Committee on Appropriations

CS/SB 2-D — Property Insurance

by Appropriations Committee and Senator Boyd

The bill addresses the increasing lack of access and affordability of property insurance in Florida.

Reinsurance to Assist Policyholders (RAP) Program

The Reinsurance to Assist Policyholders program authorizes a $2 billion dollar reimbursement layer of reinsurance for hurricane losses directly below the mandatory layer of the Florida Hurricane Catastrophe Fund (FHCF). The FHCF mandatory retention is $8.5 billion for the 2022-2023 contract year.

The RAP program must reimburse 90 percent of each insurer's covered losses and 10 percent of their loss adjustment expenses up to each individual insurer's limit of coverage for the two hurricanes causing the largest losses for that insurer during the contract year. Each insurer's limit of the $2 billion in RAP coverage is their pro-rata market share among all insurers that participate in the RAP program. Thus, an insurer with five percent of the total risk reimbursed by RAP coverage would have a limit of coverage of $100 million.

Insurers do not pay premiums for RAP program coverage, but must reduce rates to reflect savings. Insurers that participate in the RAP program for 2022-2023 must reduce their rates by June 30, 2022, to reflect the savings from RAP coverage. Insurers that defer using the RAP program until 2023-2024 must reduce rates to reflect savings by May 1, 2023.

All eligible insurers must participate in the RAP program for one year. Insurers that the Insurance Commissioner certifies are in unsound financial condition and Citizens Property Insurance Company are ineligible for the program. Insurers that do not have private reinsurance that duplicates any RAP coverage for the 2022-2023 contract year must participate during the 2022-2023 contract year. A RAP insurer that has private reinsurance that duplicates any RAP coverage for the 2022-2023 contract year must notify the State Board of Administration of the private reinsurance and must defer participation in the RAP program until the 2023-2024 contract year.

The RAP program is funded through a $2 billion dollar appropriation from the General Revenue Fund. Monies are only transferred to the State Board of Administration (the program administrator) if the RAP program coverage must be paid because of a hurricane. If funds are transferred to the State Board of Administration (SBA) because of a hurricane, the SBA may request funds for the administration of the program from the General Revenue Fund, not to exceed $5 million.

The RAP program expires July 1, 2025, if no General Revenue funds have been transferred to fund the RAP program. If such funds were transferred, the statute expires July 1, 2029, and all unencumbered RAP Program funds must be transferred back to the General Revenue Fund.

My Safe Florida Home Program

Effective July 1, 2022, the bill appropriates $150 million from the General Revenue Fund to the Department of Financial Services' My Safe Florida Home Program to provide hurricane mitigation inspections and matching grants for the performance of hurricane retrofitting on homestead single family homes with a value of $500,000 or less located in the wind-borne debris region set forth in the Florida Building Code. The My Safe Florida Home Program, which is administered by the Department of Financial Services, will provide financial incentives for Florida residential property owners to obtain free home inspections that would identify mitigation measures and also provide grants to retrofit such properties, thereby reducing their vulnerability to hurricane damage and helping decrease the cost of residential property insurance.

The bill revises the eligibility criteria for receiving program grants. It:

- Requires that a homeowner who receives a mitigation grant agree to make his or her home available for inspection after the mitigation project is completed.
- Requires that a building permit for initial construction of the home must have been made before January 1, 2008.
- Requires the home to have undergone an acceptable hurricane mitigation inspection after July 1, 2008.

Grants awarded under the program provide $2 in grant funds for every $1 provided by the homeowner. Exceptions are provided for low-income homeowners. Applicants may receive up to $10,000 in program money.

The Department of Financial Services must include in the annual report of program activities the average annual amount of insurance premium discounts and the total of such discounts received from insurers.

The bill allocates appropriated funds as follows:

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

Any unexpended balance of appropriated funds remaining on June 30, 2023, reverts and is appropriated to the Department of Financial Services for the 2023-2024 fiscal year for the My Safe Florida Home program.

Contractor Solicitation of Roof Claims

The bill prohibits contractors from making written or electronic communications that encourage or induce a consumer to contact a contractor or public adjuster for the purposes of making a property insurance claim for roof damage unless such solicitation provides notice that:

- The consumer is responsible for the payment of any deductible.
- It is insurance fraud punishable as a third-degree felony for a contractor to pay or waive a deductible with intent to injure, defraud, or deceive.
- It is insurance fraud punishable as a third-degree felony to intentionally file an insurance claim containing false, fraudulent, or misleading information.

