

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 661 Insurance Adjusters
SPONSOR(S): Policy & Budget Council; Jobs & Entrepreneurship Council; Robaina and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1098

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Jobs & Entrepreneurship Council</u>	<u>15 Y, 0 N, As CS</u>	<u>Callaway/Topp</u>	<u>Thorn</u>
2) <u>Policy & Budget Council</u>	<u>29 Y, 0 N, As CS</u>	<u>Martin</u>	<u>Hansen</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The law, in s. 626.854, F.S., defines a public adjuster as any person, except a licensed attorney, who prepares or files an insurance claim for an insured or third-party claimant. Similarly, the law recognizes that a public adjuster represents an insured or third-party claimant in negotiations with the policyholder's insurance provider with the goal of settling a claim. A public adjuster is hired and paid by the insured to act on his or her behalf. The public adjuster fee is usually a percentage of the claim payment that the public adjuster is responsible for recovering. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies and do not charge policyholders a fee.

During the 2007A 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). During review of Citizens hurricane claims, the Task Force became aware of the impact that public adjusters have on the claims process. The Task Force found that while the services of public adjusters can be beneficial to policyholders who have suffered a loss, the current laws do not adequately protect consumers from unscrupulous public adjusters. The Task Force heard testimony that some public adjusters were not properly trained or qualified to represent insureds. Also, these adjusters charged exorbitant fees which oftentimes were not apparent to insureds because such fees were not prominently displayed in the public adjuster contract. Stakeholders also testified that there was a need for an apprentice type program for public adjusters so that individuals would be knowledgeable and experienced when they became public adjusters. In an effort to remedy concerns expressed about abuses by some public adjusters, the Task Force proposed this legislation.

The bill makes numerous changes to the law governing public adjusters. The changes relate to public adjusters fees, public adjuster solicitation and business practices, public adjuster licensure, continuing education requirements for public adjusters, and requirements for public adjuster contracts. The bill also establishes a public adjuster apprenticeship program and license.

The Department of Financial Services estimates there will be a positive, recurring impact on the Insurance Regulatory Trust Fund of \$38,500. The department also estimates that there will be a negative, non-recurring impact on the Insurance Regulatory Trust Fund of \$129,770 for the cost to upgrade the department's computer systems and of \$31,000 for the cost to develop unique public adjuster examinations, but these costs can be absorbed with existing resources.

The bill is effective October 1, 2008, except as otherwise provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 4/21/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill provides for more regulation of public adjusters by the Department of Financial Services (DFS or Department) and establishes a public adjuster apprentice license overseen by the Department.

Ensure lower taxes: The bill provides licensing fees for public adjuster apprentices.

Safeguard individual liberty: The bill provides for more regulation of public adjusters by the Department and establishes a public adjuster apprentice license overseen by the Department.

Promote personal responsibility: The bill provides for more regulation of public adjusters by the Department and establishes a public adjuster apprentice license overseen by the Department.

B. EFFECT OF PROPOSED CHANGES:

Public Adjusters

Chapter 626, F.S., regulates insurance field representatives and operations. Part VI of the chapter governs insurance adjusters. The law recognizes various types of adjusters, including public adjusters, independent adjusters, company employee adjusters, and catastrophe or emergency adjusters. Adjusters can be further classified as resident or nonresident. Resident adjusters are those who reside in Florida and are licensed in Florida, whereas, nonresident adjusters reside outside of Florida and are licensed by their home state.

The law assigns the Department of Financial Services to regulate resident and nonresident adjusters of all types; the DFS reports that in January 2008, Florida licensed more than 33,000 resident adjusters and over 35,000 non-resident adjusters.¹ DFS officials state that the number of licensed public adjusters has dramatically increased since the hurricanes of 2004-2005. In 2004, there were approximately 723 Florida resident licensed public adjusters and in 2008, there are 2,414 resident licensed public adjusters.²

The law, in s. 626.854, F.S., defines a public adjuster as any person, except a licensed attorney, who prepares or files an insurance claim for an insured or third-party claimant. Similarly, the law recognizes that a public adjuster represents an insured or third-party claimant in negotiations with the policyholder's insurance provider with the goal of settling a claim. A public adjuster is hired and paid by the insured to act on his or her behalf. The public adjuster fee is usually a percentage of the claim payment that the public adjuster is responsible for recovering. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies and do not charge policyholders a fee. Public adjusters must present a \$50,000 bond to DFS in order to be licensed. No bond is required of company employee or independent adjusters.

¹ Information received from the Department of Financial Services on March 3, 2008 on file with the Committee on Insurance.

² There are 395 licensed non-resident public adjusters. According to DFS, there are 14,948 licensed resident independent adjusters (9,494 licensed non-resident independent adjusters); 15,756 licensed resident company employee adjusters (25,045 licensed non-resident company employee adjusters).

