The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE
Senator Richter, Chair
Senator Smith, Vice Chair

MEETING DATE: Wednesday, March 16, 2011
TIME: 1:30 —4:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Richter, Chair; Senator Smith, Vice Chair; Senators Alexander, Bennett, Bogdanoff, Fasano, Hays, Margolis, Negron, Oelrich, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SM 1344** Flores (Similar HM 1047)	U.S. Treasury/Deposits by Nonresident Aliens; Urges the Congress of the United States to direct the Department of the Treasury to withdraw a proposed rule on deposits made by nonresident aliens and to examine the proposed rule for negative effects. BI 03/16/2011 JU	
2	**SB 1252** Smith (Identical H 1087)	Persons Designated to Receive Insurer Notification; Changes the designated person or persons who must be notified by an insurer from the "insured" to the "first-named insured" in situations involving the nonrenewal, renewal premium, cancellation, or termination of workers' compensation, employer liability, or certain property and casualty insurance coverage. Changes the designated person or persons who must be notified by an insurer from the "insured" to the "first-named insured" in certain situations involving the cancellation or nonrenewal of motor vehicle insurance coverage, etc. BI 03/16/2011 BC	
3	**SB 1332** Richter (Similar H 1121)	Financial Institutions; Authorizes the Office of Financial Regulation (OFR) to appoint provisional directors or executive officers. Specifies which accounting practice must be followed by financial institutions. Authorizes the OFR to conduct additional examinations of financial institutions if warranted. Revises the criteria for approval of a financial entity's plan of conversion. Provides for the transfer of assets from a federally chartered or out-of-state chartered institution. Revises provisions relating to emergency actions that may be taken for a failing financial institution, etc. BI 03/16/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 740** Transportation / Negron (Compare H 437)	Motor Vehicle Licenses; Redefines the term "line-make vehicles" to clarify circumstances under which vehicles sold or leased under multiple brand names or marks constitute a single line-make. Revises application of provisions relating to franchise agreements. TR 03/09/2011 Fav/CS BI 03/16/2011 BC	
5	**SB 1426** Hays (Compare CS/H 4101)	Repeal of Health Insurance Provisions; Deletes a requirement that the annual report of the Florida Health Insurance Plan's board of directors include certain actuarial information relating to levels of coverage and funding. Deletes a requirement that the Office of Insurance Regulation of the Department of Financial Services annually report to the Governor and the Legislature concerning the Small Employers Access Program. BI 03/16/2011 CM BC	
6	**SB 1330** Hays (Identical H 885)	Residential Property Insurance; Authorizes an insurer to use a rate for residential property insurance that differs from its otherwise filed rate after a specified date under certain circumstances. Requires insurance agents to obtain a signed acknowledgment from an applicant for coverage and certain policyholders relating to surcharges and assessments potentially being imposed under a Citizens Property Insurance Corporation policy. Specifies circumstances under which an insurer may offer or renew residential property insurance policies subject to the amendments to provisions contained in this act, etc. BI 03/16/2011 BC	

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SM 1344
INTRODUCER:	Senator Flores
SUBJECT:	U.S. Treasury/Deposits by Nonresident Aliens
DATE:	March 10, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arzillo	Burgess	BI	**Pre-meeting**
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

The memorial urges the United States Congress to direct the Department of Treasury to withdraw proposed Internal Revenue Service (IRS) regulation REG-146097-09, and to hold hearings to examine the possible negative effects and the costs of the proposed regulation on United States and Florida's financial institutions.

II. Present Situation:

Current Federal Regulation of Nonresident Alien Deposits

Regulation 26 C.F.R. 1.6049-4 governs the IRS authority to obtain reports of interest earned on bank deposits. Currently, the only nonresident aliens subject to reporting interest earned on deposit accounts held in the U.S. are Canadians.[1] The report requires the U.S. financial institution disbursing the interest earned on the deposit account to submit a 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding" form each year interest is paid.[2] When a 1042-S form is submitted to the IRS, the financial institution is required to send a copy to the Canadian account holder giving notice that the form has been submitted to the IRS.[3] The interest paid to a Canadian nonresident alien is not subject to tax under 26 C.F.R. 3406.[4]

[1] *See* 26 C.F.R. 1.6049-8(a) ("Interest means interest paid to a Canadian nonresident alien individual . . . . with respect to a deposit maintained at an office within the United States.")
[2] *See* 26 C.F.R. 1.6049-4(b)(5).
[3] *See* 26 C.F.R. 1.6-49-6(e)(4).
[4] *See* 26 C.F.R. 31.3406(g)-1(d) ("A payment of interest that is reported on Form 1042-S . . . . is not subject to withholding under section 3406.")

In 2002, the IRS attempted to broaden the nonresident alien depositors subject to the reporting requirement to 15 countries.[5] The 2002 regulation also allowed for the reporting of all nonresident alien interest earnings, regardless of country of origin, if the financial institution desired.[6] This change in the regulations met with considerable opposition. Studies showed that $88 billion would be removed from U.S. financial institutions upon the approval of this regulation.[7] Nevertheless, the IRS did not make any changes to the regulation.

Proposed Changes to Regulations of Nonresident Alien Deposits

The IRS has submitted a new set of changes to the regulations, which withdraws the proposed regulation made in 2002. The proposed regulation, instead of only applying to Canada or a select number of countries, would apply to all foreign countries. Therefore, the financial institutions in all 50 states would be required to report all the interest earned on deposits, more than $10, to the IRS using the 1042-S form, effective December 31 of the year of enactment.[8] Therefore, the same requirements for filing with the IRS for Canadian nonresident aliens would be applied to all nonresident aliens, regardless of country of origin.[9]

The IRS has presented several reasons for the regulatory change. First, a growing consensus has been established between foreign countries to cooperate in information sharing for tax purposes, including entering into agreements. This proposed regulation signals to other countries that the U.S. will not protect this information through bank secrecy or due to an absence of taxable incentives. The new requirement will also limit U.S. taxpayer evasion of taxes by making false claims of foreign status.[10]

These changes have been met with opposition. Congressman Bill Posey has collected the signatures of the entire Florida Delegation of U.S. Congressmen on a letter stating that the Delegation is opposed to the change in the regulatory scheme. The most prominent concern of the delegation is the loss of foreign deposits. The proposed regulation may lead to an exodus of nonresident alien depositors, which create several economic hardships. The withdrawal of funds by multiple investors at once will affect the solvency of financial institutions that rely heavily on these nonresident alien depositors.[11] Florida, being proclaimed as the "gateway to the Americas," will experience a greater level of withdrawals compared to other States.

---

[5]The countries subject to the 2002 regulation were Australia, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, and the United Kingdom. KPMG, Tax News Flash, Proposed Regulations on Reporting of Deposit Interest Paid to Nonresident Aliens; Prior Proposed Regulations are Withdrawn—Again, January 6, 2011, No. 2011-12.

[6] *See* note 5

[7] *See* Ward, Kenric, Florida Bankers Assail IRS Reporting Rule for Nonresident Aliens, www.sunshinestatenews.com (As of March 10,2011)

[8] *See* Internal Revenue Bulletin: 2011-8, REG-146097-09, Notice of Proposed Rulemaking; Notice of Public Hearing; and Withdrawal of Previously Proposed Rulemaking Guidance on Reporting Interest Paid to Nonresident Aliens, February 22, 2011.

[9] *See* note 8.

[10] See note 8.

[11] Letter sent to President Obama from the Florida Delegation in Washington, D.C. March 2, 2011. www.posey.house.gov/News/DocumentPring.aspx?DocumentID=227141. (As of March 10, 2011)

Additionally, the removal of nonresident alien deposits will decrease the amount of capital that could be invested through loans by financial institutions.[12] The withdrawal of funds weakens competition because nonresident aliens that remove their investments from U.S. financial institutions will redeposit them into foreign financial institutions. Furthermore, while the funds remain in the U.S., the money in the deposit accounts may be spent in the U.S. on goods and services. If the deposit accounts are transferred to foreign financial institutions, it is likely that that money will be spent on goods and services in the foreign country, rather than in the U.S. To the extent that reduces spending in the U.S., the proposed regulation would affect other industries as well as the financial system.[13]

III. Effect of Proposed Changes:

The memorial would urge the United States Congress to direct the Department of Treasury to withdraw proposed Internal Revenue Service (IRS) regulation REG-146097-09, and to hold hearings to examine the possible negative effects and the costs of the proposed regulation on United States and Florida's financial institutions. The memorial would also require that it be sent to the President of the United States, to the President of the U.S. Senate, to the Speaker of the U.S. House of Representatives, and to each member of the Florida delegation to the U.S. Congress. By sending the memorial to each of the identified recipients, the recipients would be informed of the underlying rationale of SM 1344 through its "whereas" clauses, including:

- Florida is the "gateway to the Americas," and has promoted international trade and finance;
- The United States has a longstanding policy of encouraging nonresident aliens to deposit their funds in U.S. financial institutions, which fosters economic development in the United States and Florida;
- Federal law does not permit taxation of nonresident alien deposits;
- Nonresident aliens have deposited nearly $3 trillion in banks and with securities brokers in the United States;
- Nonresident aliens have deposited tens of billions of dollars in financial institutions in Florida;
- Many of the nonresident aliens who have deposited funds in Florida financial institutions are Latin Americans who do not trust the privacy of the institutions in their home country, and fear kidnapping, extortion and financial instability when their funds are domestically deposited;
- The proposed Treasury rule would place U.S. and Florida financial institutions at a competitive disadvantage; and
- Removal of nonresident alien deposits would drive job-creating capital out of Florida.

