

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	CS/CS/CS/HB 651	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Regulatory Affairs Committee; Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Beshears and others	113 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/SB 992	<b>GOVERNOR'S ACTION:</b> Approved	

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### SUMMARY ANALYSIS

CS/CS/CS/HB 651 passed the House on March 3, 2016. The bill was amended by the Senate on March 7, 2016, and subsequently passed the House on March 9, 2016. The bill creates and amends duties and responsibilities of 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 (CFO) and revising the requirements for service of process on insurers;
- Clarifying the eligibility requirements for participation in the State's deferred compensation plan;
- Revising requirements for the approval of certain surety bonds;
- Extending the exemption of medical malpractice insurance premiums from Florida Hurricane Catastrophe Fund emergency assessments from May 31, 2016, to May 31, 2019;
- 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 driver 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;
- Exempting licensed health insurance agents from licensure as a public adjuster for specified activities;
- Amending the appointment procedures for the Florida Surplus Lines Service Office board of governors;
- Exempting surplus lines agents from the quarterly reporting requirement to the Florida Surplus Lines Service Office when business has not been transacted in that quarter;
- 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 Marshal (DSFM);
- Creating the Firefighter Assistance Grant Program to provide financial assistance in the form of training and equipment for volunteer and combination fire departments;
- 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, and amending the requirements to renew firefighter certifications;
- Repealing the statute requiring the DSFM to suspend or revoke a firefighter's certification under certain conditions;
- Providing the DFS with rulemaking authority relating to all unclaimed property reported and remitted to the CFO; and
- Exempting certain travel insurance products with premiums less than \$30 for each covered trip from the Office of Insurance Regulation's rate filing requirements.

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 was approved by the Governor on March 25, 2016, ch. 2016-132, L.O.F., and will become effective on July 1, 2016.

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

STORAGE NAME: h0651z1.IBS

DATE: March 30, 2016

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Service of Process** (Sections 1, 10, 11, 12, and 14)

Florida law provides for the designation of a public officer, board, agency, or commission as the agent for service of process on a person, firm, or corporation in Florida.<sup>1</sup> 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).<sup>2</sup> Service of process on the CFO is made by mail or personal service<sup>3</sup> and plaintiffs are required to pay the DFS a \$15 fee which is deposited into the Administrative Trust Fund.<sup>4</sup> 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.<sup>5</sup> In lieu of sending the process by registered or certified mail, the CFO may send the process by "any other verifiable means."<sup>6</sup> The language "any other verifiable means" is not defined in statute but, Florida case law has interpreted it to include electronic delivery.<sup>7</sup>

#### *Effect of Changes*

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.

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<sup>1</sup> s. 48.151, F.S.

<sup>2</sup> 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.

<sup>3</sup> s. 48.151, F.S.

<sup>4</sup> s. 624.502, F.S.

<sup>5</sup> s. 624.423(1), F.S.

<sup>6</sup> s. 624.307, F.S.

<sup>7</sup> 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).

The bill also revises requirements for service of process on 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 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.

### **Alternative Retirement Income Security Program** (Section 2)

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.<sup>8</sup> 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 Changes*

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

### **Deferred Compensation Program** (Section 3)

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."<sup>9</sup> 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.<sup>10</sup> The current statutory language is unclear regarding which government entities are eligible to participate in the plan.

#### *Effect of Changes*

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.,<sup>11</sup> a special district as defined in s. 189.012(6), F.S.,<sup>12</sup> or a water management district as defined in s. 189.012, F.S.<sup>13</sup> The bill authorizes the CFO to adopt any rule necessary to administer and implement the deferred compensation plan with respect to these parties.

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<sup>8</sup> s. 110.1315, F.S.

<sup>9</sup> s. 112.215(4)(a), F.S.

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

<sup>11</sup> "'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.

<sup>12</sup> "'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, [F.S.], a municipal service taxing or benefit unit as specified in s. 125.01, [F.S.], or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality."

<sup>13</sup> "'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, [F.S.]"

## **Surety Bonds** (Sections 4 and 8)

*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.<sup>14</sup> The board of county commissions and the DFS are required to approve each surety bond.<sup>15</sup> 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.<sup>16</sup>

*Florida Inland Navigation District (FIND) Commissioners:* FIND is an independent special district existing under Florida law.<sup>17</sup> The agency head of FIND is a collegial body known as the Board of Commissioners of Florida Inland Navigation District (Board),<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> The surety bond is approved by and filed with the CFO.<sup>21</sup>

### *Effect of Changes*

*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.<sup>22</sup> The Florida Association of Counties reviewed the proposed change and agreed with the DFS, indicating they do not foresee any problems with the change.<sup>23</sup>

*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, rather than the CFO.

## **Florida Hurricane Catastrophe Fund Emergency Assessments** (Section 5)

The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers. The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage of hurricane losses to residential property above the insurer's retention (deductible). The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

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<sup>14</sup> s. 137.01, F.S.

<sup>15</sup> s. 137.09, F.S.

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

<sup>17</sup> 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).

