HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5403 PCB GOAS 14-03 Surplus Lines Tax Revenue
SPONSOR(S): Government Operations Appropriations Subcommittee, Ingram
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Appropriations Subcommittee	13 Y, 0 N	Keith	Topp
1) Appropriations Committee	26 Y, 0 N	Keith	Leznoff

SUMMARY ANALYSIS

Surplus lines insurance is a high risk category of insurance that consumers can pursue when there is no market available for insurance coverage through standard insurance carriers. Surplus lines insurance provides consumers with an option for access to insurance coverage when Florida-authorized insurers do not provide it. The Office of Insurance Regulation (OIR) approves companies, who are not licensed in Florida, to provide coverage for surplus lines insurance and to transact insurance in the state as “eligible” insurers.

Section 626.932, F.S., provides for a five percent tax on premiums of surplus lines insurance, independently procured coverage, and insurance provided by risk retention groups. Currently, 100 percent of the tax revenue generated from the surplus lines premium tax is deposited into the General Revenue Fund. However, the 100 percent distribution of surplus lines tax proceeds to the General Revenue Fund will sunset July 1, 2014, and the distribution percentages will revert to prior law.

Prior to July 1, 2009, 15.74 percent of surplus lines tax revenues were deposited to the credit of the Insurance Regulatory Trust Fund in the Department of Financial Services (DFS) and 84.26 percent of the tax proceeds were deposited into the General Revenue Fund. Chapter 2009-70, Laws of Florida, redirected all surplus lines tax revenues to the General Revenue Fund.

The bill repeals section 9 of chapter 2009-70, Laws of Florida, to provide for the continued 100 percent distribution of surplus lines tax revenues to the General Revenue Fund.

The Revenue Estimating Conference held March 12, 2014 indicated a negative $31.3 million fiscal impact to the General Revenue Fund should the redirect expire July 1, 2014, and 15.74 percent of surplus lines tax revenue be deposited in the Insurance Regulatory Trust Fund.

The General Revenue Fund appropriations within the proposed Fiscal Year 2014-2015 House General Appropriations Act contain the $31.3 million in surplus lines tax revenues this bill provides.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Surplus lines insurance is a high risk category of insurance that consumers pursue when there is no market available for insurance coverage through standard insurance carriers[1]. The Office of Insurance Regulation (OIR) approves companies, who are not licensed in Florida, to provide coverage for this type of insurance and to transact insurance in the state as “eligible” insurers. Surplus lines insurance is covered in ss. 626.913 through 626.937, F.S., and provides consumers with an option for access to insurance coverage when Florida-authorized insurers do not provide it.

In order for an agent to place an insured with a surplus lines carrier, agents must attempt through a “diligent effort”[2] to place a policy with a Florida-authorized insurer before placing the policy with a surplus lines carrier. “Diligent effort” has been demonstrated when the agent has three written rejections of coverage from authorized insurers currently writing this type of insurance coverage.

The rates that surplus lines insurers charge may not be less than rates that are offered on similar coverage, with similar risks, by authorized insurers writing policies in Florida. The types of insurance coverage available from surplus lines insurers include coverage for some sea vessels’, commercial aircraft, and homeowners’ insurance in hurricane-prone areas.

Agents who provide surplus lines coverage must be registered with the Department of Financial Services (DFS) and meet stringent qualifications for licensure. Risk retention groups are corporations or limited liability associations who purchase liability insurance on a group basis in order to assume and spread all or any portion of the liability exposure of its group members[3].

Current law provides for a five percent tax on premiums for surplus lines insurance, independently procured coverage and insurance provided by risk retention groups. The distribution set forth for surplus lines insurance is also applied to insurance provided by risk retention groups. Presently, 100 percent of the tax proceeds are distributed to the General Revenue Fund. However, the 100 percent distribution of surplus lines tax proceeds to the General Revenue Fund will sunset July 1, 2014, and the distribution percentages will revert to prior law.

Prior to July 1, 2009, 15.74 percent of surplus lines tax revenues were deposited to the credit of the Insurance Regulatory Trust Fund within the DFS and 84.26 percent of the tax proceeds were deposited into the General Revenue Fund. Chapter 2009-70, Laws of Florida, redirected all surplus lines tax revenues to the General Revenue Fund.

The Insurance Regulatory Trust Fund (IRTF) funds the expenditures of the OIR and partially funds the DFS for its administrative and regulatory functions. Historical information on the IRTF is as follows:

Insurance Regulatory Trust Fund Historical Information		
Fiscal Year	**Revenues**	**Expenditures**

[1] s. 626.913, F.S.
[2] s. 626.914(4), F.S.
[3] s. 627.942(9)(a), F.S.

