

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 79 Property Insurance Appraisal Umpires and Property Insurance Appraisers

SPONSOR(S): Insurance & Banking Subcommittee; Artiles and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 336

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 3 N, As CS	Peterson	Luczynski
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Insurance companies often include an appraisal clause in property insurance policies. The appraisal clause provides a procedure to resolve disputes between the policyholder and the insurer concerning the value of a covered loss.

The appraisal process *generally* works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and attempt to reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both appraisers. A decision agreed to by any two of the three will set the amount of the loss.
- The insurance company or the policyholder may challenge the umpire's impartiality and disqualify a proposed umpire based on criteria set forth in statute.

Current law does not regulate who may serve as a property insurance appraiser or property insurance appraisal umpire.

The bill establishes a licensing program for "property insurance appraisers," "property insurance appraisal umpires," and "property insurance appraisal firms" within the Department of Financial Services (DFS). The bill incorporates the program into part I of ch. 626, F.S., which sets forth the procedural provisions applicable to all insurance licensing programs administered by the DFS. The bill creates definitions; qualifications and requirements for licensure, including prerequisite education, fees, and background screening; continuing education; mandatory and discretionary grounds for refusal, suspension, or revocation of a license; and a code of conduct. Only retired judges and Florida-licensed engineers, contractors, architects, attorneys, and adjusters who meet specified experience requirements are eligible for licensure.

The bill authorizes two full-time equivalent positions and appropriates \$74,851 in recurring funds, and \$3,882 in nonrecurring funds from the Insurance Regulatory Trust Fund and \$67,398 in recurring funds and \$38,882 in nonrecurring funds from the Administrative Trust Fund to implement provisions of the bill. The bill is not anticipated to have a fiscal impact on local government. The bill will have a negative fiscal impact on the private sector because it imposes licensing fees and ongoing costs of licensure in order to practice as an appraiser or umpire which may also affect the cost to obtain those services. It may, however, improve appraisal results, which would have a positive impact on both insurers and policyholders.

The bill provides an effective date of October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Property Insurance Appraisers and Umpires

Insurance companies often include an appraisal clause in property insurance policies.¹ The appraisal clause provides a procedure to resolve disputes between the policyholder and the insurer concerning the value of a covered loss. The appraisal clause is used only to determine disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process *generally* works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and attempt to reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both appraisers. A decision agreed to by any two of the three will set the amount of the loss.
- The insurance company or the policyholder may challenge the umpire's impartiality and disqualify a proposed umpire based on criteria set forth in statute.²

Current law does not regulate who may serve as a property insurance appraiser or property insurance appraisal umpire.

The Sunrise Act

A proposal for new regulation of a profession must meet the requirements of s. 11.62, F.S., the Sunrise Act. In general, the act states that regulation should not occur unless it is:

- Necessary to protect the public health, safety, or welfare from significant and discernible harm or damage;
- Exercised only to the extent necessary to prevent the harm; and
- Limited so as not to unnecessarily restrict entry into the practice of the profession or adversely affect public access to the professional services.

In determining whether to regulate a profession or occupation, the act requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;

¹ *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So.3d 578 (Fla.3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America*, 540 So.2d 162 (Fla. 3d DCA 1989), contain examples of appraisal clauses.

² See s. 627.70151, F.S.

- Whether the practice of the profession or occupation requires specialized skill or training and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The act requires proponents of legislation proposing new regulation to provide the following information, upon request, to document the need for regulation:

- The number of individuals or businesses that would be subject to the regulation;
- The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding three years;
- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public;
- A copy of any federal legislation mandating regulation;
- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation; and
- The details of any previous efforts in this state to implement regulation of the profession or occupation.

The act requires the agency proposed to have jurisdiction over the regulation to provide the Legislature with the following information:

- The resources required to implement and enforce the regulation;
- The technical sufficiency of the proposal, including its consistency with the regulation of other professions; and
- Any alternatives that may result in less restrictive or more cost-effective regulation.

In determining whether to recommend regulation, the legislative committee reviewing the proposal is directed to assess whether the proposed regulation is:

- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;
- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and
- Technically sufficient and consistent with the regulation of other professions under existing law.

