

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7023 PCB IBFA 10-03 Repeal of Obsolete Insurance Provisions
SPONSOR(S): General Government Policy Council, Insurance, Business & Financial Affairs Policy
Committee, Patterson

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Insurance, Business & Financial Affairs Policy Committee	14 Y, 0 N	Callaway	Cooper
1)	General Government Policy Council	14 Y, 0 N, As CS	Callaway	Hamby
2)	_____	_____	_____	_____
3)	_____	_____	_____	_____
4)	_____	_____	_____	_____
5)	_____	_____	_____	_____

SUMMARY ANALYSIS

This bill deletes outdated or obsolete language relating to the following insurance topics:

- the Florida Automobile Joint Underwriting Association pre-suit notice,
- a report on private insurers issuing and servicing wind-only policies of Citizens Property Insurance Corporation (Citizens),
- a form filing for catastrophic ground cover collapse coverage,
- a report on the sinkhole database,
- a Florida Sinkhole Insurance Facility study,
- the effective date for the exclusion of windstorm and contents coverage in property insurance policies, and
- the refund of funds from the Insurance Capital Build-Up Incentive Program to Citizens.

The effect of this bill is of a technical, non-substantive nature.

The bill has no fiscal impact and is effective on July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The effect of this bill is of a technical, non-substantive nature. This bill deletes outdated or obsolete language relating to various insurance topics as follows:

Florida Automobile Joint Underwriting Association Pre-Suit Notice

Section 627.311(3), F.S., allows the Office of Insurance Regulation to approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance. The Florida Automobile Joint Underwriting Association (FAJUA) is created under the plan. Requirements of the plan are contained in s. 627.311(3), F.S. Section 627.311(3)(k)2., F.S., specifies that before a legal action may be brought against the FAJUA for certain violations by the FAJUA, the Department of Financial Services and the FAJUA must be given 90 days' written notice of the violation giving rise to the lawsuit.¹ Typically, a 60 day pre-suit notice, rather than a 90 day pre-suit notice, is required for actions taken against insurance companies for certain violations.² In the 2004 Session, however, the pre-suit notice requirement that applies to the FAJUA was lengthened from 60 days to 90 days to give the FAJUA more time to investigate alleged violations.

By statute, the 90 day pre-suit notice period for the FAJUA expired on October 1, 2007 unless it was reenacted by the Legislature. The statute was not reenacted by the Legislature before the October 1, 2007 deadline. Thus, this bill repeals the 90 day pre-suit notice period as it is obsolete due to the expiration of the October 1, 2007 deadline.

Report On Private Insurers Issuing and Servicing Wind-Only Policies of Citizens Property Insurance Corporation

Section 627.351(6)(cc), F.S., requires Citizens Property Insurance Corporation (Citizens) to submit a report to the Legislature on the feasibility of requiring insurance companies providing non-wind property coverage to issue and service Citizens' wind-only property insurance policies which are located only in the high risk account of Citizens. The report was due by February 1, 2007 and was submitted on this

¹ Section 624.155, F.S., specifies the insurer violations which require pre-suit notice to DFS and to the insurer. These violations include: unfair claim settlement practices, illegal dealings in premiums, refusal to insure, favored agent or insurer, illegal dealings for life or disability insurance, life or disability insurance discrimination based on policyholder having the sickle cell trait, return of auto insurance premium upon cancellation of the policy by the policyholder, not settling claims in good faith, claims payments made to policyholders without an accompanying statement relating to the coverage, and failure to settle a claim under one portion of an insurance policy in order to influence settlement under other portions of the policy.

² s. 624.155(3)(a), F.S.

date. The bill repeals s. 627.351(6)(cc), F.S., because the deadline date for the report submission has passed.

Form Filing for Catastrophic Ground Cover Collapse Coverage

Under current law, every property insurance company must cover “catastrophic ground cover collapse” in the property insurance policy. Property insurance coverage for catastrophic ground cover collapse was made mandatory and added to the law in the 2007 Special Session. Catastrophic ground cover collapse coverage pays the homeowner for property damage caused from the abrupt collapse of the ground cover with a visible ground cover depression resulting in structural damage to the home to the extent that the home is condemned and ordered to be vacated. Structural damage to a home due to settling or cracking of a foundation is not catastrophic ground cover collapse and is not paid for under catastrophic ground cover collapse coverage. Damage of this type, however, may be covered under “sinkhole coverage” which can be purchased for an additional premium. All property insurers must make sinkhole coverage available for homeowners to purchase.

When coverage for catastrophic ground cover collapse was added to the law in 2007 as a mandatory coverage, insurers were required to make a form filing with the Office of Insurance Regulation (OIR) by June 1, 2007 to implement this coverage requirement. This bill repeals s. 627.706(3), F.S., the statutory provision added in 2007 requiring insurers to make the catastrophic ground cover collapse form filing by June 1, 2007 because the filing deadline has passed.

Report on the Sinkhole Database

Section 627.7065(5), F.S., requires the Department of Environmental Protection, in consultation with the Department of Financial Services, to submit a report of activities by December 31, 2005 to the Governor, the Chief Financial Officer, and the Legislative presiding officers about the sinkhole database implemented by the Department of Financial Services. The report was submitted on March 10, 2006. The bill repeals s. 627.7065(5), F.S., because the deadline for the report submission has passed.

Florida Sinkhole Insurance Facility Study

Section 627.7077, F.S., requires the Florida State University College of Business Department of Risk Management and Insurance to conduct a feasibility and cost-benefit study of a potential Florida Sinkhole Insurance Facility and of other matters related to the affordability and availability of sinkhole insurance. A preliminary report was due to the presiding officers of the Legislature and the Financial Services Commission by February 1, 2005 with a final report due April 1, 2005. The final report was submitted in April 2005 by FSU. The bill repeals s. 627.7077, F.S., because the deadline for the report on the sinkhole study has passed.

