

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

An insurance company that transacts insurance in Florida or that has an office located in the state is required to obtain a certificate of authority (COA) issued by the Office of Insurance Regulation.¹ Surplus lines insurers are an exception to the COA requirement.

Surplus lines insurance is coverage provided by a company that is not licensed in Florida but is allowed to transact insurance in the state as an eligible insurer. The purpose of the Surplus Lines Law² is to provide the public with access to insurers not authorized to transact business in Florida when certain insurance coverage cannot be obtained from Florida-authorized insurers.³ Insurance can be purchased from a surplus lines carrier only if the necessary amount of coverage cannot be procured after a diligent effort⁴ to buy the coverage from authorized insurers.

In 1997, the Legislature created the Florida Surplus Lines Service Office (office), a non-profit association designed to act as a self-regulating organization to permit better access by consumers to approved surplus lines insurers.⁵ A nine-person board of governors governs the office.⁶ The office must perform its functions under a plan of operation that is subject to approval by the Office of Insurance Regulation.⁷ The office must:⁸

- Receive, record, and review all surplus lines insurance policies;⁹
- Maintain a record of the policies reported to the office and prepare monthly reports;¹⁰
- Prepare and deliver to each surplus lines agent quarterly reports of each agent's business;¹¹
- Collect and remit to the Department of Financial Services (DFS) the surplus lines tax;¹²
- Reconcile policies provided by non-admitted insurers with the policies reported to the office by agents;¹³ and
- Collect monthly from each surplus lines agent a service fee of .25 percent.¹⁴

¹ Section 624.401, F.S.

² Sections 626.913 – 626.937, F.S.

³ Section 626.913(2), F.S.

⁴ A “diligent effort” means seeking coverage from and being rejected by at least three authorized insurers that write the type of coverage sought. The rejections must be documented. *See* s. 626.914(4), F.S.

⁵ Chapter 97-196, L.O.F.; codified as s. 626.921, F.S.

⁶ Section 626.921(4), F.S.

⁷ Section 626.921(5), F.S.

⁸ *See generally* subsections (3) and (6) of s. 626.921, F.S.

⁹ Section 626.921(3)(a), F.S.

¹⁰ Section 626.921(3)(b), F.S. Currently, the office must prepare a “Quasar” report that includes new business reported by agents, policy cancellations, and policy renewals. Senate Staff Analysis and Economic Impact Statement for SPB 7070 by the Banking and Insurance Committee, January 23, 2006, at 4.

¹¹ Section 626.921(3)(c), F.S.

¹² Section 626.932(2), F.S.

¹³ Section 626.921(3)(d), F.S.

¹⁴ The office may collect up to .3 percent of total gross premium. The fee pays for the cost of operating the office. It is paid by the insurer. *See* s. 626.921(3)(f), F.S.

Surplus lines agents (agents) handle the placement of insurance coverage with surplus lines insurers and place coverage with authorized insurers with whom the agent is not licensed.¹⁵ In order to place a business with a surplus lines carrier, the agent must make a diligent effort to place the policy with a Florida-authorized insurer.¹⁶ Agents are required to report and file with the office a copy of, or information on, each surplus lines insurance policy.¹⁷ Upon request by DFS or the office, agents must submit:

- An exact copy of any and all requested policies and other forms confirming insurance coverage¹⁸ along with any substitutions or endorsements;¹⁹ and
- The agent's memorandum as to the substance of any change represented by a substitute certificate, cover note, other form of confirmation of insurance coverage, or endorsement as compared with the coverage as originally placed or issued.²⁰

Current law provides a public records exemption for information furnished to DFS²¹ or the office,²² under the Surplus Lines Law, if disclosure would reveal information specific to a particular policy or policyholder. The public records exemption no longer applies if DFS or the office institutes a proceeding against an agent or insurer. Pursuant to the Open Government Sunset Review Act,²³ the exemption afforded the office will repeal on October 2, 2006, unless reenacted by the Legislature.²⁴

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes.

C. SECTION DIRECTORY:

Section 1 amends s. 626.921, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an October 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

¹⁵ Section 626.914(1), F.S.

¹⁶ Section 626.914(4), F.S.

¹⁷ Agents must submit specific information on each policy including the name of the insured and insurer, the policy number and its effective date, the policy's expiration date, the zip code and county where the covered risk is located, the type of coverage, the premium, effective date, and service fees. Section 626.921(2), F.S.

¹⁸ Such as applications, certificates, and cover notes.

¹⁹ Section 626.923, F.S.

²⁰ *Id.*

²¹ Section 626.921(8)(a), F.S.

²² Section 626.921(8)(b), F.S.

²³ Section 119.15, F.S.

²⁴ Section 626.921(8)(b), F.S.

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may represent a minimal non-recurring positive impact on the Florida Surplus Lines Service Office expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment because of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, the office may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,

- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.