
101 ~~discontinuance from the Chief Financial Officer.~~

102 ~~(11)(12)~~ "Eligible collateral" means securities, Federal  
103 Home Loan Bank letters of credit, and cash, as designated in s.  
104 280.13.

105 ~~(12)(13)~~ "Financial institution" means, including, but not  
106 limited to, an association, bank, brokerage firm, credit union,  
107 industrial savings bank, savings and loan association, trust  
108 company, or other type of financial institution organized under  
109 the laws of this state or any other state of the United States  
110 and doing business in this state or any other state, in the  
111 general nature of the business conducted by banks and savings  
112 associations.

113 ~~(13)(14)~~ "Governmental unit" means the state or any county,  
114 school district, community college district, state university,  
115 special district, metropolitan government, or municipality,  
116 including any agency, board, bureau, commission, and institution

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117 of any of such entities, or any court.

118 ~~(14)~~(15) "Loss to public depositors" means loss of all  
119 principal and all interest or other earnings on the principal  
120 accrued or accruing as of the date the qualified public  
121 depository was declared in default or insolvent.

122 ~~(15)~~(16) "Market value" means the value of collateral  
123 calculated pursuant to s. 280.04.

124 ~~(16)~~(17) "Operating subsidiary" means the qualified public  
125 depository's 100 percent ~~100 percent~~ owned corporation that has  
126 ownership of pledged collateral. The operating subsidiary may  
127 not have ~~ne~~ powers beyond those that its parent qualified public  
128 depository may itself exercise. The use of an operating  
129 subsidiary is at the discretion of the qualified public  
130 depository and must meet the Chief Financial Officer's  
131 requirements.

132 ~~(18)~~ "Oversight board" means the qualified public  
133 depository oversight board created in s. 280.071 for the purpose  
134 of safeguarding the integrity of the public deposits program and  
135 preventing the realization of loss assessments through  
136 standards, policies, and recommendations for actions to the  
137 Chief Financial Officer.

138 ~~(17)~~(19) "Pledged collateral" means securities or cash held  
139 separately and distinctly by an eligible custodian for the  
140 benefit of the Chief Financial Officer to be used as security  
141 for Florida public deposits. This includes maturity and call  
142 proceeds.

143 ~~(18)~~(20) "Pledgor" means the qualified public depository  
144 and, if one is used, operating subsidiary.

145 ~~(19)~~(21) "Pool figure" means the total average monthly

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146 balances of public deposits held by all qualified public  
147 depositories during the immediately preceding 12-month period.

148 ~~(22)~~ "Previous month" means the month or months immediately  
149 preceding the month for which a monthly report is due from  
150 ~~qualified public depositories.~~

151 ~~(20)~~(23) "Public deposit" means the moneys of a  
152 governmental unit ~~the state or of any state university, county,~~  
153 ~~school district, community college district, special district,~~  
154 ~~metropolitan government, or municipality, including agencies,~~  
155 ~~boards, bureaus, commissions, and institutions of any of the~~  
156 ~~foregoing, or of any court,~~ and includes the moneys of all  
157 county officers, including constitutional officers, which that  
158 are placed on deposit in a bank, savings bank, or savings  
159 association and for which the bank, savings bank, or savings  
160 association is required to maintain reserves. This includes, but  
161 is not limited to, time deposit accounts, demand deposit  
162 accounts, and nonnegotiable certificates of deposit. Moneys in  
163 deposit notes and in other nondeposit accounts such as  
164 repurchase or reverse repurchase operations are not public  
165 deposits. Securities, mutual funds, and similar types of  
166 investments are not ~~considered~~ public deposits and are shall not  
167 ~~be~~ subject to the provisions of this chapter.

168 ~~(21)~~(24) "Public depositor" means the official custodian of  
169 funds for a governmental unit who is responsible for handling  
170 public deposits.

171 ~~(22)~~(25) "Public deposits program" means the Florida  
172 Security for Public Deposits Act contained in this chapter and  
173 any rule adopted under this chapter.

174 ~~(23)~~(26) "Qualified public depository" means a ~~any~~ bank,

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175 savings bank, or savings association that:

176 (a) Is organized and exists under the laws of the United  
177 States ~~or~~ the laws of this state or any other state or  
178 territory of the United States.

