

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 651 Department of Financial Services

SPONSOR(S): Regulatory Affairs Committee; Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Beshears and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 992

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 1 N, As CS	Yaffe	Luczynski
2) Government Operations Appropriations Subcommittee	9 Y, 0 N, As CS	Keith	Topp
3) Regulatory Affairs Committee	16 Y, 0 N, As CS	Yaffe	Hamon

SUMMARY ANALYSIS

The bill modifies several areas regulated by the Department of Financial Services (DFS), including:

- Authorizing the DFS to create an Internet-based system for the electronic transmission of service of process documents served on the Chief Financial Officer of the State;
- Revising requirements for service of process to unauthorized insurers;
- Revising requirements relating to service of legal process and revising requirements relating to service of process upon insurers or persons representing or aiding insurers;
- Removing the requirement that the Executive Office of the Governor review and approve certain alternative retirement income security programs;
- Clarifying the eligibility requirements for participation in the State's deferred compensation plan;
- Revising requirements for the approval of certain surety bonds;
- Amending the Florida Single Audit Act to conform to new federal standards, defining the term "higher education entity," and adding specific provisions applicable to higher education entities;
- Authorizing the DFS to access the digital photographs of licenses from the Department of Highway Safety and Motor Vehicles to investigate alleged violations of the insurance code by licensees and unlicensed persons;
- Revising safety regulations for carbon monoxide detectors in public lodging establishments;
- Creating an exception for health insurance agents from licensure as a public adjuster for specified activities;
- Amending the export requirements for commercial residential property insurance;
- Amending the appointment procedures for the Florida Surplus Lines Service Office board of governors;
- Revising the criteria for the Anti-Fraud Reward Program;
- Providing additional grounds for the disqualification of a neutral evaluator in sinkhole insurance claims disputes;
- Creating procedures to grant exemptions to persons disqualified from licensure or certification by the Division of State Fire Marshall (DSFM);
- Creating the Firefighter Assistance Grant Program to provide financial assistance in the form of training and equipment for volunteer and combination fire departments;
- Clarifying that the Life Safety Code does not apply to one-family and two-family dwellings;
- Amending the requirements for obtaining a firefighter certificate of compliance;
- Providing for the expiration of firefighter and volunteer firefighter certificates of compliance and completion four years after the date of issuance unless renewed;
- Repealing the statute requiring the DSFM to suspend or revoke a firefighter's certification under certain conditions;
- Amending the requirements to renew firefighter certifications; and
- Providing the DFS with rulemaking authority relating to all unclaimed property reported and remitted to the CFO; and
- Providing an appropriation to administer the Firefighter Assistance Grant Program.

The bill appropriates \$229,165 in recurring funds from the Insurance Regulatory Trust Fund and authorizes one full-time equivalent position in order to create and administer the Firefighter Assistance Grant Program within the DFS. The bill has no fiscal impact on local government revenue or expenditures. The Internet-based system for the electronic transmission of service of process documents should have a positive fiscal impact on the private sector.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

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

STORAGE NAME: h0651e.RAC

DATE: 2/19/2016

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation - Service of Process

Florida law may designate a public officer, board, agency, or commission as the agent for service of process on a person, firm, or corporation in Florida.¹ The Chief Financial Officer (CFO) is designated as the agent for service of process on insurers and other specific entities or persons licensed by the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR).² Service of process on the CFO is made by mail or personal service³ and plaintiffs are required to pay the DFS a \$15 fee which is deposited into the Administrative Trust Fund.⁴ Once the service of process is received, the CFO retains a record copy in paper or electronic form and promptly forwards the process documents to the defendant's designated agent by registered or certified mail.⁵ In lieu of sending the process by registered or certified mail, the CFO may send the process by "any other verifiable means."⁶ The language "any other verifiable means" is not defined in statute but, Florida case law has interpreted it to include electronic delivery.⁷

Effect of Proposed Changes - Service of Process (Sections 1, 9, 10, 11, and 13)

The bill amends s. 48.151(3), F.S., to authorize the DFS to create an Internet-based system to accept service of process documents by electronic transmission for serving the CFO, his or her assistant or deputy, or another person in charge of the office as the agent for *licensed* and *unauthorized* insurers. The purpose of the Internet-based system is to save consumers time and money serving process on the CFO by eliminating the need to copy, package, and mail documents or by eliminating the cost of personal service. The system's electronic transmission should eliminate the 3-7 day period for document delivery through the mail and the 3-7 day period for the DFS to send back a proof of service through the mail.

The bill also modifies several sections of ch. 624, F.S., to provide regulations related to the use of the Internet-based system and other clarifications to service of process. The modified sections of ch. 624, F.S., currently only apply to licensed insurers; however, the bill incorporates "unauthorized insurers" into these sections.

After the CFO receives service of process, he or she may send it by registered or certified mail, or by any other verifiable means to the person to receive the process. The bill modifies these options to permit the process to be sent or made available by any other verifiable means, including but not limited to, making the documents available by electronic transmission from a secure website established by the DFS. If the documents are made available electronically, the CFO is required to send a notice of receipt of service of process to the person last designated by the regulated person or unauthorized insurer to receive legal process. The notice must state the date and manner in which the copy of the process was made available and contain the uniform resource locator for a hyperlink to obtain a copy of the process.

The bill also revises requirements for service of process to an unauthorized insurer. Currently, the procedures for personal service of process on an insurer or person representing or aiding an unauthorized insurer require delivering the service to the CFO or some person in apparent charge of

¹ s. 48.151, F.S.