2009-2010	$ 125,712,511	$ 96,889,616
2010-2011	$ 127,513,076	$ 89,183,800
2011-2012	$ 139,239,823	$ 86,791,694
2012-2013	$ 139,654,742	$ 83,377,485
2013-2014[4]	$ 129,015,214	$ 91,994,084
2014-2015[5]	$ 127,966,511[6]	$ 90,494,877[7]

Based on current law and the present forecast of revenues, the Insurance Regulatory Trust Fund will meet all financial obligations without proceeds from surplus lines tax revenues.

Historical information on surplus lines revenue collections is as follows:

Surplus Lines Revenue Collections[8]			
Fiscal Year	**Total Collections**	**GR Distribution**	**IRTF Distribution**
2009-2010	$ 189,200,000	$ 189,200,000	$ -
2010-2011	$ 178,000,000	$ 178,000,000	$ -
2011-2012	$ 170,300,000	$ 170,300,000	$ -
2012-2013	$ 198,900,000	$ 198,900,000	$ -
2013-2014	$ 204,900,000	$ 204,900,000	$ -
2014-2015	$ 216,200,000	$ 182,170,120	$ 34,029,880

If current law sunsets, 15.74 percent of surplus lines tax proceeds will be deposited into the Insurance Regulatory Trust Fund within the DFS and 84.26 percent of the tax proceeds will be deposited into the General Revenue Fund.

The Insurance Regulatory Trust Fund distribution figure shown above reflects the total estimated surplus lines receipts to the IRTF of $34.0 million. However, $34.0 million is prior to the deduction of the eight percent general revenue service charge on trust funds, which is deposited into the General Revenue Fund. The eight percent service charge to the IRTF amounts to $2.7 million, which provides a net trust fund increase of revenues to the IRTF of $31.3 million.

Effect of Proposed Changes

The bill repeals section 9 of chapter 2009-70, Laws of Florida, to provide for the continued 100 percent distribution of surplus lines tax revenues to the General Revenue Fund. In addition, the bill amends the distribution of surplus lines tax revenues collected on premiums from surplus lines insurance, pursuant to s. 626.932(5), F.S.; independently procured coverage, pursuant to s. 626.938(7), F.S.; and insurance provided by risk retention groups, pursuant to 627.944(3), F.S. The bill provides that all surplus lines tax revenues be distributed to the General Revenue Fund.

The Revenue Estimating Conference held March 12, 2014 indicated a negative $31.3 million fiscal impact to the General Revenue Fund should the redirect expire July 1, 2014 and 15.74 percent of surplus lines tax revenue be redirected to the Insurance Regulatory Trust Fund[9].

The bill provides that the act shall take effect upon becoming law.

---

[4] Revenue and appropriation amounts gathered from the DFS Schedule I Trust Funds Available PDF document in the Agency Legislative Budget Request for Fiscal Year 2014-2015. Available at: http://floridafiscalportal.state.fl.us/Documents.aspx?FY=2015&EXID=149&AGY=4300&DOCID=1832&DisplayAgy=Y (Last accessed: March 11, 2014).

[5] *Id.*

[6] $127,966,511 represents revenues deposited into the Insurance Regulatory Trust Fund, less the Surplus Lines premium tax revenue.

[7] $90,494,877 represents the Insurance Regulatory Trust Fund portion of the DFS base budget.

[8] Revenue amounts gathered from the March 12, 2014 General Revenue Fund Revenue Estimating Conference. Available at: http://edr.state.fl.us/Content/conferences/generalrevenue/index.cfm (Last accessed: March 12, 2014).

[9] *Id.*

B. SECTION DIRECTORY:

Section 1: Repeals section 9 of chapter 2009-70, Laws of Florida.

Section 2: Reenacts s. 626.932(5), F.S., relating to surplus lines tax.

Section 3: Reenacts s. 626.938(7), F.S., relating to the report and tax of independently procured coverages.

Section 4: Provides that the act is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill provides for the continued distribution of all surplus lines tax revenues to the General Revenue Fund. The Revenue Estimating Conference held March 12, 2014 indicated a negative $31.3 million fiscal impact to the General Revenue Fund should the redirect expire July 1, 2014, and 15.74 percent of surplus lines tax revenue be redirected to the Insurance Regulatory Trust Fund ($34.0 million in total estimated receipts, less service charge to the General Revenue Fund of $2.7 million, providing a net loss of $31.3 million to the General Revenue Fund).

   The General Revenue Fund appropriations within the proposed Fiscal Year 2014-2015 House General Appropriations Act contain the $31.3 million in surplus lines tax revenues this bill provides.

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:

   None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES