HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1D Property Insurance
SPONSOR(S): Appropriations Committee, Trumbull
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2-D

FINAL HOUSE FLOOR ACTION: 95 **Y's** 14 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1D passed the House on May 25, 2022, as CS/SB 2-D.

The bill makes the following changes regarding property insurance:

- **Reinsurance to Assist Policyholders (RAP) Program** – Creates the RAP Program within the State Board of Administration to authorize $2 billion of reinsurance coverage to qualified property insurers at no cost to the insurers; the participating insurers must reduce rates to policyholders as a result of this reinsurance coverage.
- **My Safe Florida Home (MSFH)** – Appropriates $150 million to the MSFH Program to provide hurricane mitigation inspections and grants for retrofitting single-family homes that meet certain criteria.
- **Roof Damage Coverage and Claims** – Prohibits an insurer from refusing to issue policies for homes with roofs less than 15 years old solely because of the roof's age; if a roof is at least 15 years old, insurers must allow homeowners to have a roof inspection before requiring the replacement of a roof in order to receive a policy; prohibits an insurer from refusing to issue or renew a homeowner's insurance policy solely based on roof age if an inspection shows 5 years or more of useful life left on the roof; allows an insurer to offer an optional roof deductible if it meets certain criteria; prohibits contractors from making communications that encourage consumer to contact a contractor or public adjuster to make a property insurance claim for roof damage unless the communication provides certain notices.
- **Bad Faith** – Establishes that a policyholder may not prevail in a property insurance bad faith suit unless he or she establishes that the property insurer breached the insurance contract.
- **Insurer Annual Statement** – Directs the Office of Insurance Regulation (OIR) to make statewide data detailing the number of policies, amount of premium, number of cancellations, and other data for each property insurer publicly available on a statewide basis; establishes that such information is not a trade secret.
- **Claims Investigation** – Requires property insurers to notify the policyholder that an insurer must send a copy of any detailed estimate of the amount of loss generated by an insurer's adjuster within 7 days of a request by the insured; requires insurers to provide a reasonable written explanation to the policyholders of the basis for the payment, denial, or partial denial of a claim, if the payment is less than the detailed estimate; if an insurer wants to inspect non-hurricane damage in person, the insurer must send an adjuster within 45 day of the claim.
- **Assignment Agreements (AOB)** – Revises the definition of AOB to include AOBs executed by a party that inspects property; clarifies that public adjuster fees are not an AOB; also clarifies requirements regarding the notice of intent to litigate that must be served before filing a lawsuit regarding a claim where the policyholder has signed an AOB.
- **Attorney Fees** – Limits the application of contingency risk multipliers in property insurance litigation by only allowing them to be awarded in rare and exceptional circumstances; eliminates attorney fee awards in litigation involving a property insurance claim where the policyholder signed an AOB; allows an insurer to recover attorney fees and costs associated with securing the dismissal of a lawsuit when a first-party claimant's lawsuit is dismissed for failure to provide a notice of intent to litigate; eliminates the transfer or assignment of the right to receive attorney fees in property insurance litigation.
- **Property Insurance Stability Unit (Unit)** – Creates the Unit within OIR to increase regulatory oversight for property insurers; requires an investigation when consumer complaints suggest a trend in the marketplace rather than an isolated incident by an insurer; requires referrals to the Unit if certain provisions of the Insurance Code are triggered.
- **Property Insurer Insolvency** – Requires the Department of Financial Services (DFS) to begin an analysis of a property insurer's insolvency upon the appointment of DFS as the receiver and prepare an initial report, followed by annual reports, and a final report at the end of the proceedings.

The bill has no impact on local government revenues or expenditures or state revenues. It has an impact on state expenditures related to the RAP and MSFH Programs. It will likely have a positive direct economic impact on the private sector.

