

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 1684

INTRODUCER: Banking and Insurance Committee and Senator Baker

SUBJECT: Title Insurance Study Advisory Council

DATE: March 18, 2008

REVISED: 3/19/08

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Fav/CS
2.			GO	
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="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 1684 creates the Florida 2008 Title Insurance Study Advisory Council (Council) which will undertake a comprehensive examination of the title insurance system in Florida and make findings and recommendations in its final report to the Governor, Speaker of the House of Representatives and President of the Senate on or before December 31, 2009.

The Council is composed of 23 members who include the Governor or designee to serve as chair; the Chief Financial Officer or designee to serve as vice chair; one member of the Senate appointed by the President; one member of the House of Representatives appointed by the Speaker; the Insurance Consumer Advocate; the Commissioner of Insurance Regulation or designee, the Secretary of Business and Professional Regulation or designee; four representatives from title insurers and three independent title agents appointed by the Senate President; four representatives from title insurers and three independent title agents appointed by the Speaker of the House of Representatives; and two members of the Real Property Section of the Florida Bar.

The Council will be administratively supported by the staff of the Governor with specified agencies and applicable legislative committees supplying information, assistance and facilities to

the Council. Since there is no appropriation in the bill, these entities will provide these services within existing resources. The Council must hold its first meeting by August 1, 2008, with all meetings to be held in Tallahassee. The Council will terminate after submitting its final report, but no later than December 31, 2009.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Title Insurance

Title insurance is defined by s. 624.608, F.S., as “insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title.” Put simply, title is the formal right of ownership of property.¹ Title insurance is a policy issued by a title insurer that, after performing a search of the title, represents the state of that title and insures the accuracy of its search against claims of title defects.²

In Florida, purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that they are the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend related to an adverse claim against title, and also promises to indemnify the policyholder for damages to the lender’s security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the title insurer.

In 2005, the Legislature expanded the title insurance definition to include “insurance of owners and secured parties of the existence, attachment, perfection and priority of security interests of personal property under the Uniform Commercial Code.”³ The effect of this provision allows a title insurer to sell UCC personal property title insurance in conjunction with a transaction involving a UCC security interest.⁴ Under the law, personal property title insurance is designed to insure against challenges to the existence, attachment, perfection and priority of a security interest (such as fraud, filing office errors, inaccuracies in a search report, and errors in documentation and perfection) and provides a defense of the insured lender or owner if a claim is made regarding the lender’s or owner’s collateral position.

Under current law, title insurance agents are licensed, disciplined and regulated by the Department of Financial Services (DFS) under Part V of Ch. 626, F.S., while title insurers are regulated by the Office of Insurance Regulation (OIR).⁵ Title insurance forms must be filed and approved by the OIR prior to usage⁶ and rates and premiums charged by title insurers are specified by rule by the Financial Services Commission (FSC).⁷ Title insurers may deviate from

¹ BLACK’S LAW DICTIONARY (8th ed. 2004).

² BLACK’S LAW DICTIONARY (8th ed. 2004).

³ Chapter 2005-153, F.S.

⁴ Section 671.201(37), F.S., defines “security interest” as “an interest in personal property or fixtures which secures payment or performance of an obligation.”

⁵ Title insurers are regulated and subject to numerous statutory provisions under ch. 624, 625, 626, 627 and 628 of the Florida Statutes.

⁶ Section 627.777, F.S.

⁷ Section 627.782, F.S.

proscribed rates by petitioning the OIR for an order authorizing a specific deviation from the adopted premium.⁸ Pursuant to s. 627.782, F.S., the FSC is mandated to adopt by rule and specify a premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agent or agencies, the percentage of such premium required to be retained by the title insurer which shall not be less than 30 percent. The FSC must review the premium not less than once every three years. Also, the FSC may by rule require insurers to submit statistical information, including loss and expense data as the DFS determines to be necessary to analyze premium rates.

Title insurance rates were specified in statute for a three year period in 1999 and remained in effect until June 30, 2002.⁹ In 2002, the Financial Services Commission adopted title insurance rates by rule¹⁰ which were the same as the prior statutory rates and are the rates which remain in effect today.