² The CFO also serves as the agent for service of process to all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, F.S., domestic reciprocal insurers, fraternal benefit societies under Ch. 632, F.S., warrant associations under Ch. 636, F.S., and persons required to file statements under s. 628.461, F.S.

³ s. 48.151, F.S.

⁴ s. 624.502, F.S.

⁵ s. 624.423(1), F.S.

⁶ s. 624.307, F.S.

⁷ See *Campbell v. Metropolitan Life Ins. Co.*, No. 2:12-cv-616-Ftm-99SPC, 2013 WL 461872, at *1 (M.D. Fla.); *Dunn v. Prudential Ins. Co. of America*, No. 8:10-cv-1626-T-24-TGW, 2011 WL 52867, at *1-2 (M.D. Fla.); *Johnson v. USAA Cas. Ins. Co.*, 900 F. Supp.2d 1310, 1314 fn. 1 (M.D. Fla. 2012).

his or her office. The bill adds the assistant or deputy of the CFO or another person in charge of the office as authorized recipients of the service. Additionally, the bill clarifies that the party requesting service of process on an authorized or unauthorized insurer is required to pay the \$15 fee to the DFS.

Current Situation - Alternative Retirement Income Security Program

The DFS provides an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services.⁸ The DFS is permitted to contract with a private vendor(s) to administer the program under a defined-contribution plan. The DFS may develop a request for proposals and solicit qualified vendors to compete for the award of the contract. The proposal must comply with all necessary federal and state laws and rules. The program requires the review and approval of the Executive Office of the Governor.

Effect of Proposed Changes - Alternative Retirement Income Security Program (Section 2)

The bill removes the requirement that the Executive Office of the Governor review and approve the alternative retirement income security program.

Current Situation - Deferred Compensation Program

The CFO, with approval of the State Board of Administration, is required to establish a deferred compensation plan for state employees under the "Government Employees' Deferred Compensation Act."⁹ A deferred compensation plan is a retirement savings plan that allows eligible employees to supplement any existing retirement and pension benefits by saving and investing before-tax dollars through a tax-deferred voluntary salary contribution.¹⁰ Currently, the statutory language is unclear regarding which government entities are eligible to participate in the plan.

Effect of Proposed Changes - Deferred Compensation Program (Section 3)

The bill clarifies that eligibility in the deferred compensation plan shall apply to persons employed by a state university as defined in s. 1000.21(6), F.S.,¹¹ a special district as defined in s. 189.012(6), F.S.,¹² or a water management district as defined in s. 189.012, F.S.¹³ The bill authorizes the CFO to adopt any rule necessary to administer and implement the deferred compensation plan with respect to these parties.

Current Situation - Surety Bonds

County Officers: a county officer serving on a board of county commissioners may be required by ordinance to give a surety bond conditioned on the faithful performance of the duties of her or his office.¹⁴ The board of county commissions and the DFS are required to approve each surety bond.¹⁵

⁸ s. 110.1315, F.S.

⁹ s. 112.215(4)(a), F.S.

¹⁰ DEPARTMENT OF FINANCIAL SERVICES, *Florida Deferred Compensation Plan FAQ*, <https://www.myfloridadeferredcomp.com/SOFWeb/plan.aspx> (last visited Jan. 25, 2016).

¹¹ "State university," except as otherwise specifically provided, includes the following institutions and any branch campuses, centers, or other affiliates of the institution:" The University of Florida; The Florida State University; The Florida Agricultural and Mechanical University; The University of South Florida; The Florida Atlantic University; The University of West Florida; The University of Central Florida; The University of North Florida; The Florida International University; The Florida Gulf Coast University; New College of Florida; The Florida Polytechnic University.

¹² "Special district" means a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality."

¹³ "Water management district" for purposes of this chapter means a special taxing district which is a regional water management district created and operated pursuant to chapter 373 or chapter 61-691, Laws of Florida, or a flood control district created and operated pursuant to chapter 25270, Laws of Florida, 1949, as modified by s. 373.149."

¹⁴ s. 137.01, F.S.

This law dates back to 1887, when county officers had to pledge personal property to protect the county in the event that the official embezzled county money or property.¹⁶

Florida Inland Navigation District (FIND) Commissioners: FIND is an independent special district existing under Florida law.¹⁷ The agency head of FIND is a collegial body known as the Board of Commissioners of Florida Inland Navigation District (Board),¹⁸ comprised of one commissioner from each of the following twelve counties along Florida's east coast: Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Indian River, St. Lucie, Martin, Palm Beach, Broward and Miami-Dade.¹⁹ Each commissioner is appointed by the Governor and upon appointment, before assuming office, each commissioner is required to give a surety bond in the sum of \$10,000 payable to the Governor, conditioned upon the faithful performance of the duties of the office.²⁰ The surety bond is approved by and filed with the CFO.²¹

Effect of Proposed Changes - Surety Bonds (Sections 4 and 7)

County Officers: the bill removes the requirement that the DFS approve each surety bond issued upon county officers. Only the board of county commissioners shall be required to approve each surety bond. The DFS reports that it has no recent inquiries related to the bonds and believes this statutory section has outlived its usefulness and applicability.²² The Florida Association of Counties reviewed the proposed change and agreed with the DFS, indicating they do not foresee any problems with the change.²³

Florida Inland Navigation District Commissioners: the bill requires that the \$10,000 surety bond provided by Board commissioners be approved by and filed with the Board of Commissioners of FIND, rather than the CFO.