<sup>18</sup> *Id.*

<sup>19</sup> s. 374.983(2), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

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

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

Revenue bonds are issued by the FHCF to pay claims when the FHCF's funds are inadequate. These bonds are funded by emergency assessments levied by the FHCF against property and casualty insurance premiums paid by policyholders; however, workers' compensation, accident and health, federal flood, and medical malpractice premiums are exempt from the emergency assessments. The exemption of medical malpractice insurance premiums from emergency assessments is scheduled to be repealed on May 31, 2016, and shall be subject to emergency assessments beginning June 1, 2016.

### *Effect of Changes*

The bill exempts medical malpractice insurance policyholders from FHCF emergency assessments for three additional years, until May 31, 2019. Extending the exemption for medical malpractice insurance from the FHCF assessment base for another three years may cause policyholders of the other types of property and casualty insurance included in the assessment base to pay higher assessments if revenue bonds are issued by the FHCF during these additional three years.

### **Florida Single Audit Act** (Section 6)

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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup>

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 greatest risk of waste, fraud, and abuse of taxpayer dollars.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup>

### *Effect of Changes*

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

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<sup>24</sup> s. 215.97, F.S.

<sup>25</sup> s. 215.97(2)(m), F.S.

<sup>26</sup> s. 215.97(2)(a), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> 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).

<sup>29</sup> *Id.*

<sup>30</sup> s. 215.97, F.S.

- 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.

### **Color Photographic or Digital Image Licenses** (Section 7)

The Department of Highway Safety and Motor Vehicles maintains a digital record of digital photographs of driver 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,<sup>31</sup> which often makes it difficult for an investigator to document and confirm the identity of the alleged violator.<sup>32</sup>

#### *Effect of Changes*

The bill authorizes the DFS to access the digital photographs of driver 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.<sup>33</sup> 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.<sup>34</sup>

### **Safety Regulations in Public Lodging Establishments** (Section 9)

The DFS regulates "boiler" safety pursuant to ch. 554, F.S.,<sup>35</sup> 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 Changes*

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)

<sup>31</sup> s. 624.01, F.S., states that chs. 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code."

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

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> 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.

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 or her designee.

### **Public Adjusters** (Section 13)

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.<sup>36</sup> 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 Changes*

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, as such assistance relates to coverage under a health insurance policy.

### **Florida Surplus Lines Service Officers** (Section 15)

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.<sup>37</sup> 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;
- 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 Changes*

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.

### **Surplus Lines Agent Affidavit and Reporting** (Section 16)

Following each calendar quarter, surplus lines agents are required to file an affidavit with the Florida Surplus Lines Service Office to report all of the surplus lines insurance transacted by such agent during the calendar quarter. Surplus lines agents are required to file quarterly reports even if business has not been transacted during that quarter.

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<sup>36</sup> s. 626.854(1), F.S.

<sup>37</sup> See s. 626.921, F.S. and FLORIDA SURPLUS LINES SERVICE OFFICE, *About*, <https://www.fslso.com/about> (last visited Jan. 26, 2016).

### *Effect of Changes*

The bill exempts surplus lines agents from the quarterly reporting requirement to the Florida Surplus Lines Service Office when no business has been transacted in that quarter.

### **Anti-Fraud Reward Program** (Section 17)

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.<sup>38</sup> The awards are funded from the Insurance Regulatory Trust Fund.<sup>39</sup>

### *Effect of Changes*

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, F.S.), and burning to defraud an insurer (s. 817.233, F.S.).

### **Neutral Evaluation for Sinkhole Insurance Claims** (Section 18)

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, or a professional geologist.<sup>40</sup> 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.<sup>41</sup> The neutral evaluation program is mandatory once requested by either party. The insurer must pay all costs associated with the program.<sup>42</sup> At the conclusion of the neutral evaluation, the neutral evaluator prepares a report stating whether the sinkhole loss has been verified or invalidated.<sup>43</sup>

Upon receipt of a request for neutral evaluation, the DFS is required to provide the parties with a list of certified neutral evaluators.<sup>44</sup> 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:

- 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

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<sup>38</sup> 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.

<sup>39</sup> *Id.*

<sup>40</sup> s. 627.706(2)(c), F.S.

<sup>41</sup> s. 627.7074(3), F.S.

<sup>42</sup> s. 627.7074(6), F.S.

<sup>43</sup> s. 627.7074(12), F.S.

<sup>44</sup> s. 627.7074(7), F.S.



- 4) The neutral evaluator has worked as an employer or employee of any party to the case in the preceding 5 years.

### *Effect of Changes*

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.

### **Exemption from Disqualification from Firefighter Licensure or Certification** (Section 20)

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.<sup>45</sup> Current law does not provide the DFS with the discretion to grant disqualified individuals an exemption from disqualification.

### *Effect of Changes*

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.

### **Firefighter Assistance Grant Program** (Section 21)

Volunteer firefighters comprise about 69 percent of firefighters in the United States.<sup>46</sup> Since 1984, the number of volunteer firefighters has declined by about 12 percent, from 897,750 to 786,150.<sup>47</sup> Factors 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.<sup>48</sup> The situation is no different in Florida, where nearly 12 million residents depend on volunteer firefighters to protect

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<sup>45</sup> ss. 633.412 and 633.408, F.S.

