

**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 Governmental Operations Committee

BILL: CS/SB 1018

INTRODUCER: Banking and Insurance Committee and Senator Fasano

SUBJECT: Property Insurance Appraisal Umpires

DATE: April 15, 2008

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

Committee Substitute for Senate Bill 1018 proposes a new type and class of license for a “property insurance appraisal umpire” (umpire) under the authority of the Department of Financial Services (DFS or Department). This legislation is recommended by the Task Force on Citizens Property Insurance Claims Handling and Resolution which was created by the Legislature in 2007.<sup>1</sup> The Task Force found that it was necessary to license, regulate and discipline umpires due to the critical role umpires play in assisting the insured’s and insurer’s appraisers in reaching an agreement as to the cost of repair or replacement pertaining to a property insurance claim.

The legislation provides that, effective June 1, 2009, no person may act as an umpire in conjunction with a loss appraisal clause contained in a residential or commercial residential property insurance policy unless licensed as a property insurance appraisal umpire by the DFS. In addition, the bill sets forth procedures governing the appraisal process.

<sup>1</sup> Chapter 2007-1, L.O.F; HB 1A.

This bill substantially amends the following sections of the Florida Statutes: 624.501, 626.015, 626.016, 626.022 and 626.112.

The bill creates the following sections of the Florida Statutes: 626.9931, 626.9932, 626.9933, 626.9934, 626.9935, 626.9936, 626.9937, 626.9938, 626.9939, 626.9940, 626.9941, 626.9942, 626.9943 and 627.4141.

## II. Present Situation:

### **Task Force on Citizens Property Insurance Claims Handling and Resolution**

During the 2007 Special Session, the Legislature enacted House Bill 1A which created and directed the Task Force on Citizens Property Insurance Claims Handling and Resolution (Task Force) to make recommendations to the legislative and executive branches relating to the appropriate handling, service and resolution of the open 2004/2005 hurricane claims of Citizens Property Insurance Corporation (Citizens).<sup>2</sup>

During review of Citizens hurricane claims, the Task Force became aware of the impact that the appraisal process has on claims settlements. In virtually all property insurance policies, a party has a right to demand an appraisal, which is an informal procedure in which the value of damaged or lost property is determined.<sup>3</sup> Typically, the appraisal process operates as follows. When an insured makes a claim for damages under a property insurance policy and there is a disagreement between the insured and the insurer as to the amount of loss, insurance policies provide that either party may elect appraisal. Most policies state that once appraisal is demanded, the parties must then select an appraiser who serves as the advocate for each party. Should the two appraisers be unable to agree as to the amount of the loss, then an umpire will be selected, usually by mutual agreement of the appraisers and, if the parties cannot agree, by a court. A written award by any two (umpire and appraiser) will determine the amount of the loss. Each party pays its chosen appraiser and bears the other expenses of the appraisal and umpire equally. The Florida Supreme Court<sup>4</sup> has held that appraisal, as worded in most insurance policies, is not an agreement to arbitrate and that the formal procedures of the arbitration code<sup>5</sup> are not applicable.

Representatives with Citizens testified before the Task Force that of their 2,723 disputed claims, 1,433 were in appraisal.<sup>6</sup> The Task Force found that while the services of umpires in the appraisal process is beneficial to policyholders who have suffered a loss, the current laws do not provide for the regulation or licensing of umpires. The Task Force heard testimony that some umpires did not have the training or expertise in construction, building codes, appraisal procedure or other technical knowledge critical for assessing the type of damage that a policyholder may sustain. Also, these same umpires did not make an independent decision as to

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<sup>2</sup> The Task Force is composed of seven members, four of whom are appointed by the Governor, Chief Financial Officer, President of the Senate and Speaker of the House of Representatives. The rest of the members are the Commissioner of Insurance Regulation, or designee; Insurance Consumer Advocate, or designee; and Executive Director of Citizens Property Insurance Corp., or designee. The Task Force has held eight meetings, two public hearings and one informal workshop.

<sup>3</sup> Policyholders also have the option to enter into mediation with their insurer under the provisions of s. 627.7015, F.S.

<sup>4</sup> *Allstate Insurance Company v. Suarez*, 833 So.2d 762 (Fla. 2002).

<sup>5</sup> The Florida Arbitration Code is under chapter 682, F.S. Under arbitration, parties are allowed to issue subpoenas, submit evidence, take depositions and cross-examine witnesses.