Current Situation - Florida Single Audit Act

The Florida Single Audit Act (FSAA) establishes uniform state audit and accountability requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects.²⁴ The FSAA is intended to closely parallel the Federal Single Audit Act. Under the FSAA, nonstate entities include nonprofit organizations, for-profit organizations, and local government entities.²⁵ The Federal Act does not apply to for-profit organizations. Pursuant to the FSAA, certain nonstate entities that exceed the "audit threshold" are subject to a state single audit or a project specific audit.²⁶ Florida's "audit threshold" is triggered when a nonstate entity spends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year.²⁷

On December 13, 2013, the Federal Office of Management and Budget (OMB) issued a rule to amend the Federal Single Audit requirements to strengthen oversight and focus audits where there is the

¹⁵ s. 137.09, F.S.

¹⁶ Florida Department of Financial Services, Agency Analysis of 2015 House Bill 651, p. 1-2 (Jan. 1, 2016).

¹⁷ FIND has two primary missions: (1) to perform the functions of the "local sponsor" of the Atlantic Intracoastal Waterway project and a portion of the Okeechobee Waterway project in Florida, both of which are State/Federal navigation projects, and (2) provide assistance to other governments to develop waterway access and improvement projects. THE FLORIDA INLAND NAVIGATION DISTRICT, *Our Mission Statement*, <http://www.aicw.org/mission.jsp> (last visited Jan. 25, 2016).

¹⁸ *Id.*

¹⁹ s. 374.983(2), F.S.

²⁰ *Id.*

²¹ *Id.*

²² Florida Department of Financial Services, Agency Analysis of 2015 House Bill 651, p. 4 (Jan. 1, 2016).

²³ Email from Laura Youmans, Esq., Legislative Associate, Florida Association of Counties, RE: County Surety Bonds (Oct. 22, 2015).

²⁴ s. 215.97, F.S.

²⁵ s. 215.97(2)(m), F.S.

²⁶ s. 215.97(2)(a), F.S.

²⁷ *Id.*

greatest risk of waste, fraud, and abuse of taxpayer dollars.²⁸ OMB increased their “audit threshold” from \$500,000 to \$750,000 such that any state, local government, or nonprofit entity that receives and spends an amount equal to or in excess of \$750,000 in federal awards is subject to a single audit.²⁹ Entities that receive state financial assistance typically also receive federal grant awards and must therefore comply with the Federal and State audit requirements. The FSAA provides that every two years, the threshold amount shall be reviewed and may be adjusted in order to be consistent with the purposes of the FSAA.³⁰

Effect of Proposed Changes - Florida Single Audit Act (Section 5)

The bill amends the FSAA to more closely conform to the Federal Single Audit Act, including the following changes:

- Amends the definition of “audit threshold” to raise the amount a nonstate entity must expend from \$500,000 to \$750,000 of state financial assistance in any fiscal year to be subject to a state single audit or project-specific audit;
- Clarifies the application of the FSAA to higher education entities:
 - Creates a definition for “higher education entity” which means a Florida College System institution or a state university;
 - Amends the definition of “nonstate entity” to include “higher education entity”; and
 - Exempts higher education entities from the audit threshold provisions and from the audit requirements, while continuing to subject them to the remaining provisions, including contracting and record keeping requirements.
- Clarifies requirements of the FSAA when a higher education entity acts only as a conduit of state financial assistance to a subrecipient.

Current Situation – Color Photographic or Digital Image Licenses

The Department of Highway Safety and Motor Vehicles maintains a digital record of digital photographs of licenses and signatures pursuant to s. 322.142, F.S. These photographs and signatures (and other data required for identification and retrieval) are exempt from public disclosure but may be shared with various state agencies to assist the agencies with their duties. The DFS can obtain such photographs to facilitate the validation of unclaimed property claims and the identification of false or fraudulent claims. The DFS is unable to obtain these photographs for the investigation of alleged violations of the Florida Insurance Code,³¹ which often makes it difficult for an investigator to document and confirm the identity of the alleged violator.³²

Effect of Proposed Changes – Color Photographic or Digital Image Licenses (Section 6)

The bill authorizes the DFS to access the digital photographs of licenses from the Department of Highway Safety and Motor Vehicles’ digital records to investigate alleged violations of the insurance code by licensees and unlicensed persons. The DFS indicates this bill will help their investigative efforts to accurately confirm an accused’s identity.³³ Additionally, the DFS indicates that the ability to authenticate signatures on documents with the accused’s legally authenticated signature will be an invaluable tool in its investigative efforts.³⁴

Current Situation – Safety Regulations in Public Lodging Establishments

²⁸ FEDERAL REGISTER, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, <https://www.federalregister.gov/articles/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards> (last visited Jan. 5, 2016).

²⁹ *Id.*

³⁰ s. 215.97, F.S.

³¹ s. 624.01, F.S., states that chs. 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the “Florida Insurance Code.”

³² Florida Department of Financial Services, Agency Analysis of 2015 Senate Bill 992, p. 6 (Jan. 12, 2016).

³³ *Id.*

³⁴ *Id.*

The DFS regulates “boiler” safety pursuant to ch. 554, F.S.,³⁵ the “Boiler Safety Act.” Every enclosed space or room that contains a “boiler” and that is located in any portion of a public lodging establishment that also contains sleeping rooms must be equipped with one or more carbon monoxide sensor devices that bear the label of a nationally recognized testing laboratory and complies with the most recent Underwriters Laboratories, Inc., Standard 2034, or its equivalent. Such devices must be integrated with the public lodging establishment’s fire detection system, in accordance with rules adopted by the Division of State Fire Marshal (DSFM). A carbon monoxide sensor is not necessary if the DFS, acting through the DSFM, determines that carbon monoxide hazards have been adequately mitigated.