After the hurricanes in 2004 and 2005, Chief Financial Officer Tom Gallagher issued emergency rules relating to public adjusters. These rules banned public adjusters from requiring cash up front to adjust hurricane claims, limited public adjuster fees to 10 percent of the claim amount, gave homeowners up to 14 days to back out of a public adjuster contract without penalty, and prohibited public adjusters from demanding or accepting any type of compensation prior to the claim settlement.

On September 3, 2006, a new administrative rule³ regarding public adjusters went into effect. When the governor declares a state of emergency, the rule prohibits a public adjuster from demanding or accepting any type of compensation prior to the settlement of the claim, limits the public adjuster fee to 10 percent of the settlement amount or claim payment, and prohibits a public adjuster from contracting with any person to help the homeowner on the claim in return for a fee in excess of the 10 percent limitation.

There are also administrative rules relating to public adjusters that are in effect at all times.⁴ These rules, in part, address public adjuster contract cancellation, a public adjuster's actions relating to business referrals and actions relating to engagement of services of other professionals to help with the claim. Public adjusters must also abide by the general ethical rules applicable to all types of adjusters.

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).⁵

During review of Citizens hurricane claims, the Task Force became aware of the impact that public adjusters have on the claims process. For example, representatives with Citizens testified that of their 3,300 open claims which were in mediation or appraisal,⁶ at least ninety percent of the insureds were represented by public adjusters. The Task Force found that while the services of public adjusters can be beneficial to policyholders who have suffered a loss, the current laws do not adequately protect consumers from unscrupulous public adjusters. The Task Force heard testimony that some public adjusters were not properly trained or qualified to represent insureds. Also, these adjusters charged exorbitant fees which oftentimes were not apparent to insureds because such fees were not prominently displayed in the public adjuster contract. Stakeholders also testified that there was a need for an apprentice type program for public adjusters so that individuals would be knowledgeable and experienced when they became public adjusters. In an effort to remedy concerns expressed about abuses by some public adjusters, the Task Force has proposed this legislation.

Proposed Changes

The bill makes numerous changes to the law governing public adjusters. The bill's changes relating to **public adjusters fees** are as follows:

- Prohibits charging more than:
20% on non-hurricane claims
10% on hurricane claims⁷

³ 69B-220.201(5), F.A.C.

⁴ 69B-220.201(4), F.A.C.

⁵ 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.

⁶ As of June 18, 2007.

⁷ Similar to Rule 69B-220.201(5)(b), F.A.C.

- Prohibits basing a fee for work on a supplemental claim on the amount paid to the policyholder on the previous claim.

The current administrative rule allows public adjusters to solicit business and does not place any restriction on the solicitation. The bill makes numerous changes relating to **public adjuster solicitation and business practices** in residential property and condominium association insurance claims as follows:

- Prohibits soliciting directly or indirectly between the hours of 8:00 pm and 8:00 am Monday through Saturday and all day on Sunday.
- Prohibits soliciting or entering into a contract until at least 48 hours after occurrence of the loss, unless contracted by the policyholder.
- Prohibits giving or offering to give a monetary loan or advance to a client or prospective client.
- Prohibits giving or offering to give anything with a value in excess of \$25 for advertising or as an inducement to enter into a contract with a public adjuster.
- Allows the policyholder to cancel a public adjuster's contract without penalty within 3 days of execution or within 3 days after notification to the insurance company of the claim, whichever is later. However, the cancellation provision is extended to 5 days during a state of emergency and for one year after.
- Makes it an unfair and deceptive insurance trade practice for a public adjuster or any other person to circulate or disseminate untrue, deceptive, or misleading information relating to insurance.
- Requires that every public adjuster provide a written estimate of the loss to the insured to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds. It also requires that all written estimates be retained for at least five years and be made available to the claimant or insured and the department upon request.

The bill makes numerous changes relating to **public adjusters licensure** as follows:

- Nonresident applicants must have been continuously licensed in their home state for the past three years.
- The Department of Financial Services must create a specific examination for public adjusters. This examination must be different than the one given to company employee and independent adjusters.
- A suspended license or issuance of a new license to a person whose previous license was terminated for any reason cannot be reinstated unless the person passes the public adjuster examination before reinstatement.
- No examination on workers' compensation or health insurance is required for public adjusters.

The bill creates a **public adjuster apprenticeship program and license** with the following requirements:

- Applicant must be at least 18 years old.
- Applicant must file a surety bond in the amount of \$50,000 with the department.
- Supervisor adjuster is responsible and accountable for the acts of the apprentice related to claims adjusting.
- Apprentice must complete at least 12 months of employment as a public adjuster apprentice under the supervision of a licensed adjuster.
- Applicant must submit an affidavit from a proposed employer confirming his/her employment as a public adjuster apprentice.
- The DFS has authority to discipline public adjuster apprentices on the same grounds as a public adjuster.