Other Potential Implications:

None.

[12] *See* note 7.
[13] *See* note 7.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1252
INTRODUCER:	Senator Smith
SUBJECT:	Persons Designated to Receive Insurer Notifications
DATE:	March 11, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Pre-meeting**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill revises the policyholder notification requirements for an insurer in transactions involving the nonrenewal, renewal, or cancellation of workers compensation, employer liability, commercial liability, motor vehicle, or other property and casualty insurance coverage. Specifically, the bill changes the designated person or persons an insurer is required to notify from the "named insured" to the "first-named insured" in transactions involving the nonrenewal, renewal, or cancellation of such personal and commercial property and casualty insurance (i.e., workers' compensation, employer liability, motor vehicle, or specified property and casualty insurance coverage).

This bill substantially amends following sections of the Florida Statutes: 627.4133, 627.7277, 627.728, and 627.7281.

II. Present Situation:

Generally, the "named insured" is the person or persons listed by name on the policy's declaration page. Although the named insured is commonly one person, for a partnership, corporation, or other entity with insurable interests, multiple named insureds may be included. In regards to personal property or motor vehicle coverage, the named insured is commonly one or more individuals (husband and wife, parent and child, etc).

The "first-named insured" is the first named insured listed on the policy declarations. This insured acts as the legal agent for all named insureds in initiating cancellation, requesting policy changes, reporting notices of loss, accepting any return premiums, or other administrative functions. The first-named insured may also be responsible for payment of the premiums.

For purposes of commercial coverage, generally all named insureds on a policy are related by common ownership or a common business venture. Therefore, multiple named insureds may exist and would be included on the policy. Often, the named insureds are located at the same address, resulting in the insurer mailing multiple copies of the same notice to the same address.

Usually, lenders are added as loss payees with the attached endorsement rather than as named insureds. Status as a loss payee under the attached endorsement entitles the lender to receive notice from the insurer as a loss payee.

The insurance code contains specific policyholder notification requirements for cancellations, renewals, and nonrenewals. These provisions require notification to the named insured or the policyholder. According to the insurance industry, until recently, the OIR had interpreted the "named insured" to be "first-named insured" for purpose of notice requirements for most lines of commercial insurance. Because of this change of notification to the named insured, the OIR approved revisions to standard forms used in the commercial market related to notification requirements. Therefore, all named insureds of personal and commercial policies will receive cancellation and nonrenewal notices.

III. Effect of Proposed Changes:

Section 1 amends s. 627.4133,.F.S., relating to workers' compensation and employer's liability insurance, property, casualty, except for mortgage guaranty, surety, marine insurance, and motor vehicle, to require the "first-named insured" rather than the "named insured" to receive notice of nonrenewal or renewal premium, as well as cancellation or termination of coverage.

The bill also requires an insurer to provide notice to the "first-named insured" rather than the "named insured" with respect to the nonrenewal or renewal, as well as cancellation or termination of any personal lines or commercial property insurance policy.

Sections 2-4 amends ss. 627.7277, 627.728, and 627.7281, F.S., relating to motor vehicle insurance coverage, to require an insurer to provide notice of the nonrenewal, renewal, and cancellation to the "first-named insured" instead of the "named insured" or policyholder.

Section 5 provides that this act will take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to advocates of the bill, the intent of the bill is to reduce administrative costs associated with notifications by providing notice only to the "first-named insured" rather than all "named insureds." This change will reduce administrative costs associated with mailing multiple notices to all named insureds of a policy.

C. Government Sector Impact:

The Office of Insurance Regulation would be required to approve any revised forms or notices needed to implement the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Advocates of the bill indicated that the purpose of the bill is to amend the commercial insurance provisions to clarify that the first named insured would be the only party to receive notices. However, the bill appears to also impact personal property and motor vehicle insurance provisions.

VIII. Additional Information:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1332
INTRODUCER:	Senator Richter
SUBJECT:	Finanical Institutions
DATE:	March 7, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arzillo/Johnson	Burgess	BI	**Pre-meeting**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The Office of Financial Regulation (Office) is responsible for the regulation of state-chartered financial institutions pursuant to the provisions of the financial institutions codes.[1]. The Office does not have jurisdiction to regulate federally chartered or out-of-state chartered financial institutions. Due to the recent changes in the financial sector, the bill creates mechanisms to protect state financial institutions from failure. Since 2009, 45 Florida banks have closed, 29 of those in 2010 alone.[2] The bill also makes technical conforming changes to the recent federal legislation in the Dodd-Frank Wall Street Reform and Consumer Protection Act passed by Congress on July 21, 2010.[3]

Protection of Failing Financial Institutions - Due to the increased number of failures of state financial institutions and the unique circumstances that have arisen due to these failures, the financial institutions codes is amended in several ways. The bill permits the Office to approve special stock offering plans, which is currently prohibited if the financial institution's stock falls below par value. Additionally, the bill authorizes the Office to pre-approve shelf charters, which create a more efficient acquisition process for failing state financial institutions. The bill also allows the Office to appoint provisional directors or executive officers, if the financial institution does not have the statutorily required amount of directors and/or executive officers. Lastly, the bill changes examination requirements and other provisions for greater effectiveness of the Office's regulation of financial institutions.

[1] Chapters 655, 657, 658, 660, 663, 665, and 667, F.S.
[2] Federal Deposit Insurance Corporation, Failed Bank List, updated February 25, 2011, http://www.fdic.gov/bank/individual/failed/banklist.html (Last visited March 9, 2011).
[3] Public Law 111-203.

Dodd-Frank Wall Street Reform and Consumer Protection Act (Wall Street Reform Act) - The Wall Street Reform Act was enacted to address the catalysts of the recent financial crisis by promoting stability and transparency in the financial system. Although the Wall Street Reform Act is primarily aimed at large national financial institutions, some of its provisions affect the regulation of state financial institutions. Accordingly, the bill implements several provisions of the Wall Street Reform Act by amending the financial institutions codes concerning interstate branching and banking, the use of credit ratings for evaluating investment risks, and derivative lending limits.

The bill amends the following sections of the Florida Statutes: 288.772, 288.99, 440.12, 440.20, 445.051, 489.503, 501.005, 501.165, 624.605, 626.321, 626.730, 626.9885, 655.005, 655.013, 655.044, 655.045, 655.41, 655.411, 655.414, 655.416, 655.417, 655.418, 655.4185, 655.419, 655.947, 657.038, 657.042, 657.063, 657.064, 658.12, 658.28, 658.2953, 658.36, 658.41, 658.48, 658.53, and 658.67. The bill creates the following section in the Florida Statutes: 655.03855. The bill repeals the following sections of the Florida Statutes: 658.20(3), 658.295, 658.296, 658.65, 665.013(33), and 667.003(35).

II. Present Situation:

Protection of Failing Financial Institutions

Undercapitalization of Financial Institutions - State financial institutions cannot issue stock at less than par value, and par value cannot fall below $1.[4] Any changes, increase or decrease, in capital stock must be approved by the Office.[5] Par value of capital stock is the stock's face value and it sets the minimum price at which the financial institution may introduce shares. Historically, the market value of stock has not fallen below the par value. Recently, however, recently the falling values of stock have brought many state financial institutions below par value, but the Office is unable to assist in raising stock prices because of its lack of statutory authority.