Effect of Proposed Changes – Safety Regulations in Public Lodging Establishments (Section 8)

The bill updates the requirements and standards for carbon monoxide detector devices. It requires that carbon monoxide detector devices are listed as complying with ANSI/UL 2075, “Standard for Gas and Vapor Detectors and Sensors,” by a nationally recognized testing laboratory accredited by the Occupational Safety and Health Administration. The bill permits a carbon monoxide detector device to either be integrated into an establishment’s fire detection system or be connected to a control unit that complies with UL 2017, “Standard for General-Purpose Signaling Devices and Systems,” or a combination system complying with NFPA 720, “Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment.” If the carbon monoxide detector device is connected to a control unit or combination system, the control unit or combination system must be connected to an establishment’s boiler safety circuit in a manner that prevents the boiler from operating when carbon monoxide is detected until it is manually reset.

Determining if a public lodging establishment has otherwise adequately mitigated the hazards of carbon monoxide such that carbon monoxide detectors are not required is shifted from the DSFM to the local fire official or his designee.

Current Situation – Public Adjusters

A public adjuster is hired and paid by an insured or third-party claimant to act on his or her behalf in a claim filed against an insurance company.³⁶ Public adjusters can represent a policyholder in any type of insurance claim, including a health insurance claim. Public adjusters are regulated by the DFS.

Effect of Proposed Changes – Public Adjusters (Section 12)

The bill provides that a licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claim filing process, or filing a claim is not acting as a public adjuster.

³⁵ A “boiler” is a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam is superheated, or any combination of these functions is accomplished, under pressure or vacuum, for use external to itself, by the direct application of energy from the combustion of fuels or from electric or solar energy.” s. 554.1021(1), F.S.

³⁶ s. 626.854(1), F.S.

Current Situation – Eligibility for Export of Commercial Residential Property Insurance

Commercial residential property insurance provides coverage for condominium associations, homeowner associations, continuing care retirement communities, and apartment complexes. When this insurance coverage cannot be procured from an authorized insurer, such coverage may be procured from an unauthorized insurer subject to several conditions. Two relevant conditions are (1) the insurance must be eligible for “export” under s. 626.916, F.S., and (2) the insurer must be an “eligible surplus lines insurer.”

To “export” insurance “means to place, in an unauthorized insurer under this Surplus Lines Law, insurance covering a subject of insurance resident, located, or to be performed in this state.”³⁷ An “eligible surplus lines insurer” means an unauthorized insurer which has been made eligible by the Florida Surplus Lines Service Office to issue insurance coverage under Surplus Lines law.³⁸

In order for insurance coverage to be eligible for export, certain statutory conditions must be met.³⁹ In general, the conditions prevent an eligible surplus lines insurer, which is subject to substantially less regulation than an admitted carrier, from offering policies with terms and conditions that are more favorable than can be offered by an admitted insurer. An agent is required to determine that the insurance is not available from a company currently writing in the state and limits any amount that may be exported to the amount in excess of the amount that can be procured in the state. The agent must document that he or she has made a “diligent effort” to procure the coverage from an admitted insurer. “Diligent effort” is defined as seeking and being denied coverage from at least three authorized insurers in the admitted market, unless the cost to replace the property insured is \$1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.⁴⁰ Therefore, a consumer is prohibited from inquiring what coverage is available in the surplus lines market until a diligent effort has been made to procure coverage from an admitted insurer.

Additionally, premium rates, policy or contract forms, and deductible amounts for an exported policy may not be more favorable than those offered by a majority of authorized insurers in the state.

Effect of Proposed Changes – Eligibility for Export of Commercial Residential Property Insurance (Section 14)

The bill exempts commercial residential property insurance from the export eligibility conditions in s. 626.916, F.S. Consequently, commercial residential property insurance coverage may be exported to a surplus lines carrier without meeting the conditions related to diligent efforts to procure coverage from an admitted carrier, comparability of premiums, policy contents, and deductibility. The bill may result in surplus lines carriers having a competitive advantage over admitted carriers offering commercial residential property insurance coverage due to the reduced regulations that surplus lines carriers are subject to versus admitted carriers.

Current Situation – Florida Surplus Lines Service Officers

The Florida Surplus Lines Service Office (Office) is a self-regulating, nonprofit association of approved unauthorized insurers, established by the Legislature in 1997. The Office was created to protect consumers seeking surplus-line insurance in the state, monitor marketplace compliance, and protect state revenues.⁴¹ All licensed surplus line agents are deemed to be members of the Office. The Office operates under the supervision of a nine-member board of governors, which has oversight responsibilities for the Florida surplus lines market. The board consists of:

- Five individuals appointed by the DFS from the regular membership of the Florida Surplus Lines Association;

³⁷ s. 626.914, F.S.

³⁸ *Id.*

³⁹ s. 626.916(1), F.S.

⁴⁰ See s. 626.914, F.S.

⁴¹ See s. 626.921, F.S. and FLORIDA SURPLUS LINES SERVICE OFFICE, *About*, <https://www.fsiso.com/about> (last visited Jan. 26, 2016).

- Two individuals appointed by the DFS, one from each of the two largest domestic agents' associations, each of whom is a licensed surplus lines agent;
- The Insurance Consumer Advocate; and
- One individual appointed by the DFS, who shall be a risk manager for a large domestic commercial enterprise.

Each board member serves a 3-year term, staggered such that a number of appointments expire annually.