Proponents' Response to the Sunrise Act

The sponsor of the bill has submitted a response³ in support of the need for regulation. It states that the unregulated profession poses a substantial harm to the public health, safety, or welfare. In pertinent part, the response provides:

Currently, the state licenses adjusters in three categories, company adjuster, independent adjuster and public adjuster, if an individual is unable to pass these tests, or if they lose their license, they are able to become an insurance property appraisers [sic] and/or an insurance property umpire with no regulation. Further, convicted felons are able to become insurance property appraisers and/or insurance property umpires.

The Courts have ruled that a decision of the insurance appraisal panel (any 2 of the 3 members of the panel) is binding on the parties unless fraud is involved, (appraisals are for the dollar amount of the insurance loss and the panels are not empowered to determine coverage).

In the past, the public has been harmed when roofers, contractors and non-insurance people are involved and they don't properly appraise the amount of damages, for example, roofers have been known to appraise the roof of a home only without considering the interior of a home thus injuring the public in that they don't receive the proper insurance funds for the interior of their home and thus they fail to repair the interior making the damages worse and affecting the value of the home.

The sponsor notes that specific information regarding the current scope and nature of the public harm and the potential impact of regulation is not available. The sponsor estimates that 2,000 individuals will become licensed if the bill becomes law.

Licensing of Property Insurance Appraisers, Property Insurance Appraisal Umpires, and Property Insurance Appraisal Firms

Currently, no state licenses property insurance appraisers, property insurance appraisal umpires, or property insurance appraisal firms. Two private organizations⁴ offer voluntary certification programs that appear to impose limited eligibility standards. Both programs, however, require compliance with a code of ethics to maintain certification, although neither program indicates how compliance is monitored. Less than 5 percent of the 2,000 individuals the sponsor estimates will seek licensure in Florida if the bill becomes law are currently certified members of one or both of the organizations.⁵

Effect of the Bill

The bill establishes a licensing program for "property insurance appraisers," (appraisers) "property insurance appraisal umpires," (umpires) and "property insurance appraisal firms" (appraisal firms) within the Department of Financial Services (DFS). The bill incorporates the program into part I of ch. 626, F.S., which sets forth the procedural provisions applicable to all insurance licensing programs administered by the DFS. As a result, the bill prohibits an individual from practicing or holding him or herself out as an appraiser or umpire and prohibits an individual or entity from acting or holding himself, herself, or itself out as a firm unless licensed and, in the case of an appraiser or umpire, currently appointed with the DFS.

▪ *Definitions*

The bill provides definitions of terms, including "property insurance appraiser," "property insurance appraisal umpire," and "property insurance appraisal firm."

³ On file with the House Insurance & Banking Subcommittee.

⁴ Windstorm Insurance Network, Inc.; Insurance Appraisal and Umpire Association, Inc.

⁵ See Windstorm Insurance Network, *Wind Credential Program*, <http://windnetwork.com/wind-credential-programs/> (last visited Oct. 28, 2015); Insurance Appraisal and Umpire Association, Inc., *Certified Directory*, <http://www.iaua.us/certified-directory.aspx> (last visited Oct. 28, 2015).

▪ *Licensure Requirements – Appraiser and Umpire*

The bill establishes licensure requirements for an applicant. An applicant must:

- Be at least 18 years of age;
- Be a citizen or legal alien authorized to work in the U.S.;
- Be of good moral character;
- Submit a written application made under oath;
- Pay fees, to be deposited into the Insurance Regulatory Trust Fund;
- Undergo level two background screening; and
- Prior to submitting the application, have completed DFS-approved courses in claims estimating and insurance law and ethics.

Only the following individuals are eligible for licensure:

- A retired county, circuit, or appellate judge;
- An engineer licensed pursuant to ch. 471, F.S., or a retired professional engineer as defined in s. 471.005, F.S.;
- A general contractor, building contractor, or residential contractor licensed pursuant to part I of ch. 489, F.S.;
- An architect licensed or registered to engage in the practice of architecture pursuant to part I of ch. 481, F.S.;
- A member of The Florida Bar; or
- An adjuster licensed pursuant to part VI of ch. 626, F.S., which license includes the property and casualty lines of insurance. An adjuster must have been licensed for at least 3 years as an adjuster before he or she may be licensed as an appraiser and must have been licensed for at least 5 years as an adjuster before he or she may be licensed as an umpire.

