

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:

Overview of Title Insurance

Title insurance insures owners of real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.¹ Title insurance is a policy issued by a title insurer that, after performing a search of title, represents the state of that title and insures the accuracy of its search against claims of title defects. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property.² Most lenders require title insurance when they underwrite loans for real property.³ Title insurance provides a duty to defend related to adverse claims against title, and also promises to indemnify the policy holder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.⁴

Current Regulatory Environment

Over the past several years, title insurance has been a topic of interest on both the state and national level. The market has been the topic of two studies by the United States Government Accountability Office (GAO): "Title Insurance. Preliminary Views and Issues for Further Study," published in April 2006, and "Title Insurance. Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers," published in April 2007.

The 2006 GAO report identified issues within the title insurance industry that required further study, including the extent to which:

- Premium rates reflect underlying costs.
- State regulators review the activities of title agents.
- A competitive market exists.
- Different regulatory entities coordinate their efforts.

The 2007 GAO study presented the following findings:

- The title insurance market in each state is generally dominated by a small number of insurers.
- Title insurance premiums vary among states.
- It is difficult for consumers to comparative shop as they tend to select the title insurer suggested by the lender and they are unfamiliar with title insurance.

The 2007 report concluded: "Given consumers' weak position in the title insurance market, regulatory efforts to ensure reasonable prices and deter illegal marketing activities are critical." However, the GAO further noted

¹ Section 624.608, F.S. Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of security interest in personal property under the Uniform Commercial Code.

² See, e.g., American Land Title Association; <http://www.alta.org/consumer/questions.cfm>

³ Id.

⁴ Id.

that state regulators, as a general rule, have not collected the data necessary for analysis of premium prices and underlying costs and that there is the potential for lack of coordination among regulatory agencies when multiple regulatory bodies oversee the title insurance market in a state.

Title Insurance in Florida

Historically, a single regulatory entity, the Department of insurance, promulgated title insurance rates and regulated title insurance agents. Under current law, two entities provide regulatory oversight of the title insurance industry in Florida: the Department of Financial Services (DFS), which regulates title agents, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage⁵ and rates and premiums charged by title insurers are specified by rule by the Financial Services Commission (FSC).⁶ Title insurers may deviate from the proscribed rates by petitioning the OIR for an order authorizing a specific deviation from the adopted premium.⁷

In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.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 agents 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.

In 2006, the OIR completed a multi-faceted 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.⁹ 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 compared to consumers in other states. The study also found that the loss ratios for title insurance coverage are low relative to other states and recommended tying premium rates to loss ratios, thereby making rates a reflection of the actual risks borne by the insurer. The OIR's findings are disputed by industry representatives.

In August 2007, OIR held a public hearing on title insurance. Testimony was provided by representatives of several members of the title insurance industry, who appeared pursuant to subpoena.¹⁰ The topics discussed included the cost of producing title insurance policies and how these costs relate to insurance premiums; procedures used by companies to audit agents; methods of conducting title searches; use of affiliated business arrangements; use of reinsurance contracts; and efforts to educate and protect consumers.

HB 937 creates the Florida 2008 Title Insurance Study Advisory Council (Council) to conduct a comprehensive examination of Florida's title insurance delivery system with the ultimate goal of making recommendations for legislation to promote a sound and stable system to promote the safety of real property transfers.

The Council consists of the following 23 members:

⁵ Section 627.777, F.S.

⁶ Section 627.782, F.S.

⁷ Section 627.783, F.S.

⁸ Section 627.786.

⁹ *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.*

¹⁰ A videotape of the meeting can be viewed on OIR's website at <http://floir.com/pcfr/RateHearingVideo.aspx#OtherHearings>.

- The Governor (or the Governor's designee), who will serve as chair.
- The Chief Financial Officer (or the CFO's designee), who will serve as vice chair.
- One member of the Senate appointed by the President of the Senate.
- One member of the House of Representatives appointed by the Speaker of the House of Representatives.
- The Insurance Consumer Advocate.
- The Commissioner of Insurance Regulation.
- The Secretary of Business and Professional Regulation.
- Four representatives of title insurers doing business in Florida from four different title insurers appointed by the President of the Senate and four representatives of Florida title insurers appointed by the Speaker of the House of Representatives.
- Three independent licensed title insurance agents appointed by the President of the Senate.
- Three independent licensed title insurance agents appointed by the Speaker of the House of Representatives.
- Two members of the Real Property, Probate and Trust Law (RPPTL) Section of the Florida Bar designated by the RPPTL.

The Council will be administratively supported by the staff of the Governor's office. Additionally, all state agencies will supply the Council with any information, assistance, and facilities that are deemed necessary by the Council to carry out its duties.

The Council's examination of Florida's title insurance delivery system must include consideration of:

- The historical development of the title insurance industry in Florida and its uniqueness among other lines of insurance.
- The current regulatory structure under which oversight responsibility is shared between different state agencies.
- The adequacy of funds and agency personnel to exercise regulatory oversight.
- The adequacy of current mechanisms and expertise to gather meaningful data to properly evaluate and adopt title insurance rates.
- Such other topics as the Council deems necessary to conduct a thorough examination of the title insurance industry.

The Council, at the direction of the chair, has the authority to invite independent actuaries with title insurance expertise to provide information and appear before the Council to aid in performing its duties.

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

The bill is effective July 1, 2008.

C. SECTION DIRECTORY:

Section 1. Creates the Florida 2008 Title Insurance Study Advisory Council Act.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Council shall be administratively supported by the staff of the Office of the Governor. The Department of Financial Services, the Office of Insurance Regulation, other state agencies, and legislative staff are directed to supply any information, assistance, and facilities to the Council. The Office of Insurance Regulation may incur expenses that cannot be absorbed within existing resources.

The Office of the Governor will have expenditures that cannot be absorbed within existing resources. The Office estimates expenditures for FY 08-09 of \$230,003 and for FY 09-10 of \$116,002. These expenses include additional personnel with insurance and legal expertise related to title insurance to support the Council; clerical costs; and costs for public meeting notices, transcribing costs, meeting materials/supplies, and report publication/distribution costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill does not indicate whether the State of Florida will be required to pay for travel expenses for the Council members or whether the members are to pay their own travel expenses.

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

It is my understanding that the surcharge on the industry produces in excess of \$1.5 million for data collection and agent audit. A portion of these funds could be appropriated to cover the administrative costs of the study commission.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.