Shelf Charters - Currently, an individual can apply for prior approval with the Office to become a director or executive officer of a financial institution.[6] The individual is required to submit an application and pay a filing fee of $7,500. Upon filing an application, the Office must consider things such as the character and fitness of the applicant[7] and the applicant's expertise and ability to run a state financial institution.[8] Currently, business entities are not eligible for prior approval

[4] *See* s. 658.34, F.S.
[5] *See* s. 658.36, F.S.
[6] *See* s. 658.20(3), F.S.
[7] *See* s. 658.20(1)(a), F.S. ("Upon the filing of an application, the office shall make an investigation of: The character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.")
[8] *See* s. 658.21(4), F.S. ("The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial institutions; or any similar state or federal law. At least two of the proposed directors who are not also proposed officers shall have had at least 1 year direct experience as an executive officer, regulator, or director of a financial institution within 3 years of the date of the application.")

to merge or purchase a financial institution.[9] However, the ability of the Office to allow prior approval of mergers and acquisitions of a failing financial institution would assist in the prevention of failures.

Provisional Directors and Executive Officers - Current law requires that a state financial institution maintain a minimum of five directors on its board of directors.[10] However, the financial institutions codes does not provide for enforcement of this requirement. Although historically the maintenance of the statutorily regulated number of directors has not fallen below five, recently a state credit union was forced into conservatorship. Each of the credit union's board of directors resigned, but due to its lack of statutory authority, the Office was unable to appoint directors and possibly prevent the conservatorship.

Examinations - The Office is required to conduct an examination of each state financial institution every 18 months, but it may accept examinations by an appropriate federal regulator. In addition, the Office is required to perform its own examination of each state financial institution every 36 months. Further, to ensure the safe and sound practice of state financial institutions, the Office is permitted to perform examinations more frequently than every 36 months.[11] Therefore, the 36-month examination requirement creates duplication in the process because the federally performed exams are sufficient to be relied upon by the Office, and the Office maintains authority to perform examinations more frequently.

Definition of Related Interest – The financial institutions codes prevents executives and certain shareholders of a financial institution from unfairly acquiring loans and other financial assistance from their financial institution.[12] Nevertheless, many executives and stockholders have circumvented these laws by using relatives to obtain loans and other financial benefits. The current definition of related interest does not encompass family members, but rather is limited to those who control parts of the financial institution. Therefore, the Office is limited in its enforcement, and cannot regulate those in control of financial institutions that circumvent the regulation through family members.

Determination of Capital and Liabilities – Current law contains broad language for calculating capital and liabilities held by an individual or financial institution.[13] However, the proper determination of whether an amount should be included or excluded from the calculation may depend on the specific type of capital or liability. Consequently, the use of these amounts of capital and liabilities may misrepresent the financial condition of the individual or financial institution.

---

[9] This is called a "shelf charter" because the charter sits on "the shelf" until the applicant is in the position to acquire a failing institution.

[10] *See* ss. 657.021 and 658.33, F.S.

[11] See s. 655.005, F.S. (""Unsafe or unsound practice" means any practice or conduct found by the office to be contrary to generally accepted standards applicable to the specific financial institution, or a violation of any prior order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the specific financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved.")

[12] *See* ss. 657.039 and 658.48, F.S.

[13] *See* ss. 655.005, 658,038, 658.48, and 658.53, F.S.

Dodd-Frank Wall Street Reform and Consumer Protection Act

Interstate Banking and Branching - Currently, the only means of an out-of-state financial institution to establish its initial presence in Florida is through the merger or acquisition of an existing Florida financial institution that is more than three years old.[14] Restrictions also apply to the ownership of remote financial service units by non-Florida financial institutions.[15] The enactment of the Wall Street Reform Act by Congress requires open borders for financial institutions. The Wall Street Reform Act preempts the type of restrictions currently in place in State law; so, an out-of-state bank can now establish a de novo branch,[16] rather than merge or acquire a state financial institution.

Conversions, Mergers and Acquisitions - Section 612 of the Wall Street Reform Act prohibits the conversion of a state or federal institution if the financial institution is subject to a cease and desist order issued by the appropriate regulatory agency, whether state or federal. However, an exception exists, which requires notice of an application of conversion to the appropriate state regulatory agency by the appropriate federal agency after the conversion. The federal regulatory agency is required to introduce a plan to address the matter causing the cease and desist order by the state regulatory agency. The Wall Street Reform Act intends to prohibit financial institutions from "forum shopping" for regulators that are more lenient.[17] Florida law currently allows for the conversion of a financial institution's charter subject to certain considerations, but those considerations do not include the existence of cease and desist orders or other regulatory suspensions.[18]

Lending Limits and Derivatives - Section 611 of the Wall Street Reform Act allows state financial institutions to engage in derivative transactions, only if the state in which the financial institution is chartered has enacted laws that take into consideration credit exposure to derivative transactions.[19] Current state law requires that financial institutions consider total liabilities of a person, including all loans endorsed or guaranteed. However, there is no requirement that the credit exposure of borrowers be considered in derivative transactions.

Credit Ratings - The Wall Street Reform Act eliminates the use of credit ratings for a determination of risk for investments.[20] The Wall Street Reform Act replaces the use of credit rating agencies with internal rating guidelines that each financial institution must develop to determine risk. Federal regulators no longer rely on credit rating agencies because of their

[14] See s. 658.2953, F.S.
[15] See s. 658.65, F.S.
[16] Section 655.0385, F.S. defines de novo bank /branch as a bank/branch that is has been established no more than 2 years in the state.
[17] Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates, Dodd-Frank Act: Commentary and Insights, July 12, 2010.
[18] Section 655.411, F.S.
[19] Section 611, Dodd-Frank Wall Street Reform and Consumer Protection Act. Derivative is defined as a contract the value of which is based on the performance of an underlying financial asset, or other investment. It is not a stand-alone asset because it has no value of its own.
[20] Section 939, Dodd-Frank Wall Street Reform and Consumer Protection Act.

conflicts of interest in determining credit rating grades.[21] However, state financial institutions are currently required to use credit ratings in assessing investment risks.[22]

III. Effect of Proposed Changes:

Protection of Failing Financial Institutions

Undercapitalization of Financial Institutions (Sections 12, 16, 25, and 27-28) – Although the market value of capital stock of financial institutions historically has not fallen below par value, this has been a growing problem for state financial institutions in recent years. The bill permits the Office to approve special stock offering plans if the capital stock of a state financial institution falls below par value and it cannot reasonably issue capital stock to restore the value of the shares. The bill permits the Office to approve a plan by a state financial institution that may call for stock splits, change voting rights, dividends, and the addition of new classes of stock. However, the plan must be approved by a majority vote of the financial institution's board of directors and holders of two-thirds of outstanding shares of capital stock. Nevertheless, the Office is required to assess the fairness of benefits of the plan, and disallow a plan that would not effectively restore capital stock prices to sufficient levels. In emergency situations, a failing financial institution does not have to perform a vote for the plan to be approved by the Office.[23]

Shelf Charters (Section 12) - Section 658.4185(3), F.S., is created to expand the prior approval privilege from only officers to business entities. The bill allows holding companies to apply for prior approval to merge or acquire control of a failing financial institution. The bill mandates that an entity must file an application for prior approval and submit the $7,500 filing fee. This expansion creates a new pool of potential buyers of failing banks, and increases the available equity capital in the bidding process used to procure failing institutions by the Federal Deposit Insurance Corporation's bid process.

Provisional Directors and Executive Officers (Section 3) - The bill creates s. 655.03855, F.S.,[24] which allows the Office to temporarily place a provisional director, for reasonable compensation by the financial institution, onto a state financial institution's board. Additionally, the bill allows the appointment of a provisional director if the director(s) are not equipped to operate the financial institution in a safe and sound manner. Nevertheless, prior to the placement of a provisional director, the Office must allow the financial institution 30 days to acquire the minimum amount of directors. Allowing the placement of provisional directors avoids a possible conservatorship of the state financial institution. The appointment of a provisional director also assists the Office in the prevention of failure of the financial institution because the bill requires the provisional director to submit reports, if directed by the Office, concerning the condition of the state financial institution and any corrective actions the director believes should be taken.

---

[21] American Bankers Association, Dodd-Frank Summary and Analysis, http://www.aba.com/regreform/default.htm (Last visited March 9, 2011).

[22] Sections 657.042 and 658.67, F.S. (None of the bonds or other obligations described in this section shall be eligible for investment by credit unions/any amount in any amount unless current as to all payments of principal and interest and unless rated in one of the four highest classifications, or, in the case of commercial paper, unless it is of prime quality and of the highest letter and numerical rating, as established by a nationally recognized investment rating service, or any comparable rating as determined by the office.).

[23] *See* s. 655.4185, F.S.

[24] *See* s. 658.20(3), F.S. for original language. This section was moved from s. 658.20(3), F.S. and amended to include holding companies.