<sup>6</sup> As of May 29, 2007.

the claim, but oftentimes merely split the cost difference between the two opposing appraisers. In an effort to remedy concerns expressed about abuses by some umpires, the Task Force has proposed this legislation.

### III. Effect of Proposed Changes:

The legislation provides that, effective June 1, 2009, no person may act as an umpire in conjunction with a loss appraisal clause contained in a residential or commercial residential property insurance policy unless licensed as a property insurance appraisal umpire by the DFS.

**Section 1.** Amends s. 624.501, F.S., to require property insurance appraisal umpires (umpires) to pay the DFS an application fee of \$50, a self-appointment fee of \$50.00 and a biennial renewal fee of \$50. This fee structure currently applies to insurance representatives.

**Section 2.** Amends s. 626.015, F.S., to provide that a “property insurance loss appraiser” and a “property insurance appraisal umpire” have the same meaning as defined in s. 626.9933, F.S. (Section 6, below).

**Section 3.** Amends s. 626.016, F.S., to provide that the powers and duties of the Chief Financial Officer (CFO) and the Department apply to property insurance appraisal umpires. The bill deletes the term “agencies” because it’s redundant.

**Section 4.** Amends s. 626.022, F.S., to add the term “property insurance appraisal umpires” to the scope of chapter 626, F.S., which regulates the various types of insurance representatives and stock, mutual and reciprocal insurers, with specified exceptions.

**Section 5.** Amends s. 626.112, F.S., to provide that effective July 1, 2009, persons may not act, represent, or hold themselves out to be property insurance appraisal umpires unless they hold a current umpire license issued by DFS. Provides an exception from umpire licensure for individuals who are retired judges and certified civil court appointed mediators who are approved by the Florida Supreme Court pursuant to the Florida rules pertaining to court appointed mediators and who are on the list of approved mediators.

**Section 6.** Creates Part XII of ch. 626, F.S., which authorizes DFS to license, regulate and discipline property insurance appraisal umpires and approve specified classroom courses, collect fees and adopt rules. This Part also provides for ethical standards for property insurance loss appraisers. Part XII consists of the following sections: ss. 626.9931-626.9943, F.S.  
Section 626.9931, F.S., (Purpose) Makes a legislative finding that it is in the interest of the public welfare to regulate property insurance loss appraisers and property insurance appraisal umpires (umpires) in Florida.

Section 626.9932, F.S., (Scope of part) Provides that this part applies to residential and commercial residential property insurance contracts (contract) that contain an appraisal clause and to the umpires and appraisers who participate in the appraisal process pursuant to the appraisal clause.

Section 626.9933, F.S., (Definitions) Defines the following terms:

“Appraisal” means the process of estimating or evaluating actual cash value, amount of loss, or the cost of repair or replacement of property for the purpose of quantifying the monetary value of a property loss claim when an insurer and insured fail to agree on the value of the loss under a residential or commercial residential insurance contract (contract) that permits the resolution of a dispute by appraisal.

“Competent” means properly or sufficiently qualified or capable to perform an appraisal.

“Independent” means not subject to control, restriction, modification or limitation by the appointing party.

“Property insurance appraisal umpire” and “umpire” mean a competent, independent and impartial third-party selected by appraisers for the insurer and insured to resolve issues that appraisers are unable to agree on in the course of the appraisal process under a contract that permits resolution of a claim dispute by appraisal.

“Property insurance loss appraiser” and “appraiser” mean a competent and independent third party selected by an insurer or an insured to develop an appraisal for purposes of the appraisal process under a contract that permits resolution of a claim dispute by appraisal.

Section 626.9934, F.S. (Umpire application/fingerprinting) Provides a cross reference that application for a license is to be made under s. 626.171, F.S., which provides procedures for license applicants. Provides that an applicant must be fingerprinted and mandates that DFS maintain a public record of licensed property insurance appraisal umpires.

Section 626.9935, F.S. (Rulemaking) Provides for DFS to adopt rules.

Section 626.9936, F.S. (Qualifications for an umpire license) Provides qualifications for umpires as to filing an application with the DFS. An applicant must be 18 years of age; a U.S. citizen or legal alien; must complete education and other requirements; and provides that an applicant cannot be rejected solely by virtue of membership or lack thereof in an appraisal organization.