Effect of Proposed Changes – Florida Surplus Lines Service Officers (Section 15)

The bill amends the appointment procedure for the five individuals appointed by the DFS from the regular membership of the Florida Surplus Lines Association. The bill requires that the DFS appoint members from a pool of five nominees chosen by the association.

Current Situation – Anti-Fraud Reward Program

The Anti-Fraud Reward Program allows the DFS to award up to \$25,000 to individuals who provide information leading to the arrest and conviction of persons convicted of certain enumerated crimes investigated by the Division of Insurance Fraud.⁴² The awards are funded from the Insurance Regulatory Trust Fund.⁴³

Effect of Proposed Changes – Anti-Fraud Reward Program (Section 16)

The bill provides that the DFS, rather than the Division of Insurance Fraud, investigate violations of the crimes applicable to the Anti-Fraud Reward Program. The bill adds additional crimes applicable under the Anti-Fraud Reward Program, which include making false reports regarding explosives or arson (s. 790.164, F.S.), planting a “hoax” bomb (s. 790.165, F.S.), crimes related to weapons of mass destruction (s. 790.166, F.S.), arson resulting in injury to a firefighter or any other person (s. 806.031, F.S.), preventing extinguishment of a fire (s. 806.10, F.S.), crimes relating to fire bombs (s. 806.111), and burning to defraud an insurer (s. 817.233, F.S.).

Current Situation - Neutral Evaluation for Sinkhole Insurance Claims

Florida’s neutral evaluator program is an alternative process for resolving sinkhole insurance claims disputes. The DFS administers the program and is required to certify engineers and geologists to serve as neutral evaluators. A neutral evaluator is a fair and impartial third party selected mutually by a policyholder and insurer, and is an engineer licensed under ch. 471, F.S., who has experience and expertise in the identification of sinkhole activity as well as other potential causes of structural damage.⁴⁴ Following the report or a denial of a claim, the insurer must inform the policyholder, in writing, of their right to participate in the neutral evaluation program and must include an informational pamphlet prepared by the DFS.⁴⁵ The neutral evaluation program is mandatory once requested by either party. The insurer must pay all costs associated with the program.⁴⁶ At the conclusion of the neutral evaluation, the neutral evaluator prepares a report stating whether the sinkhole loss has been verified or invalidated.⁴⁷

Upon receipt of a request for neutral evaluation, the DFS is required to provide the parties with a list of certified neutral evaluators.⁴⁸ The policyholder and insurer may submit requests to the DFS to disqualify neutral evaluators for cause. Cause is based on any of the following grounds:

⁴² s. 626.9892, F.S.; the applicable crimes arise from violations of ss. 440.105, 624.15, 626.9541, 626.989, and 817.234, F.S.

⁴³ *Id.*

⁴⁴ s. 627.706(2)(c), F.S.

⁴⁵ s. 627.7074(3), F.S.

⁴⁶ s. 627.7074(6), F.S.

⁴⁷ s. 627.7074(12), F.S.

⁴⁸ s. 627.7074(7), F.S.

- 1) A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party;
- 2) The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter;
- 3) The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties; or
- 4) The neutral evaluator has worked as an employer or employee of any party to the case in the preceding 5 years.

Effect of Proposed Changes - Neutral Evaluation for Sinkhole Insurance Claims (Section 17)

The bill adds an additional basis for the DFS to disqualify a proposed neutral evaluator for cause at the request of a party. A proposed neutral evaluator may be disqualified for cause if, within the preceding 5 years, the neutral evaluator worked for the company or firm that performed the initial testing to determine the presence or absence of sinkhole loss or other causes of damage to the property in question.

Current Situation – Exemption from Disqualification from Licensure or Certification

An individual is disqualified from obtaining any class of firefighter certification or licensure if such individual has committed a felony or a crime punishable by imprisonment of 1 year or more, or has been dishonorably discharged from the United States Armed Forces.⁴⁹ Current law does not provide the DFS with the discretion to grant disqualified individuals an exemption from disqualification.

Effect of Proposed Changes – Exemption from Disqualification from Licensure or Certification (Section 19)

The bill creates s. 633.107, F.S., establishing discretionary standards whereby the DFS may exempt an applicant convicted of a felony or dishonorably discharged from the United States Armed Forces from disqualification from licensure or certification. Two primary requirements must be met:

- 1) The applicant must have paid in full any cost imposed by a court as part of the judgment and sentence for the disqualifying offense; and
 - a. A minimum of 5 years have elapsed since the applicant completed or was lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying offense; or
 - b. A minimum of 5 years have elapsed since the applicant was dishonorably discharged from the United States Armed Forces.
- 2) The applicant must clearly and convincingly demonstrate to the DFS that she or he does not pose a risk to persons or property if permitted to be licensed or certified. The bill provides for the types of evidence that may be presented by the applicant.

The DFS retains discretion to grant an exemption and such decisions must be made in writing. The DFS' decisions are subject to proceedings under ch. 120, F.S.

An exemption applicant that has received executive clemency or a pardon is not subject to the time limitations noted above. Applicants that receive an executive clemency are required to comply with the second requirement above. The DFS is not required to award the exemption. The DSFM has rulemaking authority to adopt rules to administer this section.

Current Situation – Firefighter Assistance Grant Program

Volunteer firefighters comprise about 69 percent of firefighters in the United States.⁵⁰ Since 1984, the number of volunteer firefighters has declined by about 12 percent, from 897,750 to 786,150.⁵¹ Factors

⁴⁹ ss. 633.412 and 633.408, F.S.