Examination Requirements (Section 5) - The bill eliminates the required examination of state financial institutions by the Office every 36 months. The bill requires that the Office perform examinations every 18 months, but the Office may accept examinations conducted by the appropriate federal regulatory agency. This eliminates unnecessary examinations by the Office, and allows the Office to their target resources on examinations on those state financial institutions that are near failure, or operating in a risky manner.

Definition of Related Interest (Section 1) – The bill moves the definition of "related interest" to s. 655.005,.F.S., and expands the definition of "related interest" to include relatives and those who reside in the same household of one who is in control of a financial institution. Consequently, the Office can ensure that executives and shareholders do not attempt to circumvent caps and limits on lending.

Determination of Capital and Liability (Sections 1, 15, and 27-28) – The bill specifies the types of capital and liabilities that a financial institution must use in order to calculate total amounts of capital and liability. This ensures that capital and liability calculations are fairly and accurately determined.

Dodd-Frank Wall Street Reform and Consumer Protection Act-The bill makes the following conforming changes to comply with the Wall Street Reform Act:

Interstate Banking and Branching (Sections 6, 9. 12, and 22-24) - The Wall Street Reform Act requires that state regulators allow for de novo banking for out-of-state financial institutions. To conform, the bill allows an out-of-state financial institution to establish a de novo bank without merging or acquiring a state financial institution.[25] The bill also allows for the creation of additional branches in accordance with state law as if the out-of-state financial institution was chartered in Florida. The bill removes restrictions on the ability of out-of-state financial institutions to establish remote financial service units within Florida.

Conversions, Mergers and Acquisitions (Sections 6-13) - The Wall Street Reform Act prohibits state regulatory agencies from accepting the conversion of a charter of a federal financial institution when the converting financial institution is subject to regulatory action or a cease and desist order.[26] To conform, the bill amends s. 655.411, F.S., by requiring the applicant to prove that the resulting financial institution will comply with all regulatory actions in effect before the date of conversion and that the appropriate federal regulatory agency does not object to the conversion.

Lending Limits and Derivatives (Sections 16 and 27) - The Wall Street Reform Act requires that in order to participate in the derivatives market, a state financial institution must consider borrower exposure in the evaluation of its risk.[27] To conform, the bill adds the evaluation exposure to risk in derivative transactions.

[25] *See* s. 613, Dodd-Frank Wall Street Reform and Consumer Protection Act.
[26] *See* s. 612, Dodd-Frank Wall Street Reform and Consumer Protection Act.
[27] *See* ss. 610, 611, and 614, Dodd-Frank Wall Street Reform and Consumer Protection Act.

Credit Ratings (Sections 16 and 30) - The Wall Street Reform Act disallows the use of credit ratings in determining investment risk by requiring financial institutions to develop their own risk evaluations. To conform, the bill requires that all financial institutions develop and use internal policies and procedures to determine risk of investments, and prohibits the financial institution from using credit ratings as the sole means of determining investment risk.

Section 43 provides that this bill takes effect on July 1, 2011. The bill also makes technical conforming changes.

Other Potential Implications:

None.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may assist undercapitalized financial institutions in raising capital by authorizing the sale of stock below par value.

The shelf-charter provisions may increase the pool of potential buyers of troubled institution and therefore avoid failures.

The streamlining of the examination process may reduce regulatory burden on financial institutions by eliminating potential duplication of effort by federal regulators.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

954628

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

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

Senate Amendment

Delete lines 96 - 97
and insert:
company of a financial institution pursuant to ss. 658.27-658.285.

498482

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

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

Senate Amendment

Delete line 239
and insert:
incorporation or bylaws.

551980

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

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

Senate Amendment

Delete lines 357 - 359

and insert:

accounting principles ~~and practices~~. The commission may authorize ~~by rule~~ exceptions to such accounting principles by rule ~~practices as necessary~~.

671016

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

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

Senate Amendment (with title amendment)

Delete lines 395 - 399
and insert:
review, or as otherwise authorized by s. 655.057.

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete lines 16 - 18
and insert:
certain examination methods; amending s. 655.41, F.S.;

668206

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

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

Senate Amendment

Delete line 468

and insert:

institution that ~~entity which~~ is authorized to issue capital stock.

598928

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

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

Senate Amendment (with title amendment)

Delete lines 922 - 943

and insert:

Section 19. Subsections (3), (4), and (25) of section 658.12, Florida Statutes, are amended to read:

658.12 Definitions.—Subject to other definitions contained in the financial institutions codes and unless the context otherwise requires:

(3) "Banker's bank" means a bank insured by the Federal Deposit Insurance Corporation, or a holding company which owns or controls such ~~an~~ insured bank, if a minimum of 75 percent of

598928

~~when~~ the stock of such bank or holding company is owned exclusively by other banks, the bank is organized solely to do business with other financial institutions, and the bank does not do business with the general public ~~and such bank or holding company and all subsidiaries thereof are engaged exclusively in providing services for other financial institutions and their officers, directors, and employees~~.

(4) "Branch" or "branch office" of a bank means any office or place of business of a bank, other than its main office and the facilities and operations authorized by ss. 658.26(4)~~,~~ ~~658.65,~~ and 660.33, at which deposits are received, checks are paid, or money is lent. With respect to a bank that ~~which~~ has a trust department, the terms ~~"branch" and "branch office"~~ have the meanings herein ascribed to a branch or a branch office of a trust company and mean~~. "Branch" or "branch office" of a trust company means~~ any office or place of business of a trust company, other than its main office and its trust service offices established pursuant to s. 660.33, where trust business is transacted with its customers.

~~(25) Terms used but not defined in this code, but which are defined in Revised Article 3 or Article 4 of the Uniform Commercial Code as enacted in chapters 673 and 674 shall, in this code, unless the context otherwise requires, have the meanings ascribed to them in chapters 673 and 674.~~

Section 20. Section 658.165, Florida Statutes, is amended to read:

658.165 Banker's banks; formation~~; applicability of financial institutions codes; exceptions~~.—

(1) If ~~When~~ authorized by the office, a corporation may be

598928

formed under the laws of this state for the purpose of becoming a banker's bank. An application for authority to organize a banker's bank is subject to ~~the provisions of~~ ss. 658.19, 658.20, and 658.21, except that s. ~~the provisions of ss.~~ 658.20(1)(b) and (c) and the minimum stock ownership requirements for the organizing directors provided in s. 658.21(2) do not apply.

(2) A banker's bank chartered pursuant to subsection (1) is ~~shall be~~ subject to the ~~provisions of the~~ financial institutions codes and rules adopted thereunder; and, except as otherwise specifically provided herein or by rule or order of the commission or office, a banker's bank is ~~shall be~~ vested with or subject to the same rights, privileges, duties, restrictions, penalties, liabilities, conditions, and limitations that would apply to a state bank. A banker's bank is organized solely to do business with other financial institutions, and is not deemed to be doing business with the general public even if, as an incidental part of its activities, it does business to a limited extent with entities and persons other than financial institutions as follows:

(a) The range of customers with which the banker's bank does business is limited to financial institutions, including subsidiaries or organizations owned by financial institutions; directors, officers, or employees of the same or other financial institutions; individuals whose accounts are acquired at the request of a financial institution's supervisory authority due to the actual or impending failure of a financial institution; and financial institution trade associations; and

(b) The banker's bank does not make loans to, or

598928

investments in, entities and persons other than financial institutions which exceed 10 percent of the banker's bank's total assets, and the banker's bank does not receive deposits from, or issue other liabilities to, entities and persons other than financial institutions which exceed 10 percent of the banker's bank total liabilities.

(3) Notwithstanding any other provision of this chapter, a banker's bank may repurchase, for its own account, shares of its own capital stock; however, the outstanding capital stock may not be reduced below the minimum required by this chapter without the prior approval of the office.

(4) A banker's bank may provide services at the request of financial institutions in organization ~~organizations~~ that have:

(a) Received conditional regulatory approval from the office in the case of a state bank or trust company, or from the appropriate state regulatory agency in the case of an out-of-state bank or trust company, or received preliminary approval from the Office of the Comptroller of the Currency in the case of a national bank.

(b) Filed articles of incorporation or organization pursuant to s. 658.23 in the case of a state bank or trust company, or pursuant to applicable state law in the case of an out-of-state bank or trust company, or filed acceptable articles of incorporation and an organization certificate in the case of a national bank.

(c) Received capital funds in an amount not less than the minimum capitalization required in any notice of or order granting conditional regulatory approval.

(5) A banker's bank may provide services to the organizers

598928

of a ~~proposed~~ financial institution in organization which ~~that~~ has not received conditional regulatory approval if ~~provided that~~ such services are limited to the financing of the expenses of organizing such proposed financial institution and expenses relating to the acquisition or construction of the institution's proposed operating facilities and associated fixtures and equipment.

