

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 79 Property Insurance Appraisers and Property Insurance Appraisal Umpires
SPONSOR(S): Regulatory Affairs Committee; 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	10 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee	13 Y, 4 N, As CS	Peterson	Hamon

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 appraisal umpires" 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. Licensure is required only for appraisals involving residential claims. 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.

In addition, the bill allows only licensed adjusters or attorneys to practice as an appraiser for a homeowner. Fees charged by public adjusters who serve as appraisers are capped at current statutory limits for adjusters, and contracts for appraisal services must contain specified notice regarding the right to negotiate fees. Appraisers for insurers are not similarly regulated.

The bill appropriates \$24,000 in recurring funds from the Insurance Regulatory Trust Fund and \$73,107 in recurring funds and \$39,230 in nonrecurring funds from the Administrative Trust Fund to the DFS, and authorizes one full-time equivalent position with associated salary rate of 47,291 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 to the extent that it requires licensure as an adjuster or attorney in order to practice as an appraiser and imposes licensing fees and ongoing costs of licensure in order to practice as an 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.

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

STORAGE NAME: h0079d.RAC

DATE: 1/20/2016

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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 be subject to licensure in order to serve as an appraiser or umpire if the bill becomes law.

Licensing of Property Insurance Appraisers and Property Insurance Appraisal Umpires

Currently, no state licenses property insurance appraisers or property insurance appraisal umpires. 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. If the bill becomes law, currently certified members of one or both of the organizations⁵ will represent less than five percent of the 2,000 individuals the sponsor estimates will be subject to licensure in Florida.

Effect of the Bill

Umpires

The bill establishes a licensing program for "property insurance appraisal umpires" (umpires) 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 umpire unless licensed and currently appointed with the DFS.

▪ Definitions

The bill provides definitions of terms, including "appraisal," "property insurance appraiser," and "property insurance appraisal umpire" for purposes of the new part XIV of ch. 626, F.S.

▪ Licensure Requirements

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

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).

- 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 the 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 5 years as an adjuster before he or she may be licensed as an umpire.

▪ ***Appointment***

The bill requires an 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.

▪ ***Continuing Education***

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***

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 –Umpire***

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

▪ ***Investigation***

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

Appraisers

The bill limits who may act as a property insurance appraiser representing an insured in a personal residential or commercial residential claim. Specifically, the bill requires a person to be licensed as an adjuster pursuant to part VI of ch. 626, F.S., or an attorney (all of whom are exempt from licensure as an adjuster pursuant to s. 626.860, F.S.). The bill caps the fees of a public adjuster who also serves as an appraiser to a total that does not exceed the adjuster fee cap currently in statute (10 percent of the paid claim amount for a period of one year after a declared emergency; in all other cases, 20 percent of the payment). Finally, the bill requires contracts for appraisal services to contain specified notice of an insured's right to negotiate the fee.

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 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 umpire licensing files and records.

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

Section 5: amends s. 624.501, F.S., authorizing specified licensing fees for 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., creating a definition of “property insurance appraisal umpire.”

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 umpires.

Section 9: amends s. 626.022, F.S., including umpire 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 umpire or licensure or exemption from licensure as an adjuster to serve as an appraiser representing an insured on a personal residential or commercial residential claim.

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

Section 12: amends s. 626.207, F.S., excluding applicants for licensure as umpires 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 umpire.

Section 14: amends s. 626.451, F.S., specifying procedures and responsibilities related to appointment of an umpire.

Section 15: amends s. 626.461, F.S., providing that a 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 16: amends s. 626.521, F.S., authorizing the DFS to obtain a credit and character report for certain umpire applicants.

Section 17: amends s. 626.541, F.S., requiring an 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 18: amends s. 626.601, F.S., authorizing the DFS to investigate improper conduct of any licensed umpire.

Section 19: amends s. 626.611, F.S., requiring the DFS to refuse, suspend, or revoke an umpire’s license under certain circumstances.

Section 20: amends s. 626.621, F.S., authorizing the DFS to refuse, suspend, or revoke an umpire’s license under certain circumstances.

Section 21: amends s. 626.641, F.S., prohibiting an umpire from owning, controlling, or being employed by other licensees during the period the umpire’s license is suspended or revoked..

Section 22: amends s. 626.7845, F.S., conforming a cross-reference.

Section 23: amends s. 626.8305, F.S., conforming a cross-reference.

Section 24: amends s. 626.8411, F.S., conforming a cross-reference.

Section 25: amends s. 626.8443, F.S., prohibiting a title insurance agent from owning, controlling, or being employed by an umpire or during the period the agent’s license is suspended or revoked.

Section 26: amends s. 626.854, F.S., to cap fees for appraisal or combined appraisal and adjusting services.

Section 27: creates s. 626.8791, F.S., providing specified notice for appraisal contracts with an insured.

Section 28: amends s. 626.9957, F.S., conforming a cross-reference

Section 29: creates part XIV of ch. 626, F.S., relating to umpires.

Section 30: repeals s. 627.70151, F.S., relating to umpire conflicts of interest. The identical language is transferred to new part XIV of ch. 626, F.S.

Section 31: providing an appropriation.

Section 32: applying the act prospectively.

Section 33: providing an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill authorizes the following fees applicable to 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)

The DFS estimates receiving approximately 250 applications the first year.⁶ Based on the proposed fee structure, estimated revenues from licensure for FY 2016-2017 would be \$28,750.

2. Expenditures:

The bill appropriates \$24,000 in recurring funds, from the Insurance Regulatory Trust Fund and \$73,107 in recurring funds and \$39,230 in nonrecurring funds from the Administrative Trust Fund to the DFS, and authorizes one full-time equivalent position with associated salary rate of 47,291 to implement provisions of the bill.

FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a negative fiscal impact on the private sector to the extent that it imposes licensing fees and ongoing costs of licensure in order to practice as an appraiser⁷ 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.

C. 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.

⁶ Florida Department of Financial Regulation, Agency Analysis of 2016 HB 79, p. 2 (Jan. 12, 2016).

⁷ The bill does not itself create a new licensing program for appraisers. Instead it requires licensure as an adjuster or attorney. Thus, a person would incur the costs associated with obtaining and/or maintaining one of those licenses.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

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 percent 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.

On January 14, 2016, the Regulatory Affairs Committee considered and adopted a strike-all amendment and an amendment to the strike-all and reported the bill favorably as a committee substitute. The amendments:

- Removed the separate licensing program for property insurance appraisers and substituted a requirement for licensure as a public adjuster or attorney to serve as an appraiser for an insured. Appraisers who represent insurance companies are not covered.
- Removed the licensing program for property insurance appraisal firms.
- Limited the scope of the bill to personal residential and commercial residential property insurance claims.
- Capped the fees of a public adjuster who also serves as an appraiser to a total that does not exceed the adjuster fee cap currently in statute (10 percent of the paid claim amount for a period of one year after a declared emergency; in all other cases, 20 percent of the payment).
- Required contracts for appraisal services to contain specified notice of an insured’s right to negotiate the fee.
- Revised the definition of “appraisal” and clarified its application.
- Authorized direct payment from the insurer and the insured to the umpire.
- Made technical corrections to language authorizing an umpire to consider the opinions of experts.
- Revised and strengthened the gift and solicitation restrictions.
- Transferred s. 627.70151, F.S., which specifies grounds for disqualifying an umpire, to the new part XIV of ch. 626, F.S., relating to umpires, which is created by the bill.

- Reduced the appropriation to reflect lower costs to implement the program as a result of the changes described above.

This analysis is drafted to the committee substitute as passed by the Regulatory Affairs Committee.