

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SB 636

INTRODUCER: Senator Simmons

SUBJECT: Repeal Obsolete Insurance Provisions

DATE: March 10, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arzillo	Burgess	BI	Favorable
2.	Roberts	Roberts	GO	Favorable
3.			BC	
4.				
5.				
6.				

I. Summary:

Senate Bill 636 repeals outdated or obsolete language relating to the following topics:

- Refund to Citizens Property Insurance Corporation of funds not committed or reserved for insurers in the Insurance Capital Build-Up Incentive Program,
- Requirements of pre-suit notice for suits brought against the Florida Automobile Joint Underwriting Association (FAJUA),
- Form filings for compliance with the mandatory catastrophic ground cover collapse coverage,
- Report on the development of a sinkhole database,
- Feasibility study for Florida sinkhole coverage facility, and
- Effective date of insurers’ mandatory windstorm and contents coverage in property insurance policies.

This bill amends the following sections of the Florida Statutes: 215.5595, 627.311, 627.706, 627.7065, and 627.712. The bill repeals the following section of the Florida Statute: 627.7077.

II. Present Situation:

Citizens Property Insurance Refund

In 2006, the Legislature created the Insurance Capital Build-Up Incentive Program (Program) to provide insurance companies low-cost capital to write additional residential property insurance

to Florida residents.¹ The Program's goal is to increase the availability of residential property insurance coverage and to restrain increases in property insurance premiums. To accomplish this goal, the State loaned funds, in the form of surplus notes, to new or existing authorized residential property insurers. In order to receive these funds, the participating insurers agreed to write additional residential property insurance in Florida and to contribute new capital to their respective companies.

In order to finance these notes, the Legislature, in 2006, appropriated \$250 million non-recurring funds from the General Revenue Fund to the Program. The Legislature required any unexpended balance to be reverted back to the General Revenue Fund on June 30, 2007. However, by June 28, 2007, the program had exhausted the Legislative appropriation.²

In 2008, the Legislature enacted CS/CS/SB 2860, which required Citizens Property Insurance Corporation (Citizens) to transfer \$250 million to the General Revenue Fund for transfer to the Program.³ The Program was required to return any unexpended balance to the General Revenue Fund on January 15, 2009. However, SB 2860 was vetoed by Governor Crist.⁴

Pre-Suit Notice for Suits Brought against FAJUA

The FAJUA was created to provide low-cost automobile insurance to those Florida residents that cannot procure automobile insurance. FAJUA is governed under s. 627.311(3), and every automobile insurer registered with the State is required to be a member of FAJUA. Subparagraph 627.311(3)(k)2., F.S. required that before a legal action is brought against FAJUA under s. 624.155, F.S., the Department of Financial Services (DFS) and FAJUA must be given 90 days written notice of the violation giving rise to the lawsuit.⁵ However, under s. 624.155, F.S., the notice requirement for a lawsuit against an "authorized insurer" is only 60 days. Therefore, an alleged violation by FAJUA requires an additional 30 days notice. By its own provision, s. 627.311(3)(k)2., F.S., was to expire on October 1, 2007, unless reenacted by the Legislature prior to that date. The Legislature has not reenacted that subparagraph.

Form Filings for the Mandatory Catastrophic Ground Cover Collapse Coverage

In the 2007A Special Session, the Legislature required that every insurer authorized to sell property insurance in Florida must provide coverage for catastrophic ground cover collapse and

¹ Section 215.5595, F.S.

² 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).

³ Section 16, ch. 2008-66, L.O.F.

⁴ 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).

⁵ Section 624.155, F.S., specifies the insurer violations which require pre-suit notice to the 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.

make available, for an appropriate premium, coverage for sinkhole losses.⁶ Catastrophic ground cover collapse coverage pays the homeowner for property damage caused by the abrupt collapse of the ground cover with a visible ground cover depression resulting in structural damage to the building when the structure is condemned and ordered to be vacated. For damages that do not reach this threshold, the homeowner can choose to purchase additional sinkhole coverage, which also requires structural damage, but does not require an abrupt collapse visible to the naked eye, resulting in condemnation by a governmental agency. Insurers were required to make a form filing with the Office of Insurance Regulation by June 1, 2007 to implement these coverage requirements.