(6) If the commission or office finds that any provision of this chapter is inconsistent with the purpose for which a banker's bank is organized and that the welfare of the public or any financial institution would not be jeopardized thereby, the commission, by rule, or the office, by order, may exempt a banker's bank from such provision or limit the application thereof.

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

And the title is amended as follows:

Delete lines 43 - 45

and insert:

F.S.; revising the definition of "banker's bank"; conforming a cross-reference; deleting a provision relating to the application of definitions in the financial institutions codes; amending s. 658.165, F.S.; revising provisions relating to banker's banks; specifying the type of business such a bank may do with entities or individuals that are not banks; revising provisions relating to the services a banker's bank may provide to financial institutions in organization; repealing s.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 740

INTRODUCER: Transportation Committee and Senator Negron

SUBJECT: Motor Vehicle Licenses

DATE: March 11, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Spalla	TR	**Fav/CS**
2.	Knudson/Arzillo	Burgess	BI	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

Manufacturers, distributors, and importers (collectively referred to as licensees) enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles that they manufacture, distribute, or import. Existing law provides for the licensing of motor vehicle dealers and motor vehicle manufacturers, distributors, and importers, and regulates numerous aspects of the franchise contracts these businesses enter into to conduct business in the State of Florida.

The Department of Highway Safety and Motor Vehicles (DHSMV) held, in an administrative proceeding, amendments to the Florida Automobile Dealers Act (ss. 320.60-320.071, F.S.) do not apply to dealers having franchise agreements which were signed prior to the effective date of the amendment. *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. DMV-09-0935 (Fla. DOAH 2009). The Petitioner appealed the final order to the First District Court of Appeal, but ultimately voluntarily dismissed the appeal. The DHSMV has indicated it will be applying this holding to every amendment to the Florida Automobile Dealers Act. That means dealers have different protections under the law depending on when they signed their franchise agreement.

The bill amends s. 320.60(14), F.S., to revise the term "line-make vehicles" to provide an exception that motor vehicles sold or leased under multiple brand names or marks constitute a single line-make when: (1) they are included in single franchise agreement; and (2) every motor vehicle dealer in Florida authorized to sell or lease any such vehicles has been offered the right to sell or lease all of the multiple brand names or marks covered by the single franchise agreement. However, such multiple brand names or marks shall be considered individual franchises for purposes of s. 320.64(36), F.S.

The bill amends s. 320.6992, F.S., to provide for the application of ss. 320.60-320.70, F.S., including any amendments to ss. 320.60-320.70, F.S., to all existing or subsequently established systems of distribution of motor vehicles in the state unless such application would impair valid contractual agreements in violation of the State or Federal Constitution. All agreements amended subsequent to October 1, 1988, are governed by ss. 320.60-320.70, F.S., including any amendments to ss. 320.60-320.70, F.S., which have been or may be from time to time adopted unless the amendment specifically provides otherwise, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

This bill substantially amends the following sections of the Florida Statutes: 320.60 and 320.6992.

II. Present Situation:

Florida has substantially regulated the relationship between motor vehicle manufacturers and motor vehicle dealers since 1970. Manufacturers, distributors, and importers (collectively referred to as licensees) enter into contractual agreements with franchised motor vehicle dealers to sell particular vehicles (or line-make) that they manufacture, distribute, or import. Chapter 320, F.S., provides, in part, for the regulation of the franchise relationship.

Current law defines "agreement" or "franchise agreement" to mean a contract, franchise, new motor vehicle franchise, sales and service agreement, or dealer agreement or any other terminology used to describe the contractual relationship between a manufacturer, factory branch, distributor, or importer, and a motor vehicle dealer, pursuant to which the motor vehicle dealer is authorized to transact business pertaining to motor vehicles of a particular line-make.[1]

A "franchised motor vehicle dealer" is defined as "any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1)."

Section 320.60(14), F.S., defines "line-make vehicles" as those motor vehicles which are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer of same.

The requirements regulating the business relationship between franchised motor vehicle dealers and licensees by the DHSMV are primarily in ss. 320.60-320.070, F.S., (the Florida Automobile Dealers Act).[3] These sections of law specify, in part:

- The conditions and situations under which the DHSMV may deny, suspend, or revoke a license;
- The process, timing, and notice requirements for licensees wanting to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a change;
- The procedures a licensee must follow if it wants to add a dealership in an area already served by a franchised dealer, the protest process, and the DHSMV's role in these circumstances;
- Amounts of damages that can be assessed against a licensee in violation of Florida Statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

Section 320.6992, F.S., provides this act [Florida Automobile Dealers Act] shall apply to all presently existing or hereafter established systems of distribution of motor vehicles in this state, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. The provisions of this act shall not apply to any judicial or administrative proceeding pending as of October 1, 1988. All agreements renewed or entered into subsequent to October 1, 1988, shall be governed hereby.

The DHSMV recently held, in an administrative proceeding, amendments to the Florida Automobile Dealers Act do not apply to dealers having franchise agreements which were signed prior to the effective date of the amendment. *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. DMV-09-0935 (Fla. DOAH 2009). The Petitioner appealed the final order to the First District Court of Appeal, but ultimately voluntarily dismissed the appeal. In this holding, the DHSMV ruled the 2006 amendment to the Florida Automobile Dealers Act which requires that if a dealer's franchise agreement is terminated the manufacturer must buyback from the dealer its unsold vehicles, parts, signs, special tools, and other items, does not apply to a dealer terminated in 2008 because the dealer's franchise agreement was entered into prior to the effective date of the amendment.

The DHSMV has indicated it will be applying this holding to every amendment to the Florida Automobile Dealers Act. That means dealers have different protections under the law depending on when they signed their franchise agreement.

III. Effect of Proposed Changes:

The bill amends s. 320.60(14), F.S., to revise the term "line-make vehicles" to provide an exception that motor vehicles sold or leased under multiple brand names or marks constitute a single line-make when: (1) they are included in single franchise agreement; and (2) every motor vehicle dealer in Florida authorized to sell or lease any such vehicles has been offered the right to sell or lease all of the multiple brand names or marks covered by the single franchise agreement. However, such multiple brand names or marks shall be considered individual franchises for purposes of s. 320.64(36), F.S.

The bill amends s. 320.6992, F.S., to provide for the application of ss. 320.60-320.70, F.S., including any amendments to ss. 320.60-320.70, F.S., to all existing or subsequently established systems of distribution of motor vehicles in the state unless such application would impair valid

contractual agreements in violation of the State or Federal Constitution. All agreements amended subsequent to October 1, 1988, are governed by ss. 320.60-320.70, F.S., including any amendments to ss. 320.60-320.70, F.S., which have been or may be from time to time adopted unless the amendment specifically provides otherwise, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Currently section 320.6992, F.S., states that the "act" applies Article 1, section 10 of the Florida Constitution states, "No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed." Consequently courts generally disfavor retroactivity in the law.[1] Therefore, in the absence of a clear legislative intent to the contrary, a law is presumed to act prospectively.[2] However, if clear evidence of legislative intent to apply a statute retroactively exists, the court must perform a constitutional inquiry into whether the retroactivity is permissible.[3]

The determination of legislative intent to apply a statute retroactively was examined in *State Farm Mutual Auto. Insurance, Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995). The amendment in *Laforet* specifically stated that it "shall apply to all causes of action accruing after the effective date of section 624.155, Florida Statutes."[4] Therefore, the intent of the Legislature was clear, that the amendment was intended to apply retroactively to the effective date of the statute that the amendment clarified. If the intent of the legislature is clear, as it was here, the analyses moves to the constitutionality of the retroactive statute.

[1] *See* Eastern Enterprises v. Apfel, 524 U.S. 498 (1998).
[2] *See* Bates v. State, 750 So. 2d 6 (Fla. 1999).
[3] *See* Menendez v. Progressive Express Insurance Co., 35 So. 3d 873 (Fla. 2010). *See also* Smiley v. State, 966 So. 2d 330 (Fla. 2007).
[4] Laws of Fla. ch. 92-318, 80.

The assessment of constitutionality of the retroactive statute comes down to whether the statute is substantive or procedural. The courts have emphasized that "even where the Legislature has expressly stated that a statute will have retroactive application, [the] Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty."[5] In other words, if a statute affects substantive rights, courts will not apply the statute retroactively. However, if the statute is procedural, meaning it does not create new rights or obligations, courts will allow for retroactive application upon clear legislative intent.[6]

A statute affecting substantive rights may be applied retroactively if it serves to clarify a recently enacted statute and does not attach "new legal consequences to events completed before its enactment."[7] For example, in *Lowry v. Parole and Probation Commission*, 473 So. 2d 1248, 1250 (Fla. 1985), the court held that "[w]hen . . . . an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof." In *Lowry*, the amendment clarified the parole release date calculations for prisoners serving consecutive sentences. The court found that the statute was an interpretation by the Legislature of a previous statute; therefore, it was not a substantive amendment.