In 2006, the OIR completed a review of the title insurance industry in Florida that focused on three areas: a financial analysis of the Florida title insurance industry, a review of the regulatory treatment of title insurance premiums and title insurance, and a comparison of what Florida consumers pay for title insurance compared to consumers in other states.¹¹ The study found that the Florida title insurance industry is overwhelmingly dominated by five large groups and that Floridians are paying more for comparable title insurance than consumers in other states. For example, the study found that some premiums in Florida were 136 percent higher than premiums in other states. The study also found that the loss ratios for title insurance coverage are low relative to other states.¹² The relatively low loss ratio and relatively high profitability of the title industry suggest a high pricing structure for Florida title insurers, according to OIR. The study recommended tying premium rates to loss ratios thereby making rates a reflection of the actual risks borne by the insurer. Title insurance premiums totaled 15.5 billion in 2004.

Industry representatives dispute the OIR study's findings and assert that it misstated facts, misread and misunderstood data and that there was little value in the OIR study, other than the recommendation for a more comprehensive study. Also, comparing title insurance rates among states is not useful, according to these representatives, because there are different coverage's, different levels of operating costs and differing loss experiences.

Representative with some title insurers complain that the OIR has not reviewed title insurance rates in over 10 years, even though the agency (via the FSC through rule promulgation) is required to do so every three years. Further, the OIR has not acquired any financial data from title agents or companies during that same time period. Over the past several years, the OIR has attempted, unsuccessfully, to promulgate rules (via the FSC) pertaining to the rate setting process

⁸ Section 627.783, F.S.

⁹ Ch. 99-286, Laws of Florida. The rate provisions in this law went into effect on July 1, 1999 and remained in effect until June 30, 2002.

¹⁰ Rule 69O-186.003, F.A.C.

¹¹ *An Analysis of Florida's Title Insurance Market: Three Studies that Provide a Comprehensive, Multi-Faceted Review of the Florida Title Insurance Industry*, July 2006.

¹² The "loss ratio" is basically the ratio of loss costs to premium revenue.

and obtaining data from the title insurers, but the proposals have been challenged by the insurers.¹³

The OIR held an evidentiary hearing on title insurance in the Fall of 2007 and subpoenaed the major title companies to discuss a range of topics which included the following: 1) cost of producing title insurance policies and how these costs relate to insurance premiums; 2) procedures used by companies to audit agents; 3) methods of conducting title searches; 4) use of affiliated business arrangements; 5) use of reinsurance contracts; and 6) efforts to educate and better protect consumers. The agency plans to hold future hearings on title insurance, according to these officials.

III. Effect of Proposed Changes:

The bill makes a series of legislative findings about the importance of establishing a stable and efficient title insurance delivery system in Florida in order to promote the economic well-being of its residents. The legislation provides that consumers have a right to affordable title insurance; that it's critical to ensure homeowners, landowners, investors and lien holders of the safety and stability of real estate transfers; that state oversight is key in insuring solvency, licensing and discipline and in establishing nondiscriminatory rates and forms; and that it is the Legislature's intent to conduct a comprehensive review of the title insurance industry and that this review should be completed prior to any substantive changes in the regulation of title insurance. The Council's jurisdiction pertains only to real and not personal property title transactions.

Section 1. The bill creates an undesignated section of the Florida Statutes. It provides that this legislation may be cited as the "Florida 2008 Title Insurance Study Advisory Council Act." The Act creates a 23-member Advisory Council whose members are:

- Governor or designee, with the Governor serving as chair;
- Chief Financial Officer or designee, with the CFO serving as vice-chair;
- One member of the Senate appointed by the President;
- One member of the House of Representatives appointed by the Speaker;
- Insurance Consumer Advocate appointed under s. 627.0613, F.S.;¹⁴
- Commissioner of Insurance Regulation or designee;
- Secretary of Business and Professional Regulation or designee;
- Four representatives from four different title insurers doing business in Florida who are appointed by the Senate President. No more than one representative may be named from each "affiliated group of corporations" as defined in s. 624.509(5)(a)2, F.S. and may not overlap with insurer appointments made by the Speaker;¹⁵
- Four representatives from four different title insurers doing business in Florida who are appointed by the Speaker of the House of Representatives. No more than one representative may be named from each "affiliated group of corporations" as defined in

¹³ Attorneys' Title Insurance Fund vs. FSC, DOAH 05-2630RP; Chicago Title Insurance Co. vs. FSC, DOAH 06-5105RP; Stewart Title Guaranty Co. vs. FSC, DOAH 07-000077.

¹⁴ This section provides the powers and duties of the Insurance Consumer Advocate who is appointed by the CFO.