⁵⁰ NATIONAL VOLUNTEER FIREFIGHTER COUNCIL, *Fire Service Statistics and Fact Sheets*, <http://www.nvfc.org/hot-topics/statistics-and-fact-sheets> (last visited Jan. 26, 2016).

⁵¹ *Id.*

contributing to the decline in volunteer firefighters include increased time demands and costs for training coupled with potential volunteers that work multiple jobs in two-income families.⁵² The situation is no different in Florida, where nearly 12 million residents depend on volunteer firefighters to protect their communities,⁵³ yet many volunteer and combination fire departments⁵⁴ report fiscal constraints in acquiring the training and equipment that is needed to perform their duties while still meeting the required minimum safety levels.⁵⁵

The Florida Fire College, in conjunction with corporate sponsors, hosts the annual Northwest Volunteer Firefighter Weekend (NVFW). The event provides volunteer firefighters with free training and equipment. The DFS reports that attendees consistently report that if not for the NVFW, they would not have the resources to take the proper training courses and to acquire the proper equipment to perform their duties because many volunteer and combination fire departments rely on donations to fund a large part of their operations.⁵⁶ Additionally, the DSFM, through its statutory authority to perform safety inspections of fire departments, constantly reports compliance issues with training and equipment due to a lack of fiscal resources.⁵⁷

Effect of Proposed Changes – Firefighter Assistance Grant Program (Section 20)

The bill creates s. 633.135, F.S., the Firefighter Assistance Grant Program (Program), within the DSFM, to improve the emergency response capabilities of volunteer fire departments and combination fire departments. The Program's stated goal is to improve firefighter safety and enable fire departments to provide firefighting, emergency medical, and rescue services to their communities.

The Program will annually award financial assistance to aid such fire departments in providing firefighter training to individuals to obtain a Volunteer Firefighter Certificate of Completion and procuring the necessary equipment for the firefighter and fire department. On average, the cost to train and equip a volunteer firefighter with personal protective equipment is about \$27,095 and the cost of fire engine pump apparatus equipment can range \$150,000 - \$400,000.⁵⁸ The DSFM is required to prioritize the grant of awards to combination and volunteer fire departments based on the results of participating in the annual Florida Fire Service Needs Assessment Survey.

The DSFM is given rulemaking authority to adopt rules and procedures for the Program that require grant recipients to:

- Report their activity to the DSFM for submission in the Fire and Emergency Incident Information Reporting System;
- Annually complete and submit the Florida Fire Service Needs Assessment Survey to the DSFM;
- Comply with the Florida Firefighters Occupational Safety and Health Act;
- Comply with any other rule determined by the DSFM to effectively and efficiently implement, administer, and manage the Program; and
- Meet the definition of a "fire service provider" in s. 633.102, F.S.

The bill appropriates \$229,165 in recurring funds from the Insurance Regulatory Trust Fund and authorizes one full-time equivalent position in order to create and administer the Firefighter Assistance Grant Program within the DFS.

Current Situation - Minimum Firesafety Standards

⁵² *Id.*

⁵³ FLORIDA'S CHIEF FINANCIAL OFFICER, *Florida Volunteer Firefighter Information*, <http://www.myfloridacfo.com/Division/sfm/VOLFF/default.htm> (last visited Jan. 26, 2016).

⁵⁴ A "combination fire department" means a fire department composed of a combination of career and volunteer firefighters.

⁵⁵ Email from B.G. Murphy, Deputy Legislative Affairs Director, Florida Department of Financial Services, RE: FFAG – Talking Points (Jan. 22, 2015).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ NATIONAL VOLUNTEER FIREFIGHTER COUNCIL, *Fire Service Statistics and Fact Sheets*, <http://www.nvfc.org/hot-topics/statistics-and-fact-sheets> (last visited Jan. 26, 2016).

The Life Safety Code (LSC), which is contained in the Florida Fire Prevention Code (FFPC), provides minimum fire safety requirements, with due regard to function, for the design, operation, and maintenance of buildings and structures. The LSC does not apply to one-family and two-family dwellings; however, the current statutory language could be misconstrued to suggest that the LSC does apply to “newly constructed” one-family and two-family dwellings.

Effect of Proposed Changes - Minimum Firesafety Standards (Section 21)

The bill removes “newly constructed” from the statute to clarify that the LSC does not apply to existing or newly constructed one-family and two-family dwellings.

Current Situation - Firefighter Certification

Chapter 633, F.S., governs state law on fire prevention and control. The CFO is designated as the State Fire Marshall, operating through the DSFM,⁵⁹ and tasked with regulating “fire service providers.” The DSFM is responsible for establishing, by rule, a Minimum Standards Course as the training and educational curriculum of firefighters and volunteers firefighters. A Firefighter is defined as an individual who holds a current and valid Firefighter Certificate of Compliance (FCOC) or Special Certificate of Compliance issued by the DSFM. A FCOC is issued by the DSFM to an individual who does all of the following:

1. Satisfactorily completes the Minimum Standards Course or training in another state determined by the DSFM to be, at a minimum, the equivalent of the training required for the Minimum Standards Course;
2. Passes the Minimum Standards Course examination; and
3. Meets the character and fitness requirements set forth in s. 633.412, F.S.

The DFS has reported that many applicants wait a year or longer to take the Minimum Standards Course examination after completion of the course, resulting in a high rate of failure and the need to re-take the course.⁶⁰

“Certification” or “certified” is defined as the act of holding a current and valid certificate.⁶¹ If evidence is found to demonstrate that certification was improperly issued, such as issuance on the basis of false or misleading information, an individual’s certification may be suspended or revoked by the DSFM. In such a case, the DSFM must suspend or revoke all other certificates issued to the individual by the DSFM.