Section 626.9937, F.S. (Umpire licensure requirements) An umpire must meet *one* of the following requirements:

- Currently licensed, registered, certified or approved as an engineer or retired professional engineer under s. 471.005, F.S. and has taught/completed four hours of classroom coursework approved by DFS and related to construction, building codes, appraisal procedures or preparation and related material;
- Currently or within the last five years, licensed, registered, certified or approved as a general, building or residential contractor under s. 489.105, F.S., and has taught/completed four hours of classroom coursework approved by DFS and related to construction, building codes, appraisal procedure or preparation and related material;
- Currently or within the last five years, licensed, registered, certified or approved as an architect under ch. 481, F.S., and has taught/completed four hours of classroom coursework approved by DFS and related to construction, building codes, appraisal procedure or preparation and related material;
- Currently or within the last five years, has been a qualified geologist or professional geologist under s. 492.102, F.S., and has taught/completed four hours of classroom coursework approved by DFS and related to construction, building codes, appraisal procedure or preparation and related material;

- Currently or within the last five years, has been licensed as a certified public accountant under s. 473.302, F.S., and has taught/completed four hours of classroom coursework approved by DFS and related to construction, building codes, appraisal procedure or preparation and related material;
- Currently or within the last five years, has been licensed as an attorney and has taught/completed four hours of classroom coursework approved by DFS and related to construction, building codes, appraisal procedure or preparation and related material;
- Received a baccalaureate degree from a four-year college in engineering, architecture, or building construction and has taught/completed four hours of classroom coursework approved by DFS and related to construction, building codes, appraisal procedure or preparation and related material;
- Currently licensed as an all-lines or property and casualty adjuster and:
  - Has one year of experience as an employee of a general, building or residential contractor;
  - Has eight semester hours or 12 quarter hours of college credit in accounting, geology, engineering, architecture, or building construction;
  - Has taught or completed 4 hours of classroom coursework in construction, building codes, appraisal procedure and preparation and related material; or
  - Has acted as an appraiser or umpire in a minimum of 20 appraisal proceedings under a property insurance contract.
- Completed 40 hours of classroom coursework related to construction, building codes, appraisal procedure or preparation and related material;

Section 626.9938, F.S. (Regulation of umpire course providers) Provides that umpire course providers must be approved by and registered with DFS prior to offering prelicensure courses. Such courses must include a written exam and students must achieve a grade of not less than 75 on the exam. Provides for rule adoption by DFS.

Section 626.9939, F.S. (License suspension/revocation) Lists the violations upon which the DFS shall deny an umpire application or suspend, revoke or refuse to renew or continue an umpire license. Such violations include violating a duty imposed by law or contract in an appraisal; aiding or conspiring to engage in misconduct or scheme to engage in such misconduct and committing an overt act in furtherance of such scheme; violating any lawful DFS order or rule; having a reservation or license as an appraiser revoked; having his/her license to practice any regulated profession or business revoked or suspended by this or any other state or district of the United States; or having had a license application to practice any regulated profession or business denied by this or any other state or district of the United States; making or filing a report which the licensee knew to be false; failing to file a report required by state/federal law; obstructing such filing; or inducing others to obstruct such filing; accepting an appointment as an umpire if such appointment is contingent on reporting a predetermined result or if the fee to be paid for the services of an umpire is contingent on the opinion reached by the umpire.

Section 626.9940, F.S. (Denial/suspension of an umpire license) Provides that DFS may deny, suspend or revoke an umpire license if the umpire has failed to timely communicate with appraisers; failed to exercise reasonable diligence in submitting recommendations to appraisers; violated any ethical standard for umpires; failed to inform the DFS within 30 days after pleading

guilty, nolo contendere or being convicted or found guilty of a felony; or failed to timely notify DFS of any change in business location.

Section 626.9941, F.S. (Ethical Standards for Umpires) Provides 12 ethical standards for umpires which include the areas of impartiality; gifts and solicitation; conflicts of interest; burden of disclosure; effect of disclosure; confidentiality; recordkeeping; fees and expenses; maintenance of records; advertising; integrity and impartiality; and skill and experience.

Section 626.9942, F.S. (Records Retention by Umpires) Requires umpires to retain original or true copies of contracts, appraisals and supporting data for at least five years. If the appraisal is the subject of a lawsuit, records must be retained for two years after the date the trial ends.

Section 626.9943, F.S. (Ethical Standards for property insurance loss appraisers) This section provides ethical standards which govern the conduct, communications and standards for appraisers and are based on the American Arbitration Association and American Bar Association Code of Ethics for Arbitrators in Commercial Disputes. The 10 standards include the areas of integrity and impartiality; communications with parties to an appraisal; gifts and solicitation; conflicts of interest; burden of disclosure; effect of disclosure; fees and expenses; maintenance of records; advertising and skill and experience. There are no provisions in the bill to enforce these standards.