However, this is limited by the court in *Laforet*. As explained above, in *Laforet*, the amendment clearly stated its retroactive application. Nevertheless, the amendment came more than ten years after the date the original statute was enacted.[8] Therefore, the court held that the Legislature had waited too long before clarifying the statute, and that "it would be absurd . . . . to consider legislation enacted more than ten years after the original act as a clarification of original intent."[9] Consequently, courts view the passage of time, between the enactment of the original statute and the amendment, negatively.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

[5] *State Farm Mutual Auto. Insurance, Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).
[6] *See* Benyard v. Wainwright, 322 So. 2d 473, 475 (Fla. 1975). *See also City of Lakeland v. Catinella, 129 So. 2d 133 (Fla. 1961).*
[7] *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 3d 494, 499 (Fla. 1999).
[8] *See* note 5.
[9] *Id*. at 62.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Transportation on March 9, 2011:

- Redefines the term "line-make vehicles" to clarify circumstances under which vehicles sold or leased under multiple brand names or marks constitute a single line-make; and specifies such multiple brand names or marks shall be considered individual franchises for purposes of s. 320.64(36), F.S.
- Provides an exception to the application of ss. 320.60 – 320.70, F.S., on all amended agreements to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1426
INTRODUCER:	Senator Hays
SUBJECT:	Repeal of Health Insurance Provisions
DATE:	March 11, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess	Burgess	BI	**Pre-meeting**
2.			CM	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill deletes s. 627.64872(6)(b), F.S., which requires the Board of Directors of the Florida Health Insurance Plan to include the actual number of individuals covered and the projected number of individuals who may seek coverage in its annual report to the Governor, the President of the Senate and the Speaker of the House of Representatives

The bill deletes s. 627.6699(15)(l), F.S., which requires the Office of Insurance Regulation to submit an annual report to the Governor, the President of the Senate and the Speaker of the House of Representatives which summarizes the activities of the Small Employer Access Program, including written and earned premiums, program enrollment, administrative expenses, and paid and incurred losses.

The bill provides an effective date of July 1, 2011.

This bill substantially amends the following sections of the Florida Statutes: 627.64872, 627.6699.

II. Present Situation:

Florida Health Insurance Plan (FHIP)

In 1983, the Florida Legislature created the Florida Comprehensive Health Association (FCHA), to cover individuals that were unable to purchase health insurance from the open market due to

pre-existing conditions. The program is financed through premiums from the participants and assessments on insurance companies, but has been closed to new enrollment since 1991.[1]

In 2004, the Legislature created the Florida Health Insurance Plan (FHIP),[2] which was intended to replace the FCHA as the state's high risk insurance pool.[3] The benefits provided by the FHIP are the same as the standard and basic plans for small employers.[4] The FHIP must also provide an option for the purchase of alternative coverage, such as catastrophic coverage which includes a minimum level of primary care coverage, and a high deductible plan that meets all the requirements for a health savings account. Eligibility for the plan is limited to individuals who have received two notices of rejection for coverage from health insurers and individuals covered under the FCHA at the time the FHIP was created.[5]

The FHIP was created to be run by a nine person Board of Directors, chaired by the Director of the Office of Insurance Regulation (OIR). Five Board members would be appointed by the Governor and one member each would be appointed by the President of the Senate, the Speaker of the House of Representatives, and the Chief Financial Officer.[6] The Board is required to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, an annual report which is to include an independent actuarial study that must contain five elements specifically enumerated in s. 627.64872(6)(a)-(e), F.S. One of the required elements is the actual number of individuals covered by FHIP, and the projected number of individuals that may seek coverage in the following year.[7]

According to the OIR, funds for the start-up of the FHIP have not been appropriated, and as a result, the FHIP is not in operation.[8] Therefore, the requirement that a report be provided that details, among other data, the number of people covered and projected to be covered is moot.

Small Employers Access Program

In 1992, the Legislature enacted the Employee Health Care Access Act (EHCAA).[9] The purpose of the act was to promote the availability of health insurance coverage to small employers, regardless of claims experience or their employees' health status.[10] In 2004, the Small Employers Access Program (Program) was created within the EHCAA.[11] The purpose of the Program was to provide additional health insurance options for small businesses consisting of up to 25 employees, including any municipality, county, school district, hospital located in a rural

[1] *See* Department of Financial Services website: myfloridacfo.com/consumers/InsuranceLibrary/Insurance/Residual_Markets/Residual_Markets – Florida_Comprehensive_Health_Association. htm; last visited March 12, 2011.
[2] Section 627.64872, F.S.
[3] *See* Department of Financial Services website:http://www.myfloridacfo.com/consumers/InsuranceLibrary/Insurance/Residual_Markets/Residual_Markets_-_The_Florida_Health_Insurance_Plan.htm; last visited March 12, 2011.
[4] *See* s. 627.6699(12), F.S.
[5] Section 627.64872(9), F.S.
[6] Section 627.64872(3), F.S.
[7] Section 627.64872(6)(b), F.S.
[8] Florida Office of Insurance Regulation Bill Analysis for SB 1426 (March 9, 2011).
[9] Ch. 92-33, s. 117, L.O.F.
[10] Section 627.6699(2), F.S.
[11] Ch. 2004-297, s. 24, L.O.F.

community, and any nursing home employer.[12] The OIR is required to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives summarizing the activities of the Program over the past year, including written and earned premiums, program enrollment, administrative expenses, and paid and incurred losses.[13]

According to OIR, the Small Employers Access Program is not operational. The enacting legislation required a competitive bid for an insurer to administer the program. The OIR issued the required request for proposals (RFP) in 2004, and no insurer submitted a bid. Therefore, the annual reporting requirement contained in the section is moot.[14]

III. Effect of Proposed Changes:

Section 1. The bill repeals s. 627.64872(6)(b), F.S., which requires that the FHIP include in its annual report the actual number of individuals covered by FHIP, and the projected number of individuals that may seek coverage in the following year.

Section 2. The bill repeals s. 627.6699(15)(l), F.S., thereby eliminating the annual reporting requirement for the Small Employers Access Program. The Program would no longer be required to submit the annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 3. The bill has an effective date of July 1, 2011.

Other Potential Implications:

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.

[12] Section 627.6699(15)(b), F.S.
[13] Section 627.6699(15)(l), F.S.
[14] Florida Office of Insurance Regulation Bill Analysis for SB 1426 (March 9, 2011).

B. Private Sector Impact:

None

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because no funds have been appropriated for it, the FHIP is not in operation. The Board of the FHIP is required by statute to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, an annual report which is to include an independent actuarial study that must contain five specifically enumerated elements. Section 2 of the bill repeals only one of the five required elements. Accordingly, the statute would continue to require the FHIP to submit an annual report containing the remaining four elements.

VIII. Additional Information:

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

None.

B. Amendments:

None.

521758

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

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

Senate Amendment (with title amendment)

Delete lines 16 - 45

and insert:

Section 1. Subsection (6) of section 627.64872, Florida Statutes, is repealed.

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

And the title is amended as follows:

Delete lines 3 - 7

and insert:

provisions; repealing s. 627.64872(6), F.S., relating

521758

to a requirement that the board of directors of the Florida Health Insurance Plan annually report to the Governor and the Legislature; amending s. 627.6699, F.S.;

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1330
INTRODUCER:	Senator Hays
SUBJECT:	Residential Property Insurance
DATE:	March 8, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Pre-meeting**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

Senate Bill 1330 authorizes insurers use an alternative rate for residential property insurance different from the rate approved by the Office of Insurance Regulation (OIR). The alternative rate may create a statewide average rate increase of up to 15 percent above the company's most recently approved standard rate filing. Rate increases for individual policyholders cannot exceed double the proposed alternative rate. The OIR may deny the alternative rate if it is inadequate or it proposes a higher premium based on the policyholder's race, color, creed, marital status, sex, or national origin. The bill places requirements on insurers seeking to use an alternate rate. The insurer may not purchase Temporary Increase in Coverage Limits (TICL) coverage from the Florida Hurricane Catastrophe Fund (Cat Fund). Effective January 1, 2015, insurers must have the ability to cover its 100-year probable maximum loss (PML) due to a hurricane.

The insurance agent must obtain a signed form acknowledging that the applicant for Citizens coverage or current Citizens policyholder understands the potential liability for surcharges and assessments of Citizens policyholders. The agent must obtain the signed acknowledgment from all Citizens applicants and all Citizens policyholders prior to the first renewal of a Citizens policy that occurs after the effective date of the bill.