179 (b) Has its principal place of business in this state or  
180 has a branch office in this state which is authorized under the  
181 laws of this state or of the United States to receive deposits  
182 in this state.

183 (c) Has deposit insurance pursuant to ~~under the provision~~  
184 ~~of the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss.~~  
185 1811 et seq.

186 (d) Has procedures and practices for accurate  
187 identification, classification, reporting, and collateralization  
188 of public deposits.

189 (e) Meets all the requirements of this chapter.

190 (f) Has been designated by the Chief Financial Officer as a  
191 qualified public depository.

192 (24)~~(27)~~ "Reported month" means the month for which a  
193 monthly report is due from qualified public depositories.

194 (25)~~(28)~~ "Required collateral" of a qualified public  
195 depository means eligible collateral having a market value equal  
196 to or in excess of the amount required under ~~pursuant to~~ s.  
197 280.04.

198 (6)~~(29)~~ "Chief Financial Officer's custody" is a collateral  
199 arrangement governed by a contract between a designated Chief  
200 Financial Officer's custodian and the Chief Financial Officer.  
201 This arrangement requires that collateral ~~to~~ be in the Chief  
202 Financial Officer's name in order to perfect the security  
203 interest.

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204 (27)~~(30)~~ "Triggering events" are events set out in s.

205 280.041 which give the Chief Financial Officer the right to:

206 (a) Instruct the custodian to transfer securities pledged,  
207 interest payments, and other proceeds of pledged collateral not  
208 previously credited to the pledgor.

209 (b) Demand payment under letters of credit.

210 Section 2. Paragraph (e) of subsection (3) of section  
211 280.03, Florida Statutes, is amended to read:

212 280.03 Public deposits to be secured; prohibitions;  
213 exemptions.-

214 (3) The following are exempt from the requirements of, and  
215 protection under, this chapter:

216 (e) Public deposits that ~~which~~ are fully secured pursuant  
217 to a collateral requirement under federal regulations.

218 Section 3. Subsections (1) and (2) of section 280.04,  
219 Florida Statutes, are amended to read:

220 280.04 Collateral for public deposits; general provisions.-

221 (1) The Chief Financial Officer shall determine the  
222 collateral requirements and collateral-pledging ~~collateral~~  
223 ~~pledging~~ level for each qualified public depository following  
224 procedures established by rule. These procedures must ~~shall~~  
225 include numerical parameters for 25 percent, 50 percent, 110  
226 percent, and 150 percent ~~25 percent, 50 percent, 125 percent,~~  
227 ~~and 200 percent~~ pledge levels based on nationally recognized  
228 financial rating services information and established financial  
229 performance guidelines.

230 (2) A qualified public depository may not accept or retain  
231 any public deposit ~~which is~~ required to be secured unless it  
232 deposits ~~has deposited~~ with the Chief Financial Officer eligible

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233 collateral at least equal to the greater of:

234 (a) The average daily balance of public deposits which ~~that~~  
235 does not exceed the lesser of its tangible equity capital  
236 ~~account~~ or 20 percent of the pool figure multiplied by the  
237 depository's collateral-pledging level, plus the greater of:

238 1. One hundred ~~ten~~ twenty-five percent of the average daily  
239 balance of public deposits in excess of its tangible equity  
240 capital ~~accounts~~; or

241 2. One hundred ~~ten~~ twenty-five percent of the average daily  
242 balance of public deposits in excess of 20 percent of the pool  
243 figure.

244 (b) Twenty-five percent of the average monthly balance of  
245 public deposits.

246 (c) One hundred ~~ten~~ twenty-five percent of the average  
247 daily balance of public deposits if the qualified public  
248 depository:

249 1. Has been established for less than 3 years;

250 2. Has experienced material decreases in its tangible  
251 equity capital ~~accounts~~; or

252 3. Has an overall financial condition that is materially  
253 deteriorating.

254 (d) ~~One~~ Two hundred fifty percent of an established maximum  
255 amount of public deposits which ~~that~~ has been mutually agreed  
256 upon by and between the Chief Financial Officer and the  
257 qualified public depository.

