

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 General Government Appropriations Committee

BILL: CS/CS/CS/SB 1684

INTRODUCER: General Government Appropriations Committee, Governmental Operations Committee,
Banking and Insurance Committee, and Senator Baker

SUBJECT: Title Insurance

DATE: April 24, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Fav/CS
2.	Wilson	Wilson	GO	Fav/CS
3.	Kynoch	DeLoach	GA	Fav/CS
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:

This bill 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 21 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 Commissioners of Insurance Regulation and Financial Regulation or their designees; three representatives from title insurers and two independent title agents appointed by the Senate President; four representatives from title insurers and one independent title agent appointed by the Speaker of the House of Representatives; two members of the Real Property Section of the Florida Bar; one member of the banking industry and one member of the real estate industry.

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. The Legislature's Office of Program Policy Analysis and Governmental Accountability will conduct an independent historical analysis of title insurance and report its findings to the Council. 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 to the Governor, the Senate President and Speaker of the House of Representatives, but no later than December 31, 2009. The legislation provides the sum of \$242,003 to be appropriated from the Insurance Regulatory Trust Fund in the Department of Financial Services for transfer to the Executive Office of the Governor for the 2008-2009 fiscal year for the purpose of implementing the activities of the Council. Further, the bill appropriates \$242,003 from the Grants and Donations Trust Fund in the Executive Office of the Governor for the 2008-2009 fiscal year and authorizes two full-time equivalent positions to support the activities of the Advisory Council.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Title Insurance

Section 624.608, F.S., defines title insurance 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

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.”

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 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

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.

⁸ Section 627.783, F.S.

⁹ Chapter 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.

recommendation for a more comprehensive study. Also, comparing title insurance rates among states is not useful, according to these representatives, because there are different coverages, different levels of operating costs and differing loss experiences.

Representatives with some title insurers complain that the OIR has not reviewed title insurance rates in over ten 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 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 title insurance is critical to ensure homeowners and landowners of the safety of real estate transfers; that investors and lienholders require security accorded their business interests by a financially stable and regulated title insurance industry; 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, the current regulatory scheme, and the rules affecting the conduct of the industry.

Section 1 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 21-member Advisory Council whose mission is to comprehensively examine the title insurance delivery system and make recommendations for legislation. The Council members are:

- Governor or designee, with the Governor serving as chair.
- Chief Financial Officer (CFO) 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.

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.

- Commissioner of the Office of Financial Regulation or designee.
- Three representatives from three 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 s. 624.509(5)(a)2, F.S., and may not overlap with insurer appointments made by the Senate President.
- Two independent licensed title insurance agents appointed by the Senate President from a list of three agents submitted by the Florida Land Title Association.
- One independent licensed title insurance agent appointed by the Speaker of the House of Representatives from a list of three agents submitted by the Florida Land Title Association.
- Two members of the Real Property, Probate and Trust Law Section of the Florida Bar who are practicing real estate attorneys, not employed by a title insurer and who are appointed by that Law Section.
- One member of the banking industry from a bank performing home and commercial mortgage lending, appointed by the Commissioner of Financial Regulation.
- One member of the real estate industry, either an independent realtor or an individual representing a company handling home and commercial real estate transactions, including closings, appointed by the CFO.

The bill provides that the 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 committee staff must supply information, assistance and facilities to the Council. The legislation specifies the subjects the Council shall consider including the historical development of the title insurance industry, the current regulatory structure, the adequacy of funding and agency personnel to exercise regulatory oversight and such other topics as the chair, in consultation with the Council, deem necessary.

The legislation directs the Office of Program Policy Analysis and Governmental Accountability to conduct an independent review of the historical development of Florida’s title insurance industry and the current regulatory structure and submit its report by September 30, 2008. The Council is also 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. The report must be approved by at least two-thirds of the Council’s membership and the chair (Governor or his designee) must be in the prevailing majority. The Council will terminate after submitting its report, but no later than December 31, 2009.

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.

Section 2 provides that the sum of \$242,003 in nonrecurring funds is appropriated from the Insurance Regulatory Trust Fund in the Department of Financial Regulation for transfer to the Executive Office of the Governor for fiscal year 2008-2009 for the purpose of implementing this legislation.

Section 3 provides that the sum of \$242,300 is appropriated from the Grants and Trust Fund in the Executive Office of the Governor for fiscal year 2008-2009 and two full-time equivalent positions are authorized for the duration of the Council.

Section 4 provides that the act shall take effect upon becoming a law.

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:

A comprehensive examination of the title insurance delivery system by the Council will likely be of benefit to title insurers, title agents and regulators.

C. Government Sector Impact:

The bill transfers \$242,003 in nonrecurring funds from the Insurance Regulatory Trust Fund within the Department of Financial Services for transfer to the Executive Office of the Governor for the Advisory Council. Further, the bill appropriates \$242,003 from the Grants and Donations Trust Fund in the Executive Office of the Governor and authorizes two full-time equivalent positions for the duration of the Florida 2008 Title Insurance Study Advisory Council.

The 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 21 members of the Council and clerical support will be needed to coordinate meetings and members and support professional 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.)

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.

The Office of Program Policy Analysis and Government Accountability has not reported any fiscal impact with its role in the study process. Its role may reduce some of the overall costs but by an unknown amount.

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/CS/CS by General Government Appropriations on April 22, 2008:

The committee substitute:

- Expands the Advisory Council from 19 to 21 members.
- Provides for the sum of \$242,003 in nonrecurring funds for the 2008-2009 fiscal year, to be appropriated from the Insurance Regulatory Trust Fund in the Department of Financial Services for transfer to the Executive Office of the Governor.
- Provides for the sum of \$242,003 from the Grants and Donations Trust Fund in the Executive Office of the Governor and authorizes two full-time equivalent positions to support the activities of the Advisory Council.
- Provides that the Advisory Council's final report must be approved by at least two-thirds of the Council's membership and that the chair (Governor or his designee) must be in the prevailing majority.

CS/CS by Governmental Operations on April 17, 2008:

The Advisory Council is reduced from 23 to 19 members and the Office of Program Policy Analysis and Governmental Accountability is directed to perform a report on the history of title insurance to the council by September 30, 2008. The bill's effective date is advanced from July 1, 2008 to upon becoming a law.

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.