In order for a firefighter to retain/renew her or his FCOC, every 4 years she or he must:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the DSFM, which proof must be registered in an electronic database designated by the DSFM;
- Successfully complete a refresher course consisting of a minimum of 40 hours of training to be prescribed by rule; or
- Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination.⁶²

Currently, there are no separate renewal requirements for a fire service instructor.

Effect of Proposed Changes - Firefighter Certification (Sections 18, 22, 23, 24, and 25)

The bill redefines “fire service provider” to include ‘the DSFM’ which houses and employs over 140 firefighters. This change will permit the DSFM’s firefighters to be classified as active firefighters in accordance with statute.

⁵⁹ s. 633.104, F.S

⁶⁰ Florida Department of Financial Services, Agency Analysis of 2015 House Bill 651, p. 5 (Jan. 1, 2016).

⁶¹ s. 633.426(1)(b), F.S.

⁶² s. 633.414(1), F.S.

The bill repeals the mandatory requirement of a suspension or revocation of all other certifications issued to an individual following the suspension or revocation of an individual's certificate.

The bill requires the Minimum Standards Course examination to be taken and passed within 12 months of completing the Minimum Standards Course. The bill clarifies that a FCOC or Volunteer Firefighter Certificate of Completion will expire 4 years after the date of issuance unless renewed.

The bill amends the certification renewal requirements for firefighters. In order to retain an FCOC, every 4 years a firefighter must meet the requirements provided under ch. 633, F.S., and by rule, which must include at least one of the following:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the DSFM, which proof must be registered in an electronic database designated by the DSFM;
- Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course; or
- Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination.

Additionally, the State Fire Marshall is provided grounds to deny, refuse to renew, suspend, or revoke the certificate of an individual.

The definition of "certification" or "certified" is amended to mean the act of holding a current and valid certificate that meets the requirements for renewal of certification pursuant to ch. 633, F.S., and by rule.

Current Situation – Rulemaking Authority for Unclaimed Property

Chapter 717, F.S., the Florida Disposition of Unclaimed Property Act (FDUP), is administered and enforced by the DFS. Under the FDUP, unclaimed property is categorized as all intangible property⁶³ held, issued, or owing in the ordinary course of business that fails to be claimed by its owner for more than 5 years after such intangible property becomes payable or distributable.⁶⁴ All funds received under the FDUP are deposited into the Unclaimed Property Trust Fund. The DFS is required to retain no more than \$15 million in the Trust Fund, from which the DFS is required to make prompt payment of claims allowed by the DFS and to pay the costs incurred in administering and enforcing the FDUP. All remaining funds are deposited into the State School Fund. The DFS is given rulemaking authority to adopt rules to implement the FDUP.

⁶³ Intangible property includes, but is not limited to, money, checks, interest, dividends, income, security deposits, credit balances, unpaid wages, stocks, bonds, amounts due and payable under the terms of insurance policies, and amounts distributable from a trust. See s. 717.101(14), F.S.

⁶⁴ s. 717.102, F.S.

Effect of Proposed Changes - Rulemaking Authority for Unclaimed Property (Section 26)

The bill amends the DFS's rulemaking authority to include all unclaimed property reported and remitted to the CFO, which includes, but is not limited to, property reported pursuant to s. 43.19, F.S., relating to unclaimed funds paid to the court; s. 45.032, F.S., relating to the disposition of surplus funds after a judicial sale; s. 732.107, F.S., relating to unclaimed funds that escheat to the state; s. 733.816, F.S., relating to unclaimed funds held by personal representatives in probate proceedings; and s. 744.534, F.S., relating to unclaimed funds in guardianship proceedings.

B. SECTION DIRECTORY:

Section 1: amends s. 48.151, F.S., authorizing the creation of an Internet-based system for the electronic acceptance of service of process documents.

Section 2: amends s. 110.1315, F.S., eliminating the requirement for the Executive Office of the Governor to review and approve the alternative retirement income security program.

Section 3: amends s. 112.215, F.S., relating to government employees; deferred compensation.

Section 4: amends s. 137.09, F.S., eliminating the DFS's duty to approve county officer surety bonds.

Section 5: amends s. 215.97, F.S., revising the Florida Single Audit Act to more closely parallel the Federal Single Audit Act.

Section 6: amends s. 322.142, F.S., relating to color photographic or digital imaged licenses.

Section 7: amends s. 374.983, F.S., eliminating the requirement that surety bonds for FIND commissioners be approved by and filed with the CFO.

Section 8: amends s.509.211, F.S., relating to safety regulations in public lodging establishments.

Section 9: amends s. 624.307, F.S., relating to general powers; duties.

Section 10: amends s. 624.423, F.S., authorizing service of process to be served on the CFO electronically.

Section 11: amends s. 624.502, F.S., relating to the service of process fee.

Section 12: amends s. 626.854, F.S., relating to the definition of the term "public adjuster."

Section 13: amends s. 626.907, F.S., permitting service of process to be made to the CFO's assistant or deputy and requiring a defendant's last known principal place of business to be provided by the party serving process documents.

Section 14: amends s. 626.916, F.S., relating to eligibility of export for commercial residential property insurance.

Section 15: amends s. 626.921, F.S., relating to the Florida Surplus Lines Service Office.

Section 16: amends s. 626.9892, F.S., relating to the Anti-Fraud Reward Program.