This bill substantially amends the following sections of the Florida Statutes: 627.062 and 627.351.

The bill creates the following section of the Florida Statutes: 627.7031.

II. Present Situation:

"Property insurance"[1] includes insurance covering personal lines residential risks, commercial lines residential risks, and commercial nonresidential risks as follows:

- *Personal lines residential coverage*: homeowners', mobile home owners', dwelling, tenants', condominium unit owners', cooperative unit owner's and similar policies.
- *Commercial lines residential coverage*: coverage provided by a condominium association, cooperative association, apartment building and similar policies.
- *Commercial nonresidential coverage*: coverage provided by commercial business policies.

Generally, residential property insurance covers a policyholder's residence, providing reimbursement due to damages sustained by the residence, including windstorm damage. Section 627.4025, F.S., defines "residential coverage" as personal lines residential coverage and commercial lines residential coverage.

Rate Regulation for Property, Casualty, and Surety Insurance

The primary purpose of Part I of ch. 627, F.S., known as the Rating Law, is to ensure that property, casualty, and surety insurance rates are not excessive, inadequate, or unfairly discriminatory and that these standards apply to every property insurance rate.

Section 627.0645, F.S., requires every property insurance company to make a rate filing, which contains the insurer's proposed rates, with the office each year. The office reviews the rate filing and either approves or disapproves the proposed rates. If an insurer does not want to change its rates one year, instead of a rate filing the insurer may file a certification by an actuary that the existing rate level produces rates which are actuarially sound and which are not inadequate. In determining whether a rate is excessive, inadequate, or unfairly discriminatory, the office uses the following statutory factors.

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, when applicable.
- A reasonable margin for underwriting profit and contingencies.
- Cost of medical services, when applicable.

[1] Section 624.604, F.S., defines property insurance as insurance on real or personal property of every kind and interest, whether on land, water, or in the air, against loss or damage for any and all hazards and against loss or damage.

- Other relevant factors impacting frequency and severity of claims or expenses.

Excess Rates

Section 627.171, F.S., permits an insurer to use a rate in excess of the insurer's filed rate on a specific risk if the insurer obtains the signed, written consent of the insured prior to the policy inception date. The signed consent form must include the filed rate and the excess rate for the risk insured. An insurer may not use excess rates for more than 5 percent of its personal lines insurance policies written or renewed in each calendar year.

Citizens Property Insurance Corporation (Citizens or corporation)

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[2] It is not a private insurance company.[3] Citizens' book of business is divided into three separate accounts:[4]

- **Personal Lines Account (PLA)** – Multiperil Policies[5]
  Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies covering damage to property from windstorm and from other perils.
- **Commercial Lines Account (CLA)** – Multiperil Policies
  Consists of condominium association, apartment building and homeowners' association policies covering damage to property from windstorm and from other perils.
- **High-Risk Account (HRA)** – Wind-only[6] and Multiperil Policies
  Consists of personal lines wind-only policies, commercial residential wind-only policies and commercial non-residential wind-only policies issued in limited eligible coastal areas which cover damage to property from windstorm only. Also consists of personal and commercial residential multiperil policies in specified coastal areas (wind-only zones) issued since 2007 which cover damage to property from windstorm and from other perils.

Each Citizens' account is a separate statutory account and, therefore, has separate calculations of surplus and deficits. By statute, assets of each account may not be comingled or used to fund losses in another account.[7]

Assessments: In the event Citizens incurs a deficit, i.e., its obligations to pay claims exceed its capital plus reinsurance recoveries, it may levy assessments on most of Florida's property and

[2] Voluntary admitted market refers to insurers licensed to transact insurance in Florida.
[3] s. 627.351(6)(a)1., F.S.
[4] s. 627.351(6)(b)2., F.S.
[5] A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy, that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (http://www2.iii.org/glossary/) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.
[6] A wind-only policy provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.
[7] s. 627.351(6)(b)2.b., F.S.

casualty insurance policyholders in a specific sequence set by statute.[8] The three Citizens' accounts calculate deficits and resulting assessment needs independently.

Citizens Policyholder Surcharges[9]

If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15 percent of premium per account for a maximum total of 45 percent. This surcharge is collected over 12 months on all Citizens' policies and collected upon issuance and renewal.

Regular Assessments:[10]

Upon the exhaustion of the Citizens policyholder surcharge for a particular account, Citizens may levy a regular assessment of up to 6 percent of premium or 6 percent of the deficit per account, for a maximum total of 18 percent. The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies.[11] Property and casualty insurers with policies subject to the regular assessment provide the assessment to Citizens up front and subsequently recover it from their policyholders at the issuance of a new policy or at renewal of existing policies. Citizens is usually able to collect regular assessment funds within 30 days after levy.

Emergency Assessments:[12]

Upon the exhaustion of the Citizens' policyholder surcharge and regular assessment for a particular account, Citizens may levy an emergency assessment of up to 10 percent of premium or 10 percent of the deficit per account, for a maximum total of 30 percent. This assessment can be collected for as many years as is necessary to rectify a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies.[13] Initially, property and casualty insurers with policies subject to the emergency assessment collect the assessment from policyholders at the issuance of a new policy or at renewal of existing policies and then remit the assessments periodically to Citizens. Thus, Citizens will not collect funds raised by an emergency assessment immediately after the assessment is levied, but will collect funds intermittently throughout the collection period as policies are renewed and new policies written.

Conclusive Presumptions

A statutory presumption is conclusive if it prevents a party from proving or disproving the presumed fact. Conclusive presumptions can raise constitutional due process concerns but are permissible in some circumstances. The constitutionality of a conclusive presumption under the due process clause is measured by determining (1) whether the concern of the Legislature was

[8] s. 627.351(6)(b)3.a.,d., and i ., F.S.
[9] s. 627.351(6)(b)3.i., F.S.
[10] s. 627.351(6)(b)3.a. and b., F.S.
[11] The assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.
[12] s. 627.351(6)(b)3.d., F.S.
[13] This assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. See s. 627.351(6)(b)3.f., F.S.

reasonably aroused by the possibility of an abuse which it legitimately desired to avoid; (2) whether there was a reasonable basis for a conclusion that the statute would protect against its occurrence; and (3) whether the expense and other difficulties of individual determinations justify the inherent imprecision of a conclusive presumption.[14] Florida insurance statutes contain conclusive presumptions related to selection or rejection of homeowner's law and ordinance coverage,[15] a motor vehicle insurance policyholder's election to purchase uninsured motorist coverage at lower limits than the insured's bodily injury coverage,[16]the assessment liability of the policyholders of a worker's compensation self insurance fund,[17] informed consent of HIV and AIDS testing for insurance purposes,[18] and the possibility that a Citizens Property Insurance Corporation policy could be replaced by a policy from an authorized insurer that does not provide identical coverage.[19]

III. Effect of Proposed Changes:

Sections 1 and 2. Amend s. 627.062(2)(l), F.S., authorizing insurers to sell residential property insurance policies at an alternate rate.

Alternative Rates for Residential Property Insurance – The bill authorizes insurers to sell residential property insurance policies at an alternative rate that is different than the rate approved by the OIR pursuant to the requirements of the Rating Law. The alternative rate is subject to the following requirements:

- *A 15 Percent Maximum Statewide Rate Increase* – The alternative rate may create a statewide average rate increase of up to 15 percent above the company's most recently approved standard rate filing. Subsequent expedited rate filings may create a statewide average rate increase of up to 15 percent above the previous year's approved expedited rate filing. Because the allowable increase is based on a percentage of the previous year's rates, the annual increase will be compounded over the previous year's rate increase.
- *A Maximum Individual Policyholder Rate Increase of 2 Times the Statewide Increase* – The alternative rate may create a percentage rate increase for an individual policyholder of up to 2 times the statewide average rate increase provided for in the filing. For example, if the rate filing proposes a statewide 14 percent rate increase, the rate increase applicable to an individual policyholder cannot exceed 28 percent.

The alternative rate filing process does not alter the insurer's responsibility to file all materials that are required under the rating law and administrative rule. However, the rate filing will be subject to only a limited review by the OIR. Under current law, a rate shall not be excessive, inadequate, or unfairly discriminatory. The bill instead utilizes the following rate standard:

- *Excessive Rates* – The authorization of a 15 percent rate increase implicitly prevents the office from denying the rate as excessive unless the proposed alternative rate causes more

[14] Hall v. Recchi America, Inc., 671 So.2d 197, 200 (Fla 1st DCA 1996)
[15] Section 627.7011(2), F.S.
[16] Section 627.727(1), F.S.
[17] Section 440.585, F.S.
[18] Section 627.429, F.S.
[19] Section 627.351(6)(c)11., F.S.

than a 15 percent statewide rate increase or an increase to an individual policyholder that is more than double the statewide average increase.