258 (e) Minimum required collateral of \$100,000.

259 (f) An amount as required in special instructions from the  
260 Chief Financial Officer to protect the integrity of the public  
261 deposits program.

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262 Section 4. Subsections (1), (2), (3), and (16) of section  
263 280.05, Florida Statutes, are amended to read:

264 280.05 Powers and duties of the Chief Financial Officer.—In  
265 fulfilling the requirements of this act, the Chief Financial  
266 Officer has the power to take the following actions he or she  
267 deems necessary to protect the integrity of the public deposits  
268 program:

269 ~~(1) Identify representative qualified public depositories~~  
270 ~~and furnish notification for the qualified public depository~~  
271 ~~oversight board selection pursuant to s. 280.071.~~

272 ~~(2) Provide data for the qualified public depository~~  
273 ~~oversight board duties pursuant to s. 280.071 regarding:~~

274 ~~(a) Establishing standards for qualified public~~  
275 ~~depositories and custodians.~~

276 ~~(b) Evaluating requests for exceptions to standards and~~  
277 ~~alternative participation agreements.~~

278 ~~(c) Reviewing and recommending action for qualified public~~  
279 ~~depository or custodian violations.~~

280 ~~(3) Review, implement, monitor, evaluate, and modify all or~~  
281 ~~any part of the standards, policies, or recommendations of the~~  
282 ~~qualified public depository oversight board.~~

283 ~~(13)-(16)~~ Require the filing of the following reports, which  
284 the Chief Financial Officer shall process as provided:

285 (a) Qualified public depository monthly reports and  
286 schedules. The Chief Financial Officer shall review the reports  
287 of each qualified public depository for material changes in  
288 tangible equity capital ~~accounts~~ or changes in name, address, or  
289 type of institution; record the average daily balances of public  
290 deposits held; and monitor the collateral-pledging levels and

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291 required collateral.

292 (b) Quarterly regulatory reports from qualified public  
293 depositories. The Chief Financial Officer shall analyze  
294 qualified public depositories ranked in the lowest category  
295 based on established financial condition criteria.

296 (c) Qualified public depository annual reports and public  
297 depositor annual reports. The Chief Financial Officer shall  
298 compare public deposit information reported by qualified public  
299 depositories and public depositors. Such comparison shall be  
300 conducted for qualified public depositories ~~that which~~ are  
301 ranked in the lowest category based on established financial  
302 condition criteria of record on September 30. Additional  
303 comparison processes may be performed as public deposits program  
304 resources permit.

305 (d) Any related documents, reports, records, or other  
306 information deemed necessary by the Chief Financial Officer in  
307 order to ascertain compliance with this chapter.

308 Section 5. Subsections (2), (6), and (12) of section  
309 280.051, Florida Statutes, are amended to read:

310 280.051 Grounds for suspension or disqualification of a  
311 qualified public depository.—A qualified public depository may  
312 be suspended or disqualified or both if the Chief Financial  
313 Officer determines that the qualified public depository has:

314 (2) Submitted reports containing inaccurate or incomplete  
315 information regarding public deposits or collateral for such  
316 deposits, tangible equity capital accounts, or the calculation  
317 of required collateral.

318 (6) Failed to furnish the Chief Financial Officer with  
319 prompt and accurate information, or failed to allow inspection

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320 and verification of any information, dealing with public  
321 deposits or dealing with the exact status of its tangible equity  
322 capital ~~accounts~~, or ~~any~~ other financial information that the  
323 Chief Financial Officer ~~deems~~ determines necessary to verify  
324 compliance with this chapter or any rule adopted pursuant to  
325 this chapter.

326 (12) Failed to execute or have the custodian execute a  
327 collateral control public depository pledge agreement before  
328 ~~prior to~~ using a custodian.