<sup>46</sup> 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).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

their communities,<sup>49</sup> yet many volunteer and combination fire departments<sup>50</sup> report fiscal constraints in acquiring the training and equipment that is needed to perform their duties while still meeting the required minimum safety levels.<sup>51</sup>

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.<sup>52</sup> 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. 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.<sup>53</sup>

### *Effect of Changes*

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. 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.

### **Minimum Firesafety Standards** (Section 22)

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.

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<sup>49</sup> FLORIDA'S CHIEF FINANCIAL OFFICER, *Florida Volunteer Firefighter Information*,

<http://www.myfloridacfo.com/Division/sfm/VOLFF/default.htm> (lasted visited Jan. 26, 2016).

<sup>50</sup> A "combination fire department" means a fire department composed of a combination of career and volunteer firefighters.

<sup>51</sup> Email from B.G. Murphy, Deputy Legislative Affairs Director, Florida Department of Financial Services, RE: FFAG – Talking Points (Jan. 22, 2015).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

## *Effect of Changes*

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.

### **Firefighter Certification** (Sections 19, 23, 24, 25, and 26)

Chapter 633, F.S., governs state law on fire prevention and control. The CFO is designated as the State Fire Marshal, operating through the DSFM,<sup>54</sup> 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.<sup>55</sup>

“Certification” or “certified” is defined as the act of holding a current and valid certificate.<sup>56</sup> 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.<sup>57</sup>

Additionally, individuals are ineligible to apply for certification if the individual has, at any time, been convicted of a misdemeanor relating to the certification or to perjury or false statements, convicted of a felony or a crime punishable by imprisonment of 1 year or more, or dishonorably discharged from any of the Armed Forces of the United States.

## *Effect of Changes*

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.

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<sup>54</sup> s. 633.104, F.S

<sup>55</sup> Florida Department of Financial Services, Agency Analysis of 2015 House Bill 651, p. 5 (Jan. 1, 2016).

<sup>56</sup> s. 633.426(1)(b), F.S.

<sup>57</sup> 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;
- Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination.

The bill clarifies that the 4-year period culminating in a necessity for renewal begins upon issuance of the FCOC.

Additionally, the State Fire Marshal 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.

The bill removes the provision prohibiting certification to individuals convicted of certain crimes or dishonorably discharged from any of the Armed Forces of the United States. Now, an individual who holds a certificate is subject to revocation for the conviction of a misdemeanor relating to the certification or to perjury or false statements, conviction of a felony or a crime punishable by imprisonment of 1 year or more, or dishonorable discharge from any of the Armed Forces of the United States.

### **Rulemaking Authority for Unclaimed Property** (Section 27)

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 property<sup>58</sup> 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.<sup>59</sup> 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.

#### *Effect of Changes*

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

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<sup>58</sup> 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.

<sup>59</sup> s. 717.102, F.S.

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.

### **Rate Standards and Filings for Travel Insurance** (Section 28 and 29)

The OIR is responsible for the regulation and enforcement of statutes related to the business of insurance. The OIR acts to protect policyholders and the public against the adverse effects of excessive, inadequate, or unfairly discriminatory insurance rates.

Section 627.062, F.S., governs insurance rate standards. Paragraphs (2)(a) and (2)(f) enumerate several of the rate filing requirements for insurers in the state. Paragraph (2)(a) requires insurers and rating organizations to establish and use rates, rating schedules, or rating manuals that allow the insurer a reasonable rate of return on insurance written in the state. A copy of the rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and all changes thereto, must be filed with the OIR in accordance with the OIR's filing procedures. In accordance with paragraph (2)(f), when reviewing a rate filing, the OIR may require the insurer to provide, at the insurer's expense, all information necessary to evaluate the condition of the company and the reasonableness of the filing according to specific criteria in s. 627.062, F.S.

Certain categories of insurance and types of commercial lines risks are not subject to the rate filing requirements listed above. These categories include, but are not limited to, surety and fidelity, errors and omissions, intellectual property and patent infringement, advertising injury and internet liability, general liability, nonresidential multiperil, and burglary and theft.

Additionally, s. 627.0645, F.S., governs annual rate filings. This section requires each rating organization filing rates and each insurer writing any line of property or casualty insurance to make an annual base rate filing for each such line with the OIR no later than 12 months after its previous base rate filing, in order to demonstrate that its rates are not inadequate. Several types of insurance are exempt from this requirement, such as workers' compensation and employer's liability insurance.

#### *Effect of Changes*

The bill exempts from the rate filing requirements in ss. 627.062(2)(a), (2)(f) and 627.0645, F.S., certain "travel insurance" products that have premiums of less than \$30 for each covered trip and where the insurer has written less than \$1 million in annual written premiums in the travel insurance product for the most recent calendar year.

## **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.<sup>60</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. 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.

**D. FISCAL COMMENTS:**

None.

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<sup>60</sup> Florida Department of Financial Services, Agency Analysis of 2015 House Bill 651, p. 7 (Jan. 27, 2016).