

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7097 PCB RORS 14-05 Ratification of Rules/Office of Insurance Regulation

SPONSOR(S): Rulemaking Oversight & Repeal Subcommittee; Steube

TIED BILLS: **IDEN./SIM. BILLS:** SB 1698

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee	12 Y, 0 N	Miller	Rubottom
1) Regulatory Affairs Committee	16 Y, 0 N	Reilly	Hamon

SUMMARY ANALYSIS

The Financial Services Commission (FSC) amended Rule 69O-186.013, F.A.C., "Title Insurance Statistical Gathering: Licensed Title Insurance Agencies and Florida Retail Offices of Direct-Writing Title Insurance Underwriters," for the Office of Insurance Regulation (OIR). The rule requires Florida licensed title insurance agencies, and the retail sales offices in Florida of licensed title insurers selling directly to customers, annually to submit certain statistical data OIR determines are necessary to analyze title insurance premiums, title search costs, and the condition of the title insurance industry in Florida.

The Statement of Estimated Regulatory Costs showed Rule 69O-186.013, F.A.C., would have a specific, adverse economic effect, or would increase regulatory costs, exceeding \$1 million over the first 5 years the rule was in effect. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

The rule was adopted on December 30, 2013, and initially submitted for ratification on January 27, 2014.

The bill authorizes the rule to go into effect. The scope of the bill is limited to this rulemaking condition and does not adopt the substance of any rule into the statutes.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.¹ Rulemaking authority is delegated by the Legislature² through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”³ a rule. Agencies do not have discretion whether to engage in rulemaking.⁴ To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.⁵ The grant of rulemaking authority itself need not be detailed.⁶ The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.⁷

An agency begins the formal rulemaking process by giving notice of the proposed rule.⁸ The notice is published by the Department of State in the Florida Administrative Register⁹ and must provide certain information, including the text of the proposed rule, a summary of the agency’s statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis projecting a proposed rule’s adverse effect on specified aspects of the state’s economy or increase in regulatory costs.¹⁰

The economic analysis mandated for each SERC must analyze a rule’s potential impact over the 5 year period from when the rule goes into effect. First is the rule’s likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.¹¹ Next is the likely adverse impact on business competitiveness,¹² productivity, or innovation.¹³ Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.¹⁴ If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million in the aggregate for the 5 year period, the rule cannot go into effect until ratified by the Legislature pursuant to s. 120.541(3), F.S.

Present law distinguishes between a rule being “adopted” and becoming enforceable or “effective.”¹⁵ A rule must be filed for adoption before it may go into effect¹⁶ and cannot be filed for adoption until completion of the rulemaking process.¹⁷ A rule projected to have a specific economic impact exceeding

¹ Section 120.52(16); *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

² *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

³ Section 120.52(17).

⁴ Section 120.54(1)(a), F.S.

⁵ Section 120.52(8) & s. 120.536(1), F.S.

⁶ *Save the Manatee Club, Inc.*, supra at 599.

⁷ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

⁸ Section 120.54(3)(a)1, F.S..

⁹ Sections 120.54(3)(a)2., 120.55(1)(b)2, F.S.

¹⁰ Section 120.541(2)(a), F.S.

¹¹ Section 120.541(2)(a)1., F.S.

¹² Including the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

¹³ Section 120.541(2)(a) 2., F.S.

¹⁴ Section 120.541(2)(a) 3., F.S.

¹⁵ Section 120.54(3)(e)6. Before a rule becomes enforceable, thus “effective,” the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.

¹⁶ Section 120.54(3)(e)6, F.S.

¹⁷ Section 120.54(3)(e), F.S.

\$1 million in the aggregate over 5 years¹⁸ must be ratified by the Legislature before going into effect.¹⁹ As a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification.

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

Rule 69O-186.013, F.A.C., implemented statutory authority for OIR to require licensed title insurance agents and insurers annually to submit statistical information OIR determines is necessary to analyze premium rates, retention rates, and the condition of the title insurance industry.²⁰ The statute was amended in 2012²¹ to require each title insurance agency and title insurer licensed in Florida, and the direct or retail sales offices of licensed title insurers located in Florida, to maintain the statistical information specified by OIR. This information must be submitted to OIR by March 31 after the year being reported.²²

The rule as amended by the FSC²³ incorporates new forms for completion and submission by title insurance agencies and retail offices of direct-writing title insurers, together with new instructions. The SERC prepared by OIR estimates the reporting entities will incur initial costs for compliance with the amended rule of \$2,000,000 and annual recurring compliance costs of \$4,000,000.²⁴ The projected costs of the rule for the first five years of implementation are \$22,000,000. The SERC further states the rule and reporting requirements were developed through consensus between the title insurance industry, the Department of Financial Services (DFS),²⁵ and OIR. No lower cost regulatory alternatives to the rule were submitted to OIR during the rulemaking process.

Effect of Proposed Change

The bill ratifies Rule 69O-186.013, F.A.C., allowing the rule to go into effect.

B. SECTION DIRECTORY:

Section 1: Ratifies Rule 69O-186.013, F.A.C., solely to meet the condition for effectiveness imposed by s. 120.541(3), F.S. Expressly limits ratification to the effectiveness of the rules. Directs the act shall not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

Section 2: Provides the act goes into effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

¹⁸ Section 120.541(2)(a), F.S.

¹⁹ Section 120.541(3), F.S.

²⁰ Section 627.782(8), F.S. (2011).

²¹ Ch. 2012-206, s. 5, LOF.

²² Section 627.782(8), F.S. (2013).

²³ OIR is a subunit of the FSC, which is the agency head of OIR for purposes of rulemaking. Section 20.121(3)(c), F.S. The FSC is authorized to make rules implementing s. 627.782(8), F.S. Section 624.308(1), F.S.

²⁴ Office of Insurance Regulation, "Statement of Estimated Regulatory Costs (SERC)," Rule No. 69O-186.013. In possession of the Regulatory Oversight & Repeal Subcommittee and published in the Subcommittee meeting materials for its consideration of PCB RORS 14-05 on March 5, 2014.

²⁵ The FSC and OIR are housed in DFS for administrative purposes but are not under any authority of DFS. Section 20.121(3), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The economic impacts projected in the statement of estimated regulatory costs would result from implementing the data retention and reporting requirements of the rule.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The legislation does not appear to require counties or municipalities to take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill meets the final statutory requirement for the agency to exercise its rulemaking authority implementing its authority to require annual reporting of certain data to analyze title insurance premium rates, retention rates, and the condition of the title insurance industry. No additional rulemaking authority is required.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.