329 Section 6. Section 280.071, Florida Statutes, is repealed.

330 Section 7. Section 280.085, Florida Statutes, is amended to  
331 read:

332 280.085 Notice to claimants.—

333 (1) Upon determining the default or insolvency of a  
334 qualified public depository, the Chief Financial Officer shall  
335 notify, by first-class mail, all public depositors that have  
336 complied with s. 280.17 of such default or insolvency. The  
337 notice must ~~shall~~ direct all public depositors having claims or  
338 demands against the Public Deposits Trust Fund occasioned by the  
339 default or insolvency to file their claims with the Chief  
340 Financial Officer within 30 days after the date of the notice.

341 ~~(a)(2)~~ A ~~No~~ claim against the Public Deposits Trust Fund is  
342 binding on the fund only if ~~unless~~ presented within 30 days  
343 after the date of the notice.

344 (b) The notice is not required if the default or insolvency  
345 is resolved in a manner whereby all Florida public deposits are  
346 acquired by another insured depository institution.

347 ~~(2)(3)~~ This section does not affect any proceeding to:

348 (a) Enforce any real property mortgage, chattel mortgage,

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349 security interest, or other lien on property of a qualified  
 350 public depository that is in default or insolvency; or  
 351 (b) Establish liability of a qualified public depository  
 352 that is in default or insolvency to the limits of any federal or  
 353 other casualty insurance protection.

354 Section 8. Present subsections (3) through (6) of section  
 355 280.10, Florida Statutes, are redesignated as subsections (4)  
 356 through (7), respectively, and a new subsection (3) is added to  
 357 that section, to read:

358 280.10 Effect of merger, acquisition, or consolidation;  
 359 change of name or address.—

360 (3) If the default or insolvency of a qualified public  
 361 depository results in the acquisition of some or all of its  
 362 Florida public deposits by another depository institution that  
 363 is not a qualified public depository, the depository institution  
 364 acquiring the Florida public deposits is subject to subsection  
 365 (1).

366 Section 9. Subsection (3) of section 280.11, Florida  
 367 Statutes, is amended to read:

368 280.11 Withdrawal from public deposits program; return of  
 369 pledged collateral.—

370 (3) A qualified public depository ~~that which~~ is required to  
 371 withdraw from the public deposits program pursuant to s.  
 372 280.05(17) may s. 280.05(1)(b) shall not receive or retain  
 373 public deposits after the effective date of withdrawal. The  
 374 contingent liability, required collateral, and reporting  
 375 requirements of the withdrawing depository shall continue until  
 376 the effective date of withdrawal. The effective date of  
 377 withdrawal means the date set out as such in a notice of

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378 withdrawal or ~~(order of discontinuance)~~ from the Chief Financial  
 379 Officer ~~which is shall be~~ mailed to the qualified public  
 380 depository by registered or certified mail. Penalties incurred  
 381 because of withdrawal from the public deposits program are shall  
 382 ~~be~~ the responsibility of the withdrawing depository.

383 Section 10. Subsection (1) of section 280.16, Florida  
 384 Statutes, is amended to read:

385 280.16 Requirements of qualified public depositories;  
 386 confidentiality.—

387 (1) In addition to any other requirements specified in this  
 388 chapter, qualified public depositories shall:

389 (a) Take the following actions for each public deposit  
 390 account:

391 1. Identify the account as a "Florida public deposit" on  
 392 the deposit account record with the name of the public depositor  
 393 or provide a unique code for the account for such designation.

394 2. When the form prescribed by the Chief Financial Officer  
 395 for acknowledgment of receipt of each public deposit account is  
 396 presented to the qualified public depository by the public  
 397 depositor opening an account, the qualified public depository  
 398 shall execute and return the completed form to the public  
 399 depositor.

400 3. When the acknowledgment of receipt form is presented to  
 401 the qualified public depository by the public depositor due to a  
 402 change of account name, account number, or qualified public  
 403 depository name on an existing public deposit account, the  
 404 qualified public depository shall execute and return the  
 405 completed form to the public depositor within 45 calendar days  
 406 after such presentation.

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407 ~~4. When the acknowledgment of receipt form is presented to~~  
 408 ~~the qualified public depository by the public depositor on an~~  
 409 ~~account existing before July 1, 1998, the qualified public~~  
 410 ~~depository shall execute and return the completed form to the~~  
 411 ~~public depositor within 45 calendar days after such~~  
 412 ~~presentation.~~

413 (b) Within 15 days after the end of each calendar month, or  
 414 when requested by the Chief Financial Officer, submit to the  
 415 Chief Financial Officer a written report, under oath, indicating  
 416 the average daily balance of all public deposits held by it  
 417 during the reported month, required collateral, a detailed  
 418 schedule of all securities pledged as collateral, selected  
 419 financial information, and any other information that the Chief  
 420 Financial Officer deems ~~determines~~ necessary to administer this  
 421 chapter.

422 (c) Provide to each public depositor annually by, not later  
 423 ~~than~~ October 30, the following information on all open accounts  
 424 identified as a "Florida public deposit" for that public  
 425 depositor as of September 30, to be used for confirmation  
 426 purposes: the federal employer identification number of the  
 427 qualified public depository, the name on the deposit account  
 428 record, the federal employer identification number on the  
 429 deposit account record, and the account number, account type,  
 430 and actual account balance on deposit. Any discrepancy found in  
 431 the confirmation process must shall be reconciled before  
 432 November 30.

433 (d) Submit to the Chief Financial Officer annually by, not  
 434 ~~later than~~ November 30, a report of all public deposits held for  
 435 the credit of all public depositors at the close of business on

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436 September 30. Such annual report must shall consist of public  
 437 deposit information in a report format prescribed by the Chief  
 438 Financial Officer. The manner of required filing may be as a  
 439 signed writing or electronic data transmission, at the  
 440 discretion of the Chief Financial Officer.

441 ~~(e) Submit to the Chief Financial Officer not later than~~  
 442 ~~the date required to be filed with the federal agency.~~

443 ~~1. A copy of the quarterly Consolidated Reports of~~  
 444 ~~Condition and Income, and any amended reports, required by the~~  
 445 ~~Federal Deposit Insurance Act, 12 U.S.C. ss. 1811 et seq., if~~  
 446 ~~such depository is a bank; or~~

447 ~~2. A copy of the Thrift Financial Report, and any amended~~  
 448 ~~reports, required to be filed with the Office of Thrift~~  
 449 ~~Supervision if such depository is a savings and loan~~  
 450 ~~association.~~

451 Section 11. Subsections (2), (5), and (8) of section  
 452 280.17, Florida Statutes, are amended to read:

453 280.17 Requirements for public depositors; notice to public  
 454 depositors and governmental units; loss of protection.—In  
 455 addition to any other requirement specified in this chapter,  
 456 public depositors shall comply with the following:

457 (2) ~~Beginning July 1, 1998, Each public depositor shall~~  
 458 ~~take the following actions~~ For each public deposit account, the  
 459 public depositor shall:

460 (a) Ensure that the name of the public depositor is on the  
 461 account or certificate or other form provided to the public  
 462 depositor by the qualified public depository in a manner  
 463 sufficient to identify that the account is a Florida public  
 464 deposit.

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

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465 (b) Execute a form prescribed by the Chief Financial  
 466 Officer for identification of each public deposit account and  
 467 obtain acknowledgment of receipt on the form from the qualified  
 468 public depository at the time of opening the account. Such  
 469 public deposit identification and acknowledgment form shall be  
 470 replaced with a current form as required in subsection (3). A  
 471 ~~public deposit account existing before July 1, 1998, must have a~~  
 472 ~~form completed before September 30, 1998.~~

473 (c) Maintain the current public deposit identification and  
 474 acknowledgment form as a valuable record. Such form is mandatory  
 475 for filing a claim with the Chief Financial Officer upon the  
 476 default or insolvency of a qualified public depository.

477 (5) Each public depositor shall ~~confirm~~ annually confirm  
 478 that public deposit information as of the close of business on  
 479 September 30 has been provided by each qualified public  
 480 depository and is in agreement with public depositor records.  
 481 Such confirmation must ~~shall~~ include the federal employer  
 482 identification number of the qualified public depository, the  
 483 name on the deposit account record, the federal employer  
 484 identification number on the deposit account record, and the  
 485 account number, account type, and actual account balance on  
 486 deposit. ~~Public depositors shall request such confirmation~~  
 487 ~~information from qualified public depositories on or before the~~  
 488 ~~fifth calendar day of October and shall allow until October 31~~  
 489 ~~to receive such information.~~ Any discrepancy found in the  
 490 confirmation process must ~~shall~~ be resolved ~~reconciled~~ before  
 491 November 30.