Effective Date for the Exclusion of Windstorm and Contents Coverage In Property Insurance Policies

Section 627.712, F.S., requires property insurers to provide windstorm coverage in residential property insurance policies but allows a policyholder to exclude windstorm coverage if specified requirements are met. The statute also allows a policyholder to exclude contents coverage if specified requirements are met. The statute was first enacted in the 2007 Special Session. Section 627.712(7), F.S., provides an effective date of June 1, 2007 for the statute but allows the OIR to extend the effective date until October 1, 2007 at the latest with approval of the Financial Services Commission. The bill repeals s. 627.712(7), F.S., which provides the effective date of the statute as the deadlines of June 1, 2007 and October 1, 2007 contained in the statute have passed.

Refund of Funds from the Insurance Capital Build-Up Incentive Program

In 2006, the Legislature created the Insurance Capital Build-Up Incentive Program (Capital Build Up Program or program) within the State Board of Administration (SBA) to provide insurance companies a low-cost source of capital to write additional residential property insurance. The program’s goal was to

increase the availability of residential property insurance covering the risk of hurricanes and to ease residential property insurance premium increases.

To accomplish its goal, the program loaned state funds in the form of surplus notes to new or existing authorized residential property insurers under specified conditions. The insurers, in turn, agreed to write additional residential property insurance in Florida and to contribute new capital to their company. The maximum dollar amount of a surplus note was \$25 million. The surplus note was repayable to the state, with a 20 year term, at the 10-year Treasury Bond interest rate (with interest only payments the first three years). The Legislature appropriated \$250 million non-recurring funds from the General Revenue Fund to fund the program at its inception in 2006. Any unexpended balance reverted back to the General Revenue Fund on June 30, 2007.

As of June 28, 2007, the program issued \$247,500,000 in funds to thirteen qualifying insurers. Administrative expenses for the program totaled \$2,500,000. Thus, the entire 2006 legislative appropriation for the program was utilized (\$247.5 million in loans, and \$2.5 million in administrative costs).³

CS/CS/SB 2860, enacted in 2008, required the Citizens Property Insurance Corporation (Citizens) to transfer \$250 million to the General Revenue Fund for transfer to the State Board of Administration (SBA) for additional funding for the Capital Build-Up Program. This funding was in addition to the \$250 million appropriated to the program from the General Revenue Fund at the program's inception in 2006. The unexpended balance from the 2008 transfer of money from Citizens to the SBA reverted to the General Revenue Fund on June 30, 2009. The 2008 legislation also required the SBA to refund to Citizens uncommitted funds, interest and principal payments for surplus notes that were funded by appropriations from Citizens. This refund was to be made by January 15, 2009.

The \$250 million transfer from Citizens for use in the Capital Build Up Program was vetoed by the Governor.⁴ In his veto message Governor Crist stated: "[w]hile I believe the program is well intended and has had the net effect of removing nearly 200,000 policies from the Citizens Property Insurance Corporation and has kept an additional estimated 480,000 policies out of Citizens, the funding source is inappropriate. The original funding for the program came from the General Revenue Fund during the 05/06 fiscal year; however, the additional funding for the program provided in this legislation comes from policyholders' premiums paid to Citizens, which is used to pay claims in the event of a catastrophic hurricane. ... Taking \$250 million away from Citizens' ability to pay claims will substantially increase the likelihood of assessments for Floridians across the state."⁵

The bill repeals language in the Capital Build Up Program statute that requires the SBA to refund to Citizens uncommitted funds, interest, and principal payments for surplus notes that were funded by the \$250 million transfer from Citizens required by CS/CS/SB 2860. The transfer of funds from Citizens to the SBA was never done due to the Governor's veto of the transfer language in CS/CS/SB 2860. Thus, the bill repeals obsolete language from the statute.

B. SECTION DIRECTORY:

Section 1: Deletes s. 215.5595(11), F.S., relating to the Insurance Capital Build-Up Incentive Program.

Section 2: Amends s. 627.311, F.S., relating to the Florida Automobile Joint Underwriting Association.

Section 3: Deletes s. 627.351(6)(cc), F.S., relating to a report by Citizens Property Insurance Corporation.

Section 4: Deletes s. 627.706(3), F.S., relating to a property insurance filing for catastrophic ground cover collapse coverage.

³ Information obtained from the Final Report of the Insurance Capital Build-Up Incentive Program available at <http://www.sbafla.com/fsb/LinkClick.aspx?fileticket=4pFJtyJk2U%3d&tabid=413&mid=1236> (last viewed October 30, 2009).

⁴ Section 16 of CS/CS/SB 2860 which required the \$250 million transfer from Citizens to the General Revenue Fund for use in the Capital Build Up Program was vetoed on May 28, 2008. CS/HB 5057 also required the \$250 million transfer and this bill was vetoed on June 10, 2008. (http://www.flgov.com/2008_legislative_actions)

⁵ http://www.flgov.com/leg_actions/2008/2008_sb2860.pdf

Section 5: Deletes s. 627.7065(5), F.S., relating to a report of activities relating to the sinkhole database.

Section 6: Repeals s. 627.7077, F.S., relating to a Florida Sinkhole Insurance Facility Study.

Section 7: Deletes s. 627.712(7), F.S., relating to the effective date of the statute relating to the exclusion of windstorm and contents coverage in property insurance policies.

Section 8: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities 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.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 17, 2010, the General Government Policy Council considered the bill, adopted one amendment, and reported the bill favorably with a council substitute. The amendment added another obsolete statutory provision to be repealed. The provision related to the refund of funds from the Capital Build-Up Program to Citizens. The staff analysis was updated to reflect the council substitute.