

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 5043 PCB JEC 08-03 Surplus Lines

**SPONSOR(S):** Jobs & Entrepreneurship Council; Reagan

**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Jobs & Entrepreneurship Council	17 Y, 0 N	Overton/Topp	Thorn
1) Policy & Budget Council	34 Y, 0 N	Martin	Hansen
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

Surplus lines insurance is insurance coverage provided by a company that is not licensed in Florida, but is allowed to transact insurance in the state. The purpose of the surplus lines law is to provide the insurance purchasing public with access to insurers that are not authorized to transact business in Florida when certain insurance coverages cannot be obtained from Florida-authorized insurers.

The premiums charged for surplus lines coverages are subject to a premium receipts tax of 5 percent of all gross premiums charged for such insurance. The surplus lines agent collects the tax from the insured at the time of the delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance.

The Department of Financial Services (DFS) collects the surplus lines tax. The Department currently is required to deposit 75.7 percent of the proceeds into the General Revenue Fund and 24.3 percent of the proceeds into the Insurance Regulatory Trust Fund. The Revenue Estimating Conference projects that \$233.3 million will be collected in surplus lines taxes, with \$176.6 million deposited into the General Revenue Fund and \$56.7 million deposited into the Insurance Regulatory Trust Fund for the Fiscal Year 2008-2009.

The bill changes the distribution of the surplus lines tax between the General Revenue Fund and the Insurance Regulatory Trust Fund by increasing the percentage deposited into the General Revenue Fund and reducing the percentage deposited into the trust fund. Under the bill, the Department deposits 82.1 percent of the proceeds into the General Revenue Fund and deposits 17.9 percent of the proceeds into the Insurance Regulatory Trust Fund.

The revised distribution would result in an additional \$13.8 million being deposited into General Revenue Fund and would result in an equal reduction in receipts for the DFS Insurance Regulatory Trust Fund during Fiscal Year 2008-2009. (A total of \$191.6 million will be deposited into the General Revenue Fund and \$41.7 million will be deposited into the Insurance Regulatory Trust Fund during Fiscal Year 2008-2009).

The effective date of the bill is July 1, 2008.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

#### B. EFFECT OF PROPOSED CHANGES:

##### **Surplus Lines Insurance Coverage**

Insurance companies that transact insurance in Florida or that have offices located in the state are required to obtain a certificate of authority, (COA) issued by the Office of Insurance Regulation pursuant to s. 624.401, F.S. Generally, an insurer that does not have a certificate of authority to transact insurance business in Florida and does so, is considered an unauthorized insurer and has committed insurance fraud. However, exceptions exist to the COA requirement, the primary one being for surplus lines insurers.

Surplus lines insurance is insurance 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 law is to provide the insurance purchasing public with access to insurers that are not authorized to transact business in Florida when certain insurance coverages cannot be obtained from Florida-authorized insurers.<sup>1</sup> Insurance may only be purchased from a surplus lines carrier if the necessary amount of coverage cannot be procured after a diligent effort<sup>2</sup> to buy the coverage from authorized insurers. Rates charged by a surplus lines carrier may not be more favorable than in use and offered by the majority of authorized insurers writing similar coverages on similar risks in Florida.<sup>3</sup>

The premiums charged for surplus lines coverages are subject to a premium receipts tax of 5 percent of all gross premiums charged for such insurance.<sup>4</sup> The surplus lines agent collects the tax from the insured at the time of the delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance.

The Department of Financial Services collects the surplus lines tax. The Department deposits 75.7 percent of the proceeds into the General Revenue Fund and deposits 24.3 percent of the proceeds into the Insurance Regulatory Trust Fund.<sup>5</sup> Under current law for the Fiscal Year 2008-2009, the Revenue Estimating Conference estimates that \$233.3 million will be collected in surplus lines taxes with \$176.6 million deposited into the General Revenue Fund and \$56.7 million deposited into the Insurance Regulatory Trust Fund.

The bill changes the distribution of the surplus lines tax between the Insurance Regulatory Trust Fund and the General Revenue Fund by reducing the percentage deposited into the trust fund and increasing the percentage deposited into the General Revenue Fund. Under the bill, the Department deposits 82.1 percent of the proceeds into the General Revenue Fund and deposits 17.9 percent of the proceeds into the Insurance Regulatory Trust Fund. The distribution would result in \$191.6 million being

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<sup>1</sup> Section 626.913(2), F.S.

<sup>2</sup> See s. 626.914(4), F.S. A “diligent effort” means seeking coverage from and having been rejected by at least three authorized insurers currently writing this type of coverage and documenting these rejections. However, if the residential structure has a dwelling replacement cost of \$1 million or more, the term means seeking coverage from and having been rejected by at least one authorized insurer currently writing this type of coverage and documenting this rejection.

<sup>3</sup> Section 626.916(1)(b), F.S.

<sup>4</sup> Section 626.932(1), F.S.

<sup>5</sup> Section 616.932(5), F.S.

deposited into the General Revenue Fund and \$41.7 million into the Insurance Regulatory Trust Fund resulting in a shift of \$15 million from trust fund to general revenue for Fiscal Year 2008-2009.

C. SECTION DIRECTORY:

Section 1 amends s. 626.932, F.S., reallocating distributions of the surplus lines tax collections.

Section 2 provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

General Revenue Fund receipts will increase by \$13.8 million for Fiscal Year 2008-2009.  
Department of Financial Services' Insurance Regulatory Trust Fund receipts will decrease by \$13.8 million for Fiscal Year 2008-2009.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Not applicable since this is a proposed council bill.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**