¹⁵ Under this provision, an affiliated group of corporations means two or more corporations that are entirely owned directly or indirectly by a single corporation and that constitutes an affiliated group as defined in s. 1504(a) of the Internal Revenue Code.

- s. 624.509(5)(a)2, F.S., and may not overlap with insurer appointments made by the Senate President;
- Three independent licensed title insurance agents appointed by the Senate President from a list of five agents submitted by the Florida Land Title Association;
 - Three independent licensed title insurance agents appointed by the Speaker of the House of Representatives from a list of five agents submitted by the Florida Land Title Association; and
 - Two members of the Real Property, Probate and Trust Law Section of the Florida Bar who are practicing attorneys, not employed by a title insurer and who are appointed by that Law Section.

The bill provides that the Advisory Council will be administratively supported by the staff of the Governor. The Department of Financial Services, Office of Insurance Regulation, other state agencies and applicable legislative committees must supply information, assistance and facilities to the Council. The legislation directs the Council to examine the historical development of Florida's title insurance industry; the current regulatory structure; the adequacy of funding and agency personnel pertaining to regulatory oversight; the adequacy of the current mechanisms to gather data to evaluate and adopt title insurance rates; and other topics deemed by the Council to be important. The Council is authorized to invite independent actuaries with title insurance expertise to provide information.

The Council must hold its first meeting by August 1, 2008, and all such meetings must be held in Tallahassee. The Council is to submit its final report with findings and recommendations to the Governor, Speaker of the House of Representatives and President of the Senate on or before December 31, 2009, and will terminate after submitting its final report, but no later than December 31, 2009.

Section 2. The act shall take effect 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:

The bill does not provide any funding so the members of the Advisory Council will have to pay their own travel and lodging expenses to attend meetings.

C. Government Sector Impact:

The Executive Office of the Governor (EOG) provided the following fiscal impact statement:

		(FY 07-08) Amt./FTE	(FY 08-09) Amt./FTE	(FY 09-10) Amt./FTE
A. Revenues	No direct revenues will be generated by this legislation			
1. Recurring				
2. Non-Recurring				
B. Expenditures – Funding Source-General Revenue				
1. Recurring				
Salaries and Benefits (2 FTE)		-0-	\$182,000	\$ 91,000
Other Personal Services				
(lump sum)		-0-	\$ 33,571	\$ 16,786
2. Non-Recurring				
Expenses (lump sum)		-0-	\$ 12,232	\$ 7,116
Contracted Services (lump sum)		-0-	\$ 14,200	\$7, 100
TOTAL:			\$ 242,003	\$ 122,002
TOTAL ESTIMATED FISCAL IMPACT FOR 17 MONTHS TO THE COUNCIL: \$ 364,005				

The bill names the Governor as Council chair and requires administrative support and staff to be provided by the EOG. Due to the complexity of title insurance, the EOG will need additional personnel with insurance and legal expertise related to title insurance to support the Council. There are 23 members of the Council and clerical support will be needed to coordinate meetings and Council members and support professional Council staff.

The Department of Financial Services, Office of Insurance Regulation, and other agencies are to supply any information, assistance, and facilities deemed necessary by the Council. Additionally, the bill provides that the Council, at the direction of the chair, may invite independent actuaries with title insurance expertise to provide information and appear before the Council to aid in performing its duties. (It is assumed that these subject area expert(s)' services may charge for research and/or meeting presentations.) There is a significant fiscal impact to the EOG and the Office does not have the financial means or available FTE to cover the costs of this Council within its current budget. The EOG made the following assumptions: there would be 4 meetings in 2008-2009 for one full fiscal year and 2 meetings in 2009-2010 (6 months). Staff required would

include 2 FTE: a Council Staff Director and a staff attorney starting on July 1, 2008, and hired through December 31, 2009. One full-time OPS at approximately \$15.00 per hour for clerical support would be needed. Expenses include rent, supplies, postage costs, telephone and communications costs and printing and duplication costs. Contracted Services include meeting transcription costs, title insurance actuarial costs, and public meeting noticing.

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 Banking and Insurance on March 18, 2008:

- Changes the composition of the Title Insurance Study Advisory Council by deleting the Lt. Governor as chair and inserting the Governor, and specifying that the Insurance Commissioner and the Secretary of Business and Professional Regulation may each appoint a designee to serve as a member.
- Requires that the three licensed title insurance agents that are each appointed by the Senate President and House Speaker be from a list of five agents submitted by the Florida Land Title Association.

B. Amendments:

None.