- *Inadequate Rates* – The OIR may disapprove the alternative rate if it is inadequate. The office's authority to deny an inadequate rate is not altered in the alternative rate review process.
- *Unfairly Discriminatory Rates* – The alternative rate review process limits the prohibition against "unfairly discriminatory" rates in s. 627.062(2)(b), F.S. Under current law, a determination that a rate is "unfairly discriminatory" is based on an actuarial determination that the rate does not bear a reasonable relationship to the expected loss and expense experience of a risk or group of risks or fails to account for a risk management program. Under the alternative rate-filing process, the examination of whether a rate is "unfairly discriminatory" is altered and uses a different standard. The alternative rate is unfairly discriminatory and must be disapproved if it proposes a higher premium based on the policyholder's race, color, creed, marital status, sex, or national origin. The OIR may direct the insurer to submit a new rate filing that does use the prohibited factor.

Other statutory provisions related to the alternative rate filing process include:

- *Separate Rate Filing* – The rate must be filed with the OIR as a separate filing.
- *Excess Rate Calculation Inapplicable* – Policies which are subject to this rate provision are not counted in the calculation of excess rates under s. 627.171, F.S.
- *Insurer Must Cover the 100-Year PML (Effective Jan. 1, 2015)* – Effective January 1, 2015, the insurer must include with the expedited filing a statement that the insurer has (or intends to have) the ability to cover its 100-year PML through a combination of surplus, Florida Hurricane Catastrophe Fund coverage, reinsurance, and reinsurance equivalents. The insurer must subsequently provide a certification to the OIR by July 31st that it can cover the 100-year PML. If the insurer fails to maintain resources sufficient to cover the 100-year PML, the expedited rate filing is void and shall be replaced by the insurer's rates that were effective when the expedited rate was filed. The insurer must give the policyholder a refund or premium discount in the amount of excess premium collected to pursuant to the voided rate.

Section 3. Creates subparagraph 19 of s. 627.736(6)(c), F.S., which contains statutory standards for the Citizen's Property Insurance Corporation plan of operation.

Acknowledgement of Surcharge and Assessment Liability – The Citizens plan of operation must require that the insurance agent obtain a signed form acknowledging that the applicant for Citizens coverage or current Citizens policyholder understands the potential liability for surcharges and assessments of Citizens policyholders. The agent must obtain the signed acknowledgment from all Citizens applicants and all Citizens policyholders prior to the first renewal of a Citizens policy that occurs after the effective date of the bill. The acknowledgment form states that the policyholder understands that:

- Citizens policyholders are subject to Citizens policyholder surcharges if the corporation sustains a deficit.
- The policyholder surcharges could be as high as 15 percent of premium in each of three Citizens accounts, or a different amount established by the Legislature.

- The policyholder may be subject to emergency assessments to the same extent as policyholders of other insurance companies.

Citizens must maintain a signed copy of the acknowledgement form. A signed acknowledgment form creates a conclusive presumption the policyholder understood and accepted the surcharge and assessment liability placed on Citizens policyholders.

Sections 4 and 5. Creates s. 627.7031, F.S., to provide requirements for using the expedited residential property insurance rate filing option.

Requirements for Use of the Expedited Rate Filing Process – Insurers may write residential property insurance policies at rates approved pursuant to the expedited rate filing process, subject to the following requirements:

- *No Cat Fund TICL Coverage* – The insurer may not purchase TICL coverage from the Cat Fund.
- *Disclosure That the Policy is not Subject to Full Rate Regulation* – Insurers must provide new applicants and current insureds prior to policy renewal with written notice that: (1) the rate for the policy is not subject to full rate regulation by the OIR and may be higher than rates approved by the office; (2) Coverage subject to full rate regulation may be otherwise available from private market insurers or Citizens; (3) the insured should discuss policy options with an agent who can provide a Citizens quote; and (4) the OIR's website at www.shopandcomparerates.com has more information about insurance choices that are available.
- *Provide Applicants and Current Policyholders with a Citizens Premium Estimate* – An applicant or current policyholder must be provided a Citizens premium estimate for similar coverage prior to the effective date of the new policy or, if the policy existed prior to this bill becoming law, prior to the first renewal that uses a rate approved via the expedited rate filing process.
- *Written Acknowledgement of Disclosures* – The applicant or insured must sign a written acknowledgment that: (1) The insured has reviewed the required disclosures and premium comparison; (2) The insured understands that the rate is not subject to full rate regulation by the OIR and may be higher than rates approved by the office; (3) The insured understands that residential property insurance policies subject to full rate regulation may be available through Citizens; and (4) The insured understands that the OIR website www.shopandcomparerates.com contains residential property insurance rate comparison information.
- *The Insurance Policy Cannot Exclude Hurricane Coverage* – Policies that exclude hurricane or windstorm coverage cannot charge rates approved via the expedited rate filing process.
- *Citizens Take-Out Policies Not Eligible if Subject to Rate Arrangement* – A rate approved via the expedited rate filing process may not be applied to policies removed from Citizens by a private carrier if the policy is subject to a consent decree, agreement, understanding, or other arrangement between the insurer and the OIR relating to rates or policy premiums.
- *Insurer Must Be Able to Cover the 100-Year PML (Effective Jan. 1, 2015)* – Effective January 1, 2015, in order to sell policies using rates approved by the expedited rate filing process, the insurer must have the ability to cover its 100-year PML through a combination of surplus, Florida Hurricane Catastrophe Fund coverage, reinsurance, and reinsurance

equivalents. The probable maximum loss must be determined using a hurricane model approved by the Florida Commission on Hurricane Loss Projection Methodology.

Section 6. The bill is effective upon becoming a law, except as otherwise provided. Sections 2 and 5 of the bill are effective January 1, 2015.

Other Potential Implications:

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:

Property insurance policies with rates different than an insurer's filed rates are likely to have higher premiums than the insurer's previously filed rate. Some homeowners may be willing to pay the higher premium in exchange for obtaining a policy from a particular insurer. However, some insurers may actually choose to implement an alternative rate that is lower than its actuarially indicated rate in order to take advantage of the expedited rate review process created by the bill. The bill establishes maximum limits on the amount an insurer may increase its rates over a period of years. Because the allowable increase is based on a percentage of the previous year's rates, the annual increase will be compounded over the previous year's rate increase.

The number of policies in Citizens may increase as a result of this bill. If property insurance premiums increase and if such increases make the premiums for a policy 15 to 20 percent higher than a comparable policy from Citizens, then some policyholders of insurers may opt to cancel their existing property policy and obtain a policy from Citizens due to the premium difference in the policies. The actual number of policies that may move from the voluntary market to Citizens cannot be calculated. Policyholders who buy property insurance based solely on price are more likely to move their policy to Citizens under this scenario. However, policyholders who base their property insurance purchase

on loyalty to an insurer or on being insured by a particular insurer that is well capitalized, may opt to stay with their insurer in the private market even if that company increases its rates as allowed under the bill.

The bill may incentivize insurance companies in the private market to write multi-peril policies[20] currently written by Citizens. If insurers determine it is advantageous for their company to write these policies at rates different than their filed rates, then these companies will write multi-peril policies currently written by Citizens. However, the policyholder would have to choose to move from Citizens to the private market insurer.

The bill may also incentivize insurance companies in the private market to assume the wind coverage on wind-only policies[21] currently written by Citizens. If insurers charge rates different than their filed rates and determine it is advantageous for the company to write the wind portion of policies currently in Citizens as wind-only policies, then some of the wind-only policies could be written by the private market. Again, the policyholder would have to choose to move from Citizens to the private market insurer. As stated previously, policyholders who buy property insurance based solely on price may not move their policy to the private market insurer if that insurer charges more than they currently pay for a policy with non-wind coverage from the insurer plus a policy with wind only coverage from Citizens. However, policyholders who base their property insurance purchase on being insured by a particular insurer or who want one comprehensive property insurance policy may opt to move to the private market insurer for a policy with wind and non-wind coverage, even if that company charges more for the policy than the price of the Citizens wind-only policy added to the price of the private insurer's non-wind coverage.

C. Government Sector Impact:

The Office of Insurance Regulation indicates that implementation of the provisions of this bill will not result in a fiscal impact to the office.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[20] A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy, that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (http://www2.iii.org/glossary/) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

[21] A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability is available in a separate policy.

VIII. Additional Information:

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

None.

B. Amendments:

None.