Separate Roof Deductibles

The bill allows property insurers to include in a personal lines residential property insurance policy a separate roof deductible of up to two percent of the Coverage A limit of the policy or 50 percent of the cost to replace the roof. The policyholder must also be offered the option to decline the roof deductible by signing a form approved by the Office of Insurance Regulation (OIR). If a roof deductible is added to the policy at renewal, the insurer must provide a notice of change in policy terms and allow the policyholder to decline the separate roof deductible.

Policyholders that select a roof deductible must receive an actuarially sound premium credit or discount.

A roof deductible does not apply to:

- A total loss to the primary structure in accordance with the valued policy law under s. 627.702, F.S., which is caused by a covered peril.
- A loss caused by a hurricane.
- A roof loss resulting from a tree fall or other hazard that damages the roof and punctures the roof deck.
- A roof loss requiring the repair of less than 50 percent of the roof.

When a roof deductible is applied, no other deductibles under the policy may be applied. A roof deductible only applies to a claim adjusted on a replacement cost basis.

A roof deductible provision must be clear and unambiguous. A policy with a roof deductible must include the following disclosures:

- On the page immediately behind the declarations page, notice that a roof deductible may result in high out-of-pocket expenses to the policyholder.
- On the policy declarations page, prominent display of the actual dollar value of the roof deductible at issuance and renewal. Allows an insurer to limit payment on a roof claim to actual cash value until the policyholder pays the roof deductible.

An insurer may limit the claim payment for a roof to the actual cash value of the loss to the roof until the insurer receives reasonable proof of payment by the policyholder of the roof deductible.

Roofs – Insurer Underwriting

The bill prohibits an insurer from refusing to issue or refusing to renew a homeowner's insurance policy insuring a residential structure with a roof that is less than 15 years old solely because of

the age of the roof. If the roof is at least 15 years old, an insurer must allow a homeowner to have a roof inspection performed by an authorized inspector at the homeowner's expense before requiring the replacement of the roof as a condition of issuing or renewing a homeowner's insurance policy. The insurer may not refuse to issue or refuse to renew a homeowner's insurance policy solely because of a roof age of at least 15 years if an inspection of the roof of the residential structure performed by an authorized inspector indicates that the roof has five years or more of useful life. The bill specifies that the roof's age shall be calculated using the last date on which 100 percent of the roof's surface area was built or replaced or the initial date of a partial roof replacement when subsequent partial roof repairs are completed that cumulatively result in 100 percent of the roof's surface area being built or replaced.

Insurer Claims Handling

The bill requires property insurers to conduct any physical inspection of the property related to a claim within 45 days of receiving proof of loss statements. The 45-day time limit does not apply to hurricane claims.

Insurers must notify policyholders of their right to receive any detailed report generated by an insurer's adjuster that estimates the amount of the loss. The report must be provided to the requesting policyholder within the later of seven days after the policyholder requests the report or seven days after the completion of the report.

Insurers must provide a reasonable explanation of the claim decision in relation to the insurance policy, facts, and law. If the insurer makes a claim payment that is less than contained in the insurer's adjuster estimate of the loss, the insurer must explain the discrepancy.

Civil Remedy

The bill requires a claimant to establish a property insurer breached the insurance contract in order for the claimant to prevail in a bad faith claim for extracontractual damages under s. 624.155(1)(b), F.S. This requirement applies to civil remedy actions based upon a property insurer:

- Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for his or her interests;
- Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or
- Except as to liability coverages, failing to settle claims promptly, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy.

Attorney Fees – Fee Multipliers

The bill creates a new standard for the award of an attorney fee multiplier in property insurance litigation. The bill creates a presumption that in property insurance cases, attorney fee awards

based on the Lodestar methodology are sufficient and reasonable. Attorney fee multipliers may only be awarded under rare and exceptional circumstances, with evidence that competent counsel could not be hired in a reasonable manner.

Attorney Fees – Dismissal for Failure to Provide Notice

The bill provides that a defendant insurer may obtain attorney fees and costs associated with securing a dismissal without prejudice for the plaintiff's failure to provide the required Notice of Intent to Initiate Litigation at least 10 days before filing a suit against a property insurer.