▪ *Licensure Requirements – Property Insurance Appraisal Firm*

The bill establishes licensure requirements for an appraisal firm. An application must be signed and include:

- Contact information for each principal who directs, manages, or controls the firm; the firm; any branch offices; and its registered agent.⁶
- Fingerprints for each principal, unless already on file with the DFS.
- Other information deemed necessary to ascertain the trustworthiness and competence of the principals.

An appraiser or umpire who practices under his or her own name and does not employ others is exempt from the firm licensing requirement.

Failure to obtain a firm license, if required, may result in a fine of up to \$10,000.

▪ *Appointment – Appraiser and Umpire*

The bill requires an appraiser or umpire to be appointed with the DFS in order to practice in the state. The fee for appointment and biennial renewal of appointment is \$60.

⁶ Separate licensure is not required for branches.

- *Continuing Education – Appraiser and Umpire*

The bill requires the same continuing education currently required of an adjuster: 19 hours of approved continuing education and five hours of ethics biennially.

- *Code of Conduct – Appraiser and Umpire*

The bill establishes ethical standards related to confidentiality; fees and expenses; maintenance of records; advertising; integrity and impartiality; skill and experience; and gifts and solicitation.

- *Grounds for Refusal, Suspension, or Revocation of a License – Appraiser, Umpire, and Firm*

The bill establishes conditions for mandatory and discretionary refusal, suspension, or revocation of a license.

- *Investigation – Appraiser, Umpire, and Firm*

The bill authorizes the DFS to investigate any appraiser, umpire, or firm for suspected or reported violations of the insurance code.

B. SECTION DIRECTORY:

Section 1: amends s. 624.04, F.S., revising the definition of the term “person.”

Section 2: amends s. 624.303, F.S., excepting certificates issued to appraisers and umpires from the requirement to bear the seal of the DFS.

Section 3: amends s. 624.311, F.S., providing a schedule for destruction of property insurance appraiser and umpire licensing files and records.

Section 4: amends s. 624.317, F.S., authorizing the DFS to investigate appraisers, umpires, and appraisal firms for violations of the insurance code.

Section 5: amends s. 624.501, F.S., authorizing specified licensing fees for appraisers and umpires.

Section 6: amends s. 624.523, F.S., requiring the deposit of fees into the Insurance Regulatory Trust Fund.

Section 7: amends s. 626.015, F.S., revising the definition of “appraisal” and creating definitions of “property insurance appraisal umpire,” “property insurance appraiser,” and “property insurance appraisal firm.”

Section 8: amends s. 626.016, F.S., expanding the scope of the Chief Financial Officer’s powers and duties and the DFS’s enforcement jurisdiction to include appraisers, umpires, and appraisal firms.

Section 9: amends s. 626.022, F.S., including appraiser, umpire, and appraisal firm licensing in the scope of part I of chapter 626, F.S., relating to licensing to procedures.

Section 10: amends s. 626.112, F.S., requiring licensure as an appraiser, umpire, or appraisal firm.

Section 11: amends s. 626.171, F.S., requiring applicants for licensure as an appraiser or umpire to submit fingerprints.

Section 12: amends s. 626.207, F.S., excluding applicants for licensure as appraisers, umpires, and appraisal firms from application of s. 112.011, F.S., relating to disqualification from license or public employment.

Section 13: amends s. 626.2815, F.S., requiring specified continuing education for licensure as an appraiser or umpire.

Section 14: amends s. 626.382, F.S., providing that an appraisal firm license continues in force until canceled, suspended, or revoked or otherwise terminated by law.

Section 15: amends s. 626.451, F.S., specifying procedures and responsibilities related to appointment of a property insurance appraiser or property insurance appraisal umpire;

Section 16: amends s. 626.461, F.S., providing that a property insurance appraiser or property insurance appraisal umpire appointment continues in effect, subject to renewal or earlier written notice of termination, until the person’s license is revoked or otherwise terminated;

Section 17: amends s. 626.521, F.S., authorizing the DFS to obtain a credit and character report for certain appraiser and umpire applicants.

Section 18: amends s. 626.536, F.S., requiring appraisal firms to submit a copy of certain documents to the DFS within 30 days after disposition of certain administrative actions.