**Section 7.** Creates s. 627.4141, F.S. relating to residential or commercial property insurance loss appraisals. The appraisal process is governed by this section if a residential or commercial residential property contract provides that either party may submit a written demand to enter into the appraisal process if the insured and insurer fail to agree as to actual cash value, amount of loss, or cost of repair or replacement of property for which a claim has been filed. An insurer may refuse to accept the written demand only if the insured materially failed to comply with the post-loss obligation of the insured as set forth in the policy. The insurer waives its right to demand an appraisal if it fails to invoke an appraisal within 30 days after the insured complies with the proof of loss obligation as set forth in the policy.

The legislation provides procedures and time frames for selecting an appraiser and selecting an umpire who must be on the DFS list of umpires. Appraisal proceedings are informal (defined to mean that no forms of civil discovery or rules of evidence apply). Within 60 days after being appointed, each appraiser must appraise the loss and submit a written report to the other appraiser and within 30 days after submitting such report, the appraisers must attempt to resolve any differences and reach a mutual agreement. However, if the appraisers are not able to agree, they must, within 5 days, submit the differences in writing to the umpire. The bill provides that appraisers have an additional 60 days after appointment to appraise a loss if such loss is covered under a commercial insurance policy and the insured structure is 10,000 square feet or more, or is covered under a commercial residential or residential policy and the claim is made subsequent to a hurricane or a declared emergency by the Governor.

An umpire has ten days after receipt of the differences in appraisals to submit his/her conclusions in writing to each appraiser. The appraisal award is binding on the insurer and insured as to amount of loss. If the insurance policy so provides, the insurer may assert that there is no

coverage under the policy for the loss or that there has been a violation of the conditions of the policy pertaining to fraud, lack of notice, or failure to cooperate.

Appraisers are paid by the party who selects him/her and the umpire fees are paid by the parties equally except, if the final amount of the loss is 50 percent greater than the insurer's preappraisal estimate of the loss communicated to the insured in writing, the insurer must pay all expenses, including fees of the insured's appraiser and all fees of the umpire. The bill provides that this provision does not affect an insured's claim for attorney's fees under s. 627.428, F.S.

The legislation provides that the provisions of the Florida Arbitration Code (chapter 682, F.S.) do not apply to appraisal proceedings; however, specified sections of the Code apply which relate to motions to compel or stay a proceeding; procedures for correcting, vacating or modifying a umpire's award; procedures for entry of judgment on the award and procedures regarding confirmation of an award. The appraisal process may not address issues as to whether the loss is covered under the terms of the insurance contract; however, appraisers and umpires may consider causation issues.

**Section 8.** Provides that the act shall take effect on July 1, 2008.

#### **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:

Individuals who want to become property insurance appraisal umpires will now have to meet the pre-licensing requirements set forth in the bill. Once licensed, these individuals will have to adhere to the ethical and other guidelines enumerated in this legislation.

C. Government Sector Impact:

Representatives with the DFS submitted the following fiscal impact statement:

I. FISCAL IMPACT ON STATE AGENCIES:		(FY 08-09) Amount / FTE	(FY 09-10) Amount / FTE	(FY 10-11) Amount / FTE
A.	Revenues			
	1. Recurring:			
	Trust Fund:	\$31,500	Minimal	\$15,000
	General Revenue:			
	2. Non-recurring:			
	Trust Fund:			
	General Revenue:			
B.	Expenditures		<b>NONE</b>	<b>NONE</b>
	1. Recurring			
	Trust Fund:			
	General Revenue:			
	2. Non-Recurring			
	Trust Fund: Contract Services/OPS	\$41,800**		
	Development of curriculum/outline for pre-licensing course	\$5,000***		
	<b>Total</b>	<b>\$46,800</b>		
	General Revenue:			

\*The DFS estimates approximately 300 individuals will apply for the property insurance appraisal umpire license in the first fiscal year. The bill requires the applicant to pay an application fee of \$50 and an appointment fee of \$50. Current law also requires a license fee of \$5: (300 X \$105= \$31,500). An estimated \$15,000 in revenue will be received in FY 2010-11 for the biennial renewal of the appointment license. The revenue generated in FY 2009-10 and forward will be minimal since most of the individuals will have applied for a license in the first fiscal year because of the July 1, 2009 deadline.