The bill was approved by the Governor on May 26, 2022, and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Florida Residential Property Insurance Market

From 2017 through the second quarter of 2021, Florida domestic property insurers (domestic insurers) had cumulative net underwriting losses[1] that resulted in a cumulative net income loss in excess of $1 billion.[2] Since at least early 2021, the Florida Office of Insurance Regulation (OIR) has reported an increasing trend in domestic insurers filing for rate increases. In 2020, domestic insurers submitted 105 rate filings in which they requested rate increases of 10 percent or more.[3] OIR approved 55 of those filings. In contrast, OIR approved only six rate increases in excess of 10 percent in 2016.[4] Additionally, between December 2019 and May 2022, OIR has held 16 rate hearings for domestic insurers seeking rate increases in excess of 15 percent.[5]

The Florida Insurance Commissioner has attributed the net underwriting losses, combined ratios[6], and resulting rate increases to several trends and behaviors present in Florida's domestic property insurance market:

- Claims litigation;
- Claims solicitation; and
- Adverse loss reserve development.[7]

OIR conducted a 2020 data call of domestic insurers, which showed that the cost of non-weather water claims with litigation is nearly double that of claims that are closed without litigation.[8] The increased cost of claims involving litigation is driving adverse loss reserve development that leads to an increased number of rate filings asking for significant rate increases.[9]

The impact of the troubled property insurance market is being felt across the state. Seven property and casualty insurance companies are in liquidation because they were unable to maintain the statutorily-required policyholder surplus of at least $15 million.[10] OIR approved the early cancellation of policies and restructuring plans for five property and casualty insurers.[11] Several insurers, including United

---

[1] Underwriting losses are losses experienced by insurance companies over a particular period of time or related to a particular activity because they had to pay more in claims than they expected to pay. Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/underwriting-loss (last visited May 18, 2022).

[2] David Altmaier, Florida Office of Insurance Regulation (OIR), Overview of the Florida Insurance Market, pg. 6 (Sept. 22, 2021). https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/5252/9419_MeetingPacket_5252_2.pdf (last visited May 18, 2022).

[3] Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, OIR). https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/4966/8842_MeetingPacket_4966.pdf.

[4] *Id.*

[5] S. 627.0629(6), F.S., establishes that no rate filing for residential property insurance that is based on data from a computer model may exceed a 15 percent increase unless OIR holds a public hearing.

[6] The combined ratio is used an indicator of underwriting profit or loss. A combined ratio below 100 percent is indicative of an underwriting profit. The combined ratio is the sum two ratios. One ratio calculated by dividing incurred losses plus loss adjustment expenses by earned premiums (the calendar year loss ratio) and another ratio calculated by dividing all other expenses by either written or earned premiums. IRMI, *Combined Ratio*, https://www.irmi.com/term/insurance-definitions/combined-ratio (last visited May 18, 2022).

[7] Loss reserve development is the difference between the original loss as initially estimated or reserved by an insurer and its subsequent evaluation later or at the time of final disposal. Loss development occurs because of inflation and time lags between claims occurrence and claims reporting. IRMI, *Loss Development,* https://www.irmi.com/term/insurance-definitions/loss-development (last visited May 18, 2022). When adverse loss reserve development occurs, claims cost more than their reserves were originally estimated to be by insurers.

[8] Florida Senate, *supra*, note 3.

[9] *Id.*

[10] DFS is the court-appointed receiver for American Capital Assurance Corporation, Avatar Property and Casualty Insurance Company, Florida Specialty Insurance Company, Gulfstream Property and Casualty Insurance Company, Sawgrass Mutual Insurance Company, St. Johns Insurance Company, and Sunshine State Insurance Company. *See* Florida Department of Financial Services, Division of Rehabilitation & Liquidation, *Companies in Receivership*, Companies in Receivership (myfloridacfo.com), (last visited May 19, 2022).

[11] Capitol Preferred Insurance Company cancelled 27,500 policies and merged with Southern Fidelity Insurance Company, which subsequently cancelled 2,300 policies and did not renew 19,000 policies; FedNat Insurance Company will cancel 68,000 policies;

Property and Casualty, have announced that they no longer write new business in Florida.[12] People's Trust Insurance is not accepting new business from eight south and central Florida counties.[13] And Progressive Insurance will not renew 56,000 policies for homes with shingle roofs that are 16 years or older.[14]

On April 15, 2022, rating agency Demotech downgraded FedNat Insurance Company from an "A exceptional" to "S Substantial." An "A" rating is required to write policies for homeowners that rely on federally-backed mortgages from Fannie Mae or Freddie Mac. The downgrade prompted FedNat to cancel 68,000 policies and restructure under a plan approved by OIR.[15]