492 (8) If a public depositor does not comply with this section  
 493 with respect to ~~on~~ each public deposit account, the protection

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494 from loss provided under ~~in~~ s. 280.18 is not effective as to  
 495 that public deposit account. However, if a public depositor  
 496 fails to present the form prescribed by the Chief Financial  
 497 Officer for identifying public deposit accounts, the protection  
 498 from loss provided under s. 280.18 is effective if the Chief  
 499 Financial Officer determines that the defaulting depository has  
 500 classified, reported, and collateralized the account as public  
 501 deposits.

502 Section 12. This act shall take effect July 1, 2014.

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



161010

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2014	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 346  
and insert:  
acquired by a bank, savings bank, or savings association.

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

And the title is amended as follows:

Delete lines 15 - 16  
and insert:



11 Florida public deposits are acquired by a bank,  
12 savings bank, or savings association; amending s.  
13 280.10, F.S.;



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2014	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 360 - 365

and insert:

(3) If the default or insolvency of a qualified public depository results in the acquisition of all or part of its Florida public deposits by a bank, savings bank, or savings association that is not a qualified public depository, such bank, savings bank, or savings association is subject to subsection (1).



253364

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

And the title is amended as follows:

Delete lines 17 - 18

and insert:

providing that a bank, savings bank, or savings  
association that is not a qualified public depository  
and acquires Florida public deposits is subject to  
certain

# CourtSmart Tag Report

Room: EL 110

Caption: Senate Banking and Insurance

Case:

Judge:

Type:

Started: 2/11/2014 2:03:29 PM

Ends: 2/11/2014 3:52:56 PM

Length: 01:49:28

2:03:31 PM Chairman calls meeting to order  
2:05:26 PM Senator Hays recognized for announcement  
2:06:34 PM TAB 1 - SB 708 -- Senator Bean recognized to explain bill  
2:19:53 PM Amd. 440546 courtesy amd. by Sen. Hays--w/o objection -- adopted  
2:21:48 PM Amd. 686228 courtesy amd. by Sen. Hays --w/o objection -- adopted  
2:22:56 PM Late filed Amd. 657208 by Sen. Diaz de la Portilla --w/o objection  
2:46:25 PM Sen. Diaz de la Portilla recognized to explain late filed amendment 657208 --  
3:00:21 PM Jeff Grant - FL Assoc. of Restoration Specialist  
3:04:36 PM Kimberly Salmon - attorney representing self  
3:13:23 PM Carolyn Johnson - FL Chamber of Commerce -- spoke against amd. 657208  
3:14:28 PM Steve Burgess, Insurance Consumer Advocate  
3:18:51 PM Bill Herrle, Leg. Director, National Federation of Independent Business  
3:20:41 PM Gary Farmer representing self  
3:29:06 PM Debate on AMD. 657208  
3:30:19 PM Senator Diaz de la Portilla closes on amendment  
3:31:20 PM Roll call on AMD. 657208 --Fails  
3:33:01 PM Steve Geller representing FL Association of Public Insurance Adjusters  
3:38:57 PM Jay Neal representing FAIR  
3:40:18 PM Chief Financial Officer Jeff Atwater testified  
3:44:53 PM Motion for CS b y Senator Hays--without objection -- adopted  
3:45:19 PM Roll call on S 708 -- Passed  
3:47:05 PM TAB 2 - S 564 - Security for Public Deposits by Sen. Richter  
3:47:51 PM Explanation of bill by Sen. Richter  
3:48:05 PM Amd. 1 -- 161010 - tech. amd. --w/o objection -- adopted  
3:48:46 PM Amd. 2 -- 253364 techn. amd. by Sen. Richter -- w/o objections -- adopted  
3:51:05 PM Motion for CS - Sen. Richter -- w/o objection -- adopted  
3:52:05 PM Roll call on CS/SB 564 -- Favorable  
Adjourn