Attorney Fees – Assignment of Benefits

The bill prohibits assignment of the right to obtain attorney fees in suits arising out of a property insurance policy to persons other than a named or omnibus insured or a named beneficiary under the policy. The result is that assignment agreements may occur, but the assignee vendor will no longer be able to recover attorney fees in suits against an insurer. This provision applies to property insurance lawsuits brought by vendor assignees against authorized insurers and surplus lines insurers.

The bill also eliminates statutory language detailing the methodology for awarding attorney fees to plaintiffs or defendants in litigation brought by an assignee of benefits under a property insurance policy. The language is no longer necessary because the bill prohibits assignment of the right to recover attorney fees in suits arising out of a property insurance policy.

Assignment of Benefits (AOB)

The bill revises the definition of "assignment agreement" to include assignments executed by a party that inspects the property, clarifies that public adjuster fees are not an assignment agreement, and clarifies the requirement to provide a Notice of Intent to Initiate Litigation before filing suit.

The bill requires that a valid AOB must specify that the assignee will hold harmless the assignor from all liabilities, including attorney fees.

Regulation of Insurers and Insurer Transparency

The bill creates a Property Insurer Stability Unit within the OIR to aid in the detection and prevention of insurer insolvencies in the homeowners' and condominium unit owners' insurance market. Insurers must be referred to the unit for enhanced monitoring upon the occurrence of specified events. The unit must:

- Provide enhanced monitoring when the OIR identifies significant concerns about various aspects of the insurer.
- Conduct a target market exam when there is reason to believe the insurer may be in an unsound financial condition.
- Closely monitor insurer financial data.

- Conduct annual catastrophe stress tests of domestic insurers.
- Update wind mitigation credits.
- Review the causes of insolvency and business practices of insurers referred to the Division of Rehabilitation and Liquidation within the Department of Financial Services.
- Twice annually, provide a report on the status of the homeowners' and condominium unit owners' insurance market.

The bill requires the OIR to publish all orders, specified insurance industry data, and reports issued by the newly created Property Insurer Stability Unit. The scope of the Property Insurer Stability Unit is limited to matters related to homeowners' and condominium unit owners' insurance.

The OIR must include within the annual statistical report an analysis of the availability of reinsurance to domestic insurers selling homeowners' and condominium unit owners' insurance in Florida. The OIR must include within its annual report additional data regarding property insurers against which delinquency or similar proceedings were instituted, a concise statement of the circumstances that led to each insurer's delinquency, a summary of actions taken by the insurer and the OIR to avoid delinquency, and the results or status of each delinquency proceeding. The OIR must maintain and make available upon request reports relating to the health of the homeowners' and condominium unit owners' insurance market that include specified information regarding market trends and the percentage of policies written by voluntary carriers and the Citizens Property Insurance Corporation.

The bill directs the OIR to make data publicly available detailing the statewide number of policies, amount of premium, number of cancellations, and other data for each property insurer, and specifies that such information is not a trade secret.

The bill requires the OIR to execute an affidavit identifying the grounds for initiating delinquency proceedings against an insurer.

For an insolvency involving a domestic property insurer, the bill provides that the Department of Financial Services must:

- Begin an analysis of the history and causes of the insolvency no later than the initiation of delinquency proceedings against the insurer;
- Review the OIR's regulatory oversight of the insurer;
- Submit an initial report analyzing the history and causes of the insolvency no later than two months after the initiation of the delinquency proceeding;
- Provide a special report within ten days of identifying any condition or practice that may lead to insolvency in the property insurance marketplace; and
- Submit a final report analyzing the history and causes of the insolvency and the OIR's regulatory oversight within 30 days of the conclusion of the insolvency proceeding.

Committee on Appropriations

Conflict with Laws Passed During the 2022 Regular Session

The bill provides that if any law amended by this act was also amended by a law enacted during the 2022 Regular Session of the Legislature, such laws shall be construed as if enacted during the same session of the Legislature, and full effect shall be given to each if possible.