The bill amends the **continuing education requirements for public adjusters** as follows:

- Public adjusters must take courses that are specifically designed for public adjusters, not company adjusters.
- Courses for public adjusters must include information on duties and responsibilities under law and rules of the department as well as on standard policy forms.
- Public adjusters do not have to take courses on workers' compensation or health insurance.
- Non-resident adjusters can comply by meeting their own state's continuing education requirements if the requirements are substantially comparable to Florida's continuing education requirements and if their own state recognizes reciprocity with Florida's continuing education requirements.

The bill provides **requirements for public adjuster contracts** as follows:

- Contract for public adjusting services must be in writing and contain a statement that notifies consumers that it is a felony to knowingly and with intent to injure, defraud, or deceive any insurer, file a proof of loss or estimate of cost or repair containing any false, incomplete, or misleading information.

If the claim involves a **proof of loss**, the bill provides the following:

- Requires a proof of loss to contain a statement that notifies consumers that it is a felony to knowingly and with intent to injure, defraud, or deceive any insurer, file a proof of loss or estimate of cost or repair containing any false, incomplete, or misleading information.

C. SECTION DIRECTORY:

Section 1: Amends s. 624.501 making a filing fee applicable to application for reinstatement of suspended license.

Section 2: Amends s. 626.015 adding public adjuster apprentice to the definition of "adjuster."

Section 3: Amends s. 626.221 relating to examination requirement; exemptions for adjusters.

Section 4: Amends s. 626.241 relating to scope of examination for adjusters.

Section 5: Amends s. 626.641 relating to duration of suspension or revocation of a license or appointment of an adjuster's license.

Section 6: Amends s. 626.854 relating to prohibited practices of public adjusters.

Section 7: Creates s. 626.8541 defining "public adjuster apprentice."

Section 8: Amends s. 626.865 relating to public adjuster's qualifications.

Section 9: Creates s. 626.8651 relating to public adjuster apprentice license and qualifications.

Section 10: Amends s. 626.869 relating to adjuster continuing education.

Section 11: Amends s. 626.8698 relating to disciplinary guidelines for public adjusters and public adjuster apprentices.

Section 12: Amends s. 626.870 relating to reinstatement of a suspended public adjuster license or appointment.

Section 13: Amends s. 626.8732 relating to nonresident public adjuster's qualifications.

Section 14: Creates s. 626.8796 relating to public adjuster contracts and fraud statement.

Section 15: Creates s. 626.8797 relating to public adjusters and proof of loss certification.

Section 16: Provides an effective date of October 1, 2008, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Financial Services estimates there will be a positive, recurring impact on the Insurance Regulatory Trust Fund of \$38,500. This estimate is based on 700 public adjusters apprentice applications being received annually with fees of \$55 (\$50 application fee and \$5 license appointment fee) (700 X \$55 = \$38,500).

2. Expenditures:

The Department of Financial Services estimates that there will be a negative, non-recurring impact on the Insurance Regulatory Trust Fund of \$129,770 for the cost to upgrade the department's computer systems and of \$31,000 for the cost to develop unique public adjuster examinations, but these costs can be absorbed with existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons applying for a public adjuster license will have to meet more stringent requirements under the bill. Persons currently licensed as public adjusters will have to sign a statement under oath for proof of loss, limit their fees, adhere to anti-soliciting provisions, modify contracts to allow consumers to terminate such contracts, and meet other regulatory requirements. Individuals desiring to be public adjuster apprentices must file a \$50,000 bond with the Department, pay fees, and meet other criteria for licensure.

D. FISCAL COMMENTS:

None.

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:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 15, 2008, the Jobs and Entrepreneurship Council heard the bill, adopted four amendments, and reported the bill favorably as a council substitute. The amendments:

- Revised the hours and days a public adjuster can solicit business.
- Shortened the time period during which a public adjuster cannot solicit after a hurricane.
- Required a three day cancellation period for the public adjuster contract.
- Prohibited a public adjuster examination and continuing education courses on workers' compensation or health insurance.
- Required public adjusters to give recorded statements and examinations under oath under specified circumstances.

The staff analysis was updated to reflect the council substitute.

On April 21, 2008, the Policy and Budget Council adopted one amendment that removed the requirement that a public adjuster provide a recorded statement under oath to provide information necessary to evaluate the factual basis and validity of a claim and the adjuster's related actions. The amendment inserted the requirement that every public adjuster provide a written estimate of the loss to the insured to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds. It also requires that all written estimates be retained for at least five years and be made available to the claimant or insured and the department upon request.

The staff analysis was updated to reflect the council substitute.