Section 19: amends s. 626.541, F.S., requiring an appraiser or umpire to provide certain information to the DFS when doing business under a different business name or when information in the licensure application changes.

Section 20: amends s. 626.601, F.S., authorizing the DFS to investigate improper conduct of any licensed appraiser, umpire, or appraisal firm.

Section 21: amends s. 626.602, F.S., authorizing the DFS to disapprove certain appraisal firm names.

Section 22: amends s. 626.611, F.S., requiring the DFS to refuse, suspend, or revoke an appraiser's or umpire's license under certain circumstances.

Section 23: amends s. 626.6115, F.S., requiring the DFS to refuse, suspend, or revoke an appraisal firm license under certain circumstances.

Section 24: amends s. 626.621, F.S., authorizing the DFS to refuse, suspend, or revoke an appraiser's or umpire's license under certain circumstances.

Section 25: amends s. 626.6215, F.S., authorizing the DFS to refuse, suspend, or revoke an appraisal firm's license under certain circumstances.

Section 26: amends s. 626.641, F.S., prohibiting an appraiser or umpire from owning, controlling, or being employed by other licensees during the period the appraiser or umpire's license is suspended or revoked.

Section 27: amends s. 626.6515, F.S., authorizing the DFS to suspend or revoke the license of an appraisal firm under the control of any person who participated in activities resulting in the suspension or revocation of the license of an associated firm.

Section 28: amends s. 626.681, F.S., authorizing an administrative fine in lieu of or in addition to suspension, revocation, or refusal of an appraisal firm license.

Section 29: amends s. 626.8443, F.S., prohibiting a title insurance agent from owning, controlling, or being employed by an appraiser, umpire, or appraisal firm during the period the agent's license is suspended or revoked.

Section 30: creates part XIV of chapter 626, F.S., relating to appraisers and umpires.

Section 31: providing an appropriation.

Section 32: providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill authorizes the following fees applicable to appraisers and umpires:

- Appointment and biennial appointment: \$60
- Application fee: \$50
- License fee: \$5
- Late filing of appointment: \$20
- Fee to cover the cost of a credit report when requested by the DFS: actual cost
- Fee to cover the cost of a level two background screening: actual cost (\$38.75)

2. Expenditures:

The bill authorizes two full-time equivalent positions and appropriates \$74,851 in recurring funds, and \$3,882 in nonrecurring funds from the Insurance Regulatory Trust Fund and \$67,398 in recurring funds and \$38,882 in nonrecurring funds from the Administrative Trust Fund to implement provisions of the bill. The bill is not anticipated to have a fiscal impact on local government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a negative fiscal impact on the private sector because it imposes licensing fees and ongoing costs of licensure in order to practice as an appraiser or umpire which may also affect the cost to obtain those services. It may, however, improve appraisal results which would have a positive impact on both insurers and policyholders.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the DFS to adopt a rule, as needed, defining additional information that may be required in an appraisal firm application to determine compliance with the insurance code.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 4, 2015, the Insurance & Banking Subcommittee adopted a proposed committee substitute (PCS) and two amendments to the PCS and reported the bill favorably as a committee substitute. The amended PCS:

- Moved the licensing program to the Department of Financial Services (DFS).
- Incorporated the program into part I of chapter 626, F.S., which sets forth the procedural provisions applicable to all insurance related licensing programs administered by DFS.
- Refined the definitions of “appraisal,” “property insurance appraiser,” and “property insurance appraisal umpire”; deleted the definition of “independent,” but retained its component provisions as grounds for discipline; and created a definition of “property insurance appraisal firm.”
- Removed the requirement for an examination.
- Removed the prerequisite 4-hour class in building-related topics and substituted prerequisite courses in claims estimating, and insurance law and ethics.
- Required applicants who qualify based on separate professional license to be currently licensed as such.
- Capped contingency fees charged by an appraiser to not more than 20% of any additional money paid on the claim as a result of the appraisal process.
- Created a one-time license requirement for property insurance appraisal firms.
- Revised the code of conduct for clarity of administration and removed portions that regulated the process of appraisal.
- Reduced the proposed fiscal from more than \$650,000 and 4 FTEs to 2 FTEs and \$185,013.

The staff analysis is drafted to reflect the committee substitute.