

FINAL BILL ANALYSIS

BILL #: HB 4081

FINAL HOUSE FLOOR ACTION:
116 Y's 0 N's

SPONSOR: Rep. Horner

GOVERNOR'S ACTION: Approved

COMPANION BILLS: SB 636

SUMMARY ANALYSIS

HB 4081 passed the House on March 24, 2011, and subsequently passed the Senate on April 6, 2011. The bill was approved by the Governor on April 27, 2011, chapter 2011-11, Laws of Florida, and becomes effective July 1, 2011.

The bill deletes outdated or obsolete language relating to the following insurance topics:

- the Florida Automobile Joint Underwriting Association pre-suit notice,
- a form filing for catastrophic ground cover collapse coverage,
- a report on the sinkhole database,
- a study on the feasibility of a facility for insuring sinkhole loss and other issues related to sinkhole loss,
- the effective date for the exclusion of windstorm and contents coverage in property insurance policies, and
- the transfer of funds from the State Board of Administration to Citizens Property Insurance Corporation relating to the Insurance Capital Build-Up Program.

The changes made by the bill are technical and not substantive.

The bill has no fiscal impact.

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

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

The changes made by this bill are technical and not substantive. This bill deletes outdated or obsolete language relating to various insurance topics as follows: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 (OIR) 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. Current law (s. 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 (DFS) 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 applying 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 the 90 day notice period 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 reenactment deadline.

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 2007A Special Session.³ 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.

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.

³ Section 30, Ch. 2007-1, L.O.F.

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 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, F.S., enacted in 2005,⁴ creates a sinkhole information database for the purpose of tracking sinkhole claims made against property insurance policies. The DFS is primarily responsible for the development of the database, with input from the Department of Environmental Protection (DEP) and the Florida Geological Survey. The DFS has authority to require insurers to report past and present sinkhole claims for inclusion in the database. The DEP must investigate reports of sinkhole activity and report its findings to the database.

Section 627.7065(5), F.S., requires the DEP, in consultation with the DFS, 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 DFS. 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 (FSU) 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 2007A Special Session.⁵ 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

⁴ Section 18, Ch. 2005-111, L.O.F.

⁵ Section 32, Ch. 2007-1, L.O.F.

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, by June 2007 the entire 2006 legislative appropriation for the program was exhausted (\$247.5 million in loans, and \$2.5 million in administrative costs).⁶

CS/CS/SB 2860, enacted in 2008, required the Citizens Property Insurance Corporation (Citizens) to transfer \$250 million to the General Revenue Fund by December 15, 2008.⁷ The 2008 General Appropriations Act (GAA) contained a contingent appropriation of \$250 million to the SBA for additional funding for the Capital Build-Up Program. The appropriation was contingent upon Citizens transferring \$250 million to the General Revenue Fund.

The \$250 million transfer from Citizens to the General Revenue Fund was line item vetoed by the Governor Crist.⁸ 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.”⁹

CS/CS/SB 2860 also required the SBA to transfer back to Citizens on January 15, 2009 any uncommitted funds that were initially transferred from Citizens for the program. The bill repeals current law requiring the transfer of funds back to Citizens on January 15, 2009. The initial transfer of funds from Citizens to the General Revenue Fund was never completed due to the

⁶ Information obtained from the Final Report of the Insurance Capital Build-Up Incentive Program available at <http://www.sbafla.com/fsb/LinkClick.aspx?fileticket=TYIOUbpBbDM%3d&tabid=975&mid=2692> (last viewed February 1, 2011).

⁷ Section 16, Ch. 2008-66, L.O.F.

⁸ On May 28, 2008, Governor Charlie Crist line-item vetoed 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. CS/HB 5057 also required the \$250 million transfer and this entire bill was vetoed on June 10, 2008. (Letter to Secretary Kurt S. Browning, Secretary of State, from Governor Charlie Crist dated June 10, 2008, on file with staff of the Insurance & Banking Subcommittee).

⁹ Letter to Secretary Kurt S. Browning, Secretary of State, from Governor Charlie Crist dated May 28, 2008, on file with staff of the Insurance & Banking Subcommittee.

Governor's line item veto in CS/CS/SB 2860. Thus, the bill repeals obsolete language from the statute.

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.