If approved by the Governor, except as otherwise expressly provided, these provisions take effect upon becoming a law.
Vote: Senate 30-9; House 95-14

Committee on Appropriations

SB 4-D — Building Safety

by Senator Boyd

The bill requires the Florida Building Code to provide that when 25 percent or more of a roofing system or roof section is being repaired, replaced, or recovered, only the portion of the roofing system or roof section undergoing such work need be constructed in accordance with the current Florida Building Code in effect at the time of such work. This new provision applies only to roof systems and roof sections built, repaired, or replaced in accordance with the requirements of the 2007 Florida Building Code or subsequent editions. The provision revises the current Florida Building Code which requires that not more than 25 percent of the total roof area or roof section, of any existing building or structure, may be repaired, replaced, or recovered in any 12-month period—unless the entire existing roofing system or roof section conforms to the current requirements of the Code.

The bill also provides building safety inspection requirements for condominium and cooperative association buildings, increases the rights of unit owners and prospective unit owners to access information regarding the condition of such buildings, and revises the requirements for associations to fund reserves for the continued maintenance and repair of such buildings.

Regarding building safety inspections, the bill:

- Requires condominium and cooperative association buildings that are three or more stories in height to have a "milestone inspection" of the buildings' structural integrity by an architect or engineer when a building reaches:
  - 30 years of age and every 10 years thereafter, or
  - 25 years of age and every 10 years thereafter if the building is located within three miles of a coastline.
- Requires, if a milestone inspection is required and the building's certificate of occupancy was issued on or before July 1, 1992, the building's initial milestone inspection to be performed before December 31, 2024.
- Requires that a phase one milestone inspection must commence within 180 days after an association receives a written notice from the local enforcement agency.
- Requires a phase two milestone inspection if there is evidence of "substantial structural deterioration" as determined by a phase one inspection.
- Specifies the minimum contents of a milestone inspection report.
- Requires inspection report results to be provided to local building officials and the associations, and requires an inspector-prepared summary to be provided to unit owners by mail and by email to unit owners who have consented to receive notices by email.
- Requires that the contract between an association that is subject to the milestone inspection requirement and a community association manager (CAM) or CAM firm must require compliance with those requirements as directed by the board.
- Requires the local enforcement agency to review and determine if a building is safe for human occupancy if an association fails to submit proof that repairs for substantial

deterioration have been scheduled or begun within at least 365 days after the local enforcement agency receives a phase two inspection report.
- Requires the Florida Building Commission to make recommendations to the Governor and Legislature regarding the inspection requirements in the bill and inspection for other types of buildings and structures that are three stories or more.
- Provides that a willful and knowing failure by an officer or director of an association to have a milestone inspection performed is a breach of the officer's and director's fiduciary relationship to the unit owners.
- Gives unit owners the right to inspect and copy, as official records, the milestone inspection report and all other inspection reports relating to structural or life safety, and gives renters the right to inspect the milestone inspection reports.
- Requires the developer's turnover inspection report to comply with the milestone inspection requirements.
- Requires associations to report to the Florida Division of Condominiums, Timeshare, and Mobile Homes (division) the number of buildings that are three stories or higher in height and the total number of units in such buildings on or before January 1, 2023, and requires the division to publish that information on its website.
- Requires developer and non-developer unit owners to give prospective buyers of a unit a copy of the inspector-prepared summary of the milestone inspection report.
- Extends the jurisdiction of the division to investigate complaints to include complaints related to the procedural completion of milestone inspections.

Regarding the funding of reserves for the continued maintenance and repair of condominium and cooperative buildings, the bill:
- Requires condominium associations and cooperative associations to complete a structural integrity reserve study every 10 years for each building in an association that is three stories or higher in height.
- Requires associations existing on or before July 1, 2022, that are controlled by non-developer unit owners to have a structural integrity reserve study completed by December 31, 2024.
- Defines "structural integrity reserve study" as a study of the reserve funds required for future major repairs and replacement of the common elements based on a visual inspection of the common elements.
- Requires the study to include a visual inspection, state the estimated remaining useful life, and the estimated replacement cost of the roof, load bearing walls or other primary structural members, floor, foundation, fireproofing and fire protection systems, plumbing, and any item with a deferred maintenance or replacement cost that exceeds $10,000.
- Requires the visual inspection to be performed by a person licensed as an engineer or an architect. However, any qualified person or entity may perform the other components of a structural integrity reserve study.
- Requires a developer to have a structural integrity reserve study completed for each building in the association that is three stories or more in height before turning over control of an association to the non-developer unit owners.

Committee on Appropriations

- Provides that it is a breach of a board member or officer's fiduciary duty if an association fails to complete a structural integrity reserve study.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 110-0