\*\*\$41,800 non-recurring expenditure – The appropriation is being requested to make changes to the DFS three computer systems to allow for filing of electronic applications; review and



approval of electronic applications; acceptance and approval of pre-licensing courses; and to allow for biennial renewal of licenses.

\*\*\*\$5,000 estimate is based on the department requesting five individuals to spend three days assisting the DFS in developing the curriculum and content outline for the pre-licensing course. This amount includes airfare, hotel, and food expenses.

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

None.

#### **VII. Related Issues:**

The Sunrise Act of s. 11.62, F.S., provides legislative intent and requirements to be followed for proposed regulation of unregulated functions. It appears that the Sunrise Act applies to some of the regulation proposed by this bill.

Proponents of legislation that provides for the regulation of a profession or occupation not already expressly subject to state regulation must provide, upon request, the following information in writing to the state agency that is proposed to have jurisdiction over the regulation and to the legislative committees to which the legislation is referred:

- The number of individuals or businesses that would be subject to the regulation;
- The name of each association that represents members of the profession or occupation;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding 3 years;
- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public;
- A copy of any federal legislation mandating regulation;
- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation;
- The details of any previous efforts in this state to implement regulation of the profession or occupation; and
- Any other information the agency or the committee considers relevant to the analysis of the proposed legislation.

The agency must provide the Legislature with information concerning the effect of proposed legislation that provides for new regulation of a profession or occupation regarding:

- The departmental resources necessary to implement and enforce the proposed regulation;
- The technical sufficiency of the proposal for regulation, including its consistency with the regulation of other professions and occupations under existing law; and
- If applicable, any alternatives to the proposed regulation which may result in a less restrictive or more cost-effective regulatory scheme.

When making a recommendation concerning proposed legislation providing for new regulation of a profession or occupation, a legislative committee must determine:

- Whether the regulation is justified;
- The least restrictive and most cost-effective regulatory scheme that will adequately protect the public; and
- The technical sufficiency of the proposed legislation, including its consistency with the regulation of other professions and occupations under existing law.

The bill provides in lines 540-542 that the department must adopt rules proscribing the forms necessary to administer the prelicensure requirements. The reference to forms is unnecessary, as the definition of “rule” in the Administrative Procedure Act includes any form, and the bill requires and gives authority to the agency to adopt rules relating to prelicensure requirements.

## 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 Banking and Insurance on March 11, 2008:**

- Adds ethical standards for property insurance loss appraisers based on the code of ethics of the American Arbitration Association and the American Bar Association Code of Ethics for Arbitrators in Commercial Disputes.
- Exempts from umpire licensure requirements individuals who are retired judges or certified civil court appointed mediators.
- Requires that all of the fees and expenses of the appraisers and the umpire must be paid by the insurer if the final determination of the insured’s loss is 50 percent greater than the insurer’s pre-appraisal estimate provided to the insured in writing.
- Provides procedures and time frames for appraisers to follow during the appraisal process. Requires each appraiser to file a written loss appraisal within 60 days of appointment and to attempt to resolve differences within 30 days of filing the loss reports. If unable to resolve differences, appraisers have 5 days to submit written differences to the umpire. Allows an extra 60 days if appraising a commercial property loss or the claim is made subsequent to a hurricane or a declared emergency.
- Provides that insurers must invoke the appraisal process within 30 days of the insured submitting proof of loss, or waive the right to demand appraisal.
- Applies specified sections of the Florida Arbitration Code (chapter 682, F.S.) to property insurance appraisal proceedings. These provisions relate to motions to compel or stay a proceeding; procedures for correcting, vacating or modifying an

umpire's award; procedures for entry of judgment on the award and procedures regarding confirmation of an award.

- Defines the terms "competent" and "independent" which are referred to in the bill.
- Reduces the number of classroom coursework hours to become a licensed umpire (among other alternatives) from 24 hours to 4 hours for all-lines property and casualty adjusters (to conform to the number of hours required of other professionals qualified to be umpires).
- Eliminates language that required the experience of an appraiser or umpire to be done within the previous four years.
- Specifies that in the appraisal process, an insurer retains the right to assert that there is no coverage under the policy or that there has been a violation of the policy conditions regarding fraud, lack of notice or failure to cooperate.
- Clarifies that the bill does not affect an insured's claim for attorneys' fees under s. 627.428, F.S.
- Clarifies that the specified \$50 fee refers to an appointment fee rather than a license fee.

B. Amendments:

None.