Section 17: amends s. 627.7074, F.S., adding a new cause for disqualifying a neutral evaluator.

Section 18: amends s. 633.102, F.S., relating to the definition of "fire service provider."

Section 19: creates s. 633.107, F.S., relating to the exemption from disqualification from licensure or certification.

Section 20: creates s. 633.135, F.S., relating to the Firefighter Assistance Grant Program.

Section 21: amends s. 633.208, F.S., clarifying that the Life Safety Code does not apply to one-and two-family dwellings.

Section 22: amends s. 633.408, F.S., relating to firefighter and volunteer firefighter training and certification.

Section 23: amends s. 633.412, F.S., relating to firefighters; qualifications for certification.

Section 24: amends s. 633.414, F.S., relating to retention of firefighter, volunteer firefighter, and fire investigator certificates.

Section 25: amends s. 633.426, F.S., relating to disciplinary action; standards for revocation of certification.

Section 26: amends s. 717.138, F.S., relating to rulemaking authority.

Section 27: provides an appropriation.

Section 28: provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appropriates \$229,165 in recurring funds from the Insurance Regulatory Trust Fund and authorizes one full-time equivalent position in order to create and administer the Firefighter Assistance Grant Program within the DFS.

In addition, the DFS indicates there could be potential expenditure savings associated with implementing the internet-based system for service of process documents. Specifically, the DFS estimates a savings of \$54,500 associated with a reduction in postage, printing, and the elimination of current IT support as a result of implementing the new system. Additionally, the DFS estimates that 2-3 OPS positions will be eliminated due to the proposed Internet-based system.⁶⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Internet-based system for service of process prescribed in the bill may save money for consumers by eliminating the need to print, package, and mail service of process documents or by saving the cost of personal service.

C. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

⁶⁵ Florida Department of Financial Services, Agency Analysis of 2015 House Bill 651, p. 7 (Jan. 27, 2016).

2. Other:

Section 14 of the bill, relating to eligibility for export of commercial residential property insurance, may implicate the constitutional single subject rule pursuant to article III, section 6 of the Florida Constitution, which states “[e]very law shall embrace but one subject and matter properly connected therewith....” Each section of this bill, except for section 13, affects the duties and obligations of the DFS. Section 13, on the other hand, does not direct the DFS to act in any way, nor does it affect the duties and obligations of the DFS.

B. RULE-MAKING AUTHORITY:

Section 19 provides the Division of State Fire Marshal (DSFM) with rulemaking authority to adopt rules to administer the procedures pertaining to exempting applicants from certain disqualifying conditions from firefighter licensure or certification.

Section 20 provides the DSFM with rulemaking authority to adopt rules and procedures for the Firefighter Assistance Grant Program.

Section 24 provides that the DSFM may establish certificate retention requirements by rule.

Section 26 provides the DFS with the authority to administer and enforce ch. 717, F.S., by amending its rulemaking authority to include all unclaimed property reported and remitted to the CFO pursuant to ss. 43.19, 45.032, 732.107, 733.816, and 744.534, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2016, the Insurance & Banking Subcommittee adopted a proposed strike-all amendment and reported the bill favorably as a committee substitute. The strike-all:

- Amended the deferred compensation program by removing the updated definition of “employee,” removing the newly defined term “governmental entity,” and clarifying that the program applies to state employees, and may include persons employed by a state university, a special district, or a water management district.
- Revised the Florida Single Audit Act to restore applicability to “for-profit organizations.”
- Amended newly added s. 322.142, F.S., to authorize the DFS to access the digital image of a driver’s license for purposes of the investigation of an alleged violation of the insurance code.
- Amended newly added s. 509.211, F.S., concerning carbon monoxide detector regulations in public lodging establishments.
- Clarified language regarding the Internet-based system for the electronic transmission of service of process documents.
- Amended newly added s. 626.916, F.S., exempting commercial residential property insurance from conditions required before insurance coverage may be eligible for export to surplus lines.
- Removed s. 627.706, F.S., from the bill.
- Amended newly added s. 626.921, F.S., revising the procedure for appointing the board of governors of the Florida Surplus Lines Association.
- Amended the definition of “fire service provider.”
- Created s. 633.107, F.S., providing exemption provisions from the disqualification of firefighter licensure or certification.
- Created s. 633.135, F.S., establishing the Firefighter Assistance Grant Program.
- Clarified language regarding firefighter and volunteer firefighter certification, certification retention, and revocation of certification.
- Repealed subsection (2) of 633.412, F.S.

On February 8, 2016, the Government Operations Appropriations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. Specifically, the amendments:

- Removed a \$25 fee for service of process on unauthorized insurers created in the bill; and
- Provided appropriations for the creation and administration of the Firefighter Assistance Grant Program created in the bill.

On February 17, 2016, the Regulatory Affairs Committee considered and adopted five amendments and reported the bill favorably as a committee substitute. The amendments:

- Revised the standards for carbon monoxide detector devices in public lodging establishments, shifted the State Fire Marshall's authority to exempt carbon monoxide detector devices to the local fire official or his designee, and provided an alternative method for installing such devices.
- Created an exception for health insurance agents from licensure as a public adjuster for specified activities.
- Revised the criteria for the Anti-Fraud Reward Program.
- Removed the county limitation for the annual award of grants under the Firefighter Assistance Grant Program and made the granting of such awards subject to the annual Florida Fire Service Needs Assessment Survey.
- Amended the DFS's rulemaking authority to include the disposition of all unclaimed property reported and remitted to the CFO.

The staff analysis has been updated to reflect the committee substitute.