Report on the Development of a Sinkhole Database

Section 627.7065, F.S., creates a sinkhole information database for the purpose of tracking current and past sinkhole activity and making the information available for prevention and remediation activities. The Department of Financial Services and the Insurance Consumer Advocate, in consultation with the Florida Geological Survey and the Department of Environmental Protection, was charged with implementing the database. The Florida Geological Survey is responsible for recording reports of sinkhole activity in the database, which is downloadable and available to the public.⁷ In order to create the database, the Department of Environmental Protection, in consultation with the Department of Financial Services, was required to submit a report of database recommendations and other similar matters by December 31, 2005 to the Governor, the Chief Financial officer, and the Legislative presiding officers.

Feasibility Study for Florida Sinkhole Facility

Pursuant to s. 627.7077, F.S., the Florida State University College of Business Department of Risk Management and Insurance was directed by the Legislature to perform a feasibility and cost-benefit study of a Florida Sinkhole Insurance Facility. Specifically, the study was to examine the availability, coverage options, and costs associated with various sinkhole insurance programs.⁸ A draft report was due to the Legislature and the Financial Services Commission by February 1, 2005, and the final report was due by April 1, 2005.

Effective date of insurers' mandatory windstorm and contents coverage

Section 627.712, F.S. requires residential property insurers to offer windstorm coverage for property insurance policies, but allows policyholders to exclude windstorm coverage and contents coverage, if specified requirements are met. The effective date of the statute, as specified in s. 627.712(7), F.S., was June 1, 2007. However, the statute allowed the Office of Insurance Regulation to extend the effective date to October 1, 2007, with the approval of the Financial Services Commission.

⁶ Section 30, ch. 2007-1, L.O.F.

⁷ Department of Environmental Protection, Florida Geological Survey-Data and Maps. http://www.dep.state.fl.us/geology/gisdatamaps/SIRs_database.htm, (As of February 25, 2011).

⁸ *Final Report: Insurance Study of Sinkholes*; Submitted to the State of Florida, April 2005. http://www.flair.com/pdf/Sinkhole_Study_042005.pdf, (As of February 25, 2011).

III. Effect of Proposed Changes:

Section 1 deletes s. 215.5595(11), F.S., which requires the State Board of Administration to refund to Citizens all uncommitted Insurance Capital Build-Up Incentive Program funds that were to have been transferred from Citizens to the Program through SB 2860. The transfer of funds was never performed due to the Governor's veto of SB 2860; thus, the bill repeals this obsolete language from the statute.

Section 2 deletes s. 627.311(3)(k)2., F.S., which contains the 90 day pre-suit notice requirement for suits brought against FAJUA under s. 624.155, F.S. By its own terms, s. 627.311(3)(k)2., F.S., was to expire on October 1, 2007, unless reenacted by the Legislature prior to that date. Because the Legislature did not reinstate s. 627.311(3)(k)2., F.S., prior to October 1, 2007, that subparagraph expired and is obsolete. Therefore, the bill deletes obsolete language from the statute.

Section 3 deletes s. 627.706(3), F.S., which required insurers to file a form implementing the mandated coverage of catastrophic ground cover collapse and the optional sinkhole coverage with the Office of Insurance Regulation (OIR) by June 1, 2007. Since the time for filing has passed, and all insurers have filed with OIR, the bill deletes the obsolete language from the statute.

Section 4 deletes s. 627.7065(5), F.S., because the report of sinkhole database recommendations was filed by the Department of Environmental Protection before the deadline of December 31, 2005.

Section 5 repeals s. 627.7077, F.S., because the Florida State University College of Business Department of Risk Management and Insurance submitted the report on the feasibility of a Florida Sinkhole Insurance Facility, required by the statute, to the Legislature on April 1, 2005.⁹

Section 6 deletes s. 627.712(7), F.S., which provides an effective date of June 1, 2007, or at the latest, October 1, 2007, of the statute requiring residential property insurers to offer windstorm coverage for property insurance policies. This date has passed, and insurance companies are now required to offer windstorm coverage.

Section 7 provides that this act take effect July 1, 2011.

Other Potential Implications:

None.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁹ See Note 6.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.