

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 Committee on Banking and Insurance

BILL: SB 1698

INTRODUCER: Banking and Insurance Committee

SUBJECT: Ratification of Rules of the Office of Insurance Regulation

DATE: March 26, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Knudson	Knudson		BI SPB 7110 as introduced

I. Summary:

The bill will ratify Rule 69O-186.013, F.A.C., titled Title Insurance Statistical Gathering, as filed for adoption with the Department of State pursuant to the certification package dated December 30, 2013. The rule, which implements s. 627.782(8), F.S., requires Florida licensed title insurance agencies and the retail sales offices of licensed title insurers selling directly to customers to annually submit specified statistical data that the OIR determines are necessary to analyze title insurance premiums, title search costs, and the condition of the title insurance industry in Florida. The data will be used by the Financial Services Commission in its promulgation of title insurance rates. The ratification is for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S.

The Statement of Estimated Regulatory Costs prepared by the OIR estimates that the rule will increase the costs of these agencies and retail sales offices by approximately \$3,000 in the first year and \$2,000 annually thereafter. The estimated cumulative 5-year impact of the rule is \$22 million.

II. Present Situation:

Title Insurance

Title insurance insures owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.¹ Title insurance is a policy issued by a title insurer² 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. Title insurance 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. Most lenders require title insurance

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 a security interest in personal property under the Uniform Commercial Code.

²S. 627.7711(3), F.S.

when they underwrite loans for real property. Title insurance places on title insurers a duty to defend actions related to adverse claims against title, and also promises to indemnify the policyholder 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.

The Office of Insurance Regulation (OIR) regulates title insurers, including licensing and promulgation of rates, while the Department of Financial Services (DFS) regulates title agents. Title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.³

Title Insurance Ratemaking

Section 627.782, F.S., requires title insurance rates to be promulgated pursuant to a rule adopted by the Financial Services Commission (Commission) that specifies the premium charged by title insurers in this state. If a title insurance policy is issued through an agent or agency, the title insurer must retain at least 30 percent of the premium. No portion of the premium attributable to providing a primary title service may be paid to a person who does not perform that service.

The Commission must give due consideration to the following factors in adopting premium rates by rule:⁴

- Title Insurers' loss experience and prospective loss experience under closing protection letters and policy liabilities.
- A reasonable margin for underwriting profit and contingencies, including contingent liabilities.⁵ The profit must be sufficient to allow title insurers, agents, and agencies to earn a rate of return on their capital that will attract and retain adequate capital investment in the title insurance business and maintain an efficient title insurance delivery system.
- Past and prospective expenses for administration and handling of risks.
- Liability for defalcation.⁶
- Other relevant factors.

Rates for title insurance may not be excessive, inadequate, or unfairly discriminatory. The rates adopted by the Commission apply throughout the state,⁷ though a title insurer may petition the OIR for an order authorizing a specific deviation from the adopted premium.⁸

The 2012 Legislature required each Florida-licensed title insurance agency, insurer, and insurer's direct or retail business in this state to maintain and submit to the OIR revenue, loss, and expense data that the OIR determines is necessary to analyze title insurance premium rates, title search costs, and the condition of the title insurance industry in the state.

³ s. 627.786, F.S.

⁴ s. 627.782(2), F.S.

⁵ Under s. 627.7865, F.S., each title insurer is liable for an assessment to pay all the unpaid title claims on real property in Florida of a title insurer that is liquidated with unpaid outstanding claims.

⁶ Defalcation occurs when a title insurance agent or agency misappropriates or embezzles funds held in trust in connection with a real estate closing transaction.

⁷ s. 627.782(6), F.S.

⁸ s. 627.783, F.S.

Rulemaking Authority and Legislative Ratification

Pursuant to s. 120.541, F.S., a rule that meets any of three thresholds must be ratified by the Legislature. The thresholds are:

- If the rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after implementation of the rule;
- If the rule is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after implementation of the rule; or
- If the rule is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after implementation of the rule.⁹

Rule 69O-186.013, F.A.C.

Section 627.782(8), F.S., requires the Commission to adopt rules regarding the collection and analysis of data from the title insurance industry. The OIR prepared two rules for this purpose. Rule 69O-186.013, F.A.C., provides for a data call of title insurance agencies, while Rule 69O-186.014, F.A.C., provides for a data call of title insurance underwriters. The OIR submitted Rule 69O-186.013, F.A.C., to the legislature for ratification as required under s. 120.541(2), F.S., because the office determined it is likely to increase regulatory costs in excess of \$1 million within 5 years of implementation.

The OIR Statement of Estimated Regulatory Costs (SERC) found that the rule is expected to increase the operating costs of title insurance agencies by \$3,000 in the first year and \$2,000 annually thereafter.¹⁰ The office estimates that there are approximately 2,000 title insurance agencies and a small number of retail offices owned by title insurance underwriters. On a statewide basis, these offices will incur a cost of \$6,000,000 in the first year and \$4,000,000 in succeeding years. The estimated \$22 million impact over 5 years implicates s. 120.541(1)(b), F.S. which prohibits an agency rule from going into effect if its regulatory costs exceed \$1 million in the aggregate over 5 years.

III. Effect of Proposed Changes:

The proposed bill will ratify Rule 69O-186.013, F.A.C., titled Title Insurance Statistical Gathering, as filed for adoption with the Department of State pursuant to the certification package dated December 30, 2013. The rule, which implements s. 627.782(8), F.S., requires Florida licensed title insurance agencies and the retail sales offices of licensed title insurers selling directly to customers to annually submit specified statistical data that the OIR determines are necessary to analyze title insurance premiums, title search costs, and the condition of the title insurance industry in Florida. The data will be used by the Financial Services Commission in its

⁹ Section 120.541(2)(a)1.-3., F.S.

¹⁰ Office of Insurance Regulation, *Statement of Estimated Regulatory Costs: Rule Number 69O-186.013*. (On file with the Senate Banking and Insurance Committee).

promulgation of title insurance rates. The ratification is for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S.
The proposed bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

The OIR Statement of Estimated Regulatory Costs (SERC) found that the rule is expected to increase the operating costs of title insurance agencies by \$3,000 in the first year and \$2,000 annually thereafter.¹¹ The office estimates that there are approximately 2,000 title insurance agencies and a small number of retail offices owned by title insurance underwriters. On a statewide basis, these offices will incur a cost of \$6,000,000 in the first year and \$4,000,000 in succeeding years.

C. Government Sector Impact:

Section 627.782, F.S., requires the OIR to annually collect title insurance data from insurers and agents, and to analyze such data once every 3 years to assist the Commission in its promulgation of title insurance rates. The OIR SERC report estimates the cost to the OIR of collecting the data is \$50,000 per year and estimates that the cost of analyzing the data once every 3 years is \$150,000. The report also opined that in years when the data is analyzed and new rates are proposed, additional costs could be incurred.

VI. Technical Deficiencies:

None.

¹¹ Office of Insurance Regulation, *Statement of Estimated Regulatory Costs: Rule Number 690-186.013*. (On file with the Senate Banking and Insurance Committee).

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