As the voluntary market struggles, an increasing number of homeowners are obtaining policies through Citizens Property Insurance Corporation (Citizens)[16] and in the unregulated surplus lines market.[17]

Citizens is a not-for-profit, tax-exempt government entity that provides property insurance to those who are unable to find affordable coverage in the private market. Applicants are eligible for coverage if no admitted private carrier will write them a policy for a premium that is less than 20 percent greater than what Citizens would offer for comparable coverage.[18] Citizens will cover homes if the cost of replacing the dwelling, or the dwelling and its' contents, is no more than $700,000. In Miami-Dade and Monroe counties, Citizens may insure structures valued up to $1 million so long as OIR continues to determine that these counties are not competitive.[19]

Homeowners who cannot obtain coverage in the voluntary market or from Citizens may find coverage in the surplus lines market, which is not regulated. Policies written in the surplus lines market do not have the backing of a guaranty fund that covers claims if an insurer becomes insolvent.[20]

The Florida Insurance Commissioner attributed the financial losses to several trends and behaviors present in Florida's property insurance market, including but not limited to, claims solicitations and litigation.[21] Claims solicitations allegations include solicitations related to roofs and the fraudulent use of the 25 percent rule.[22] It is reported that in such cases, roofers and roofing contractors go door to door asking homeowners if they can inspect their roof for damage. The contractors then advise homeowners their property insurance may replace the entire roof if the homeowners file a claim.

Universal Insurance Company of America cancelled 13,294 policies; and Weston Insurance Company cancelled 1,500 wind-only policies. *See* Florida Office of Insurance Regulation, *Recent Company Actions*, Recent Company Actions (floir.com) (last visited May 19, 2022).

[12] Insurance Journal, *Another Big Insurer Stops Writing Homeowners Policies in Florida*, Feb. 21, 2022, Another Big Insurer Stops Writing Homeowners Policies in Florida (insurancejournal.com) (last visited May 19, 2022).

[13] *Id*.

[14] *Id*. *Also see* Insurance Journal, *Florida insurance market needs strong medicine, April 7, 2022* (last visited May 19, 2022).

[15] Office of Insurance Regulation, *In the Matter of FedNat Insurance Company, Maison Insurance Company, and Monarch National Insurance Company*, Case No. 295625-22-CO, May 13, 2022, SKM_80822051317530 (floir.com) (last visited May 19, 2022).

[16] An analysis of market data published by OIR shows that Citizens' share of the homeowners' insurance market has fluctuated from a low of 2.53 percent in the fourth quarter of 2016 (when the corporation wrote 5 percent of all new policies), to a high of 27 percent in fourth quarter of 2021 (when the corporation wrote 52 percent of all new policies. Market data for commercial and residential property insurance is available on OIR's website, at https://apps.fldfs.com/QSRNG/Reports/ReportCriteriaWizard.aspx

[17] An analysis of market data published by the Florida Surplus Lines Service Office (FSLSO) shows that surplus lines insurers have increased their presence in Florida's homeowners' insurance market. In the fourth quarter of 2011, 23 surplus lines insurers wrote 11,108 policies with premium of $27,728,710. In the fourth quarter of 2021, 31 surplus lines insurers wrote 20,708 policies with premium of $89,732,534. Market data for surplus lines insurance is available on the FSLSO website, at https://www.fslso.com/Florida/MarketData/home.

[18] S. 627.351(6)(c)5.a, F.S. The 20 percent threshold applies to personal lines residential risks. Commercial lines residential risks are not eligible for coverage by Citizens if a private carrier will write them a policy for a premiums that is less than 15 percent greater than what Citizens would offer for comparable coverage.

[19] S. 627.351(6)(a)3, F.S.

[20] *See* ss. 626.921-626.939, F.S.

[21] Altmaier, supra note 2.

[22] Not more than 25 percent of the total roof area or roof section of any existing building or structure shall be repaired, replaced, or recovered in any 12-month period unless the entire roofing system or roof section conforms to the requirements of the Florida Building Code. Ch. 6, s. 611.1.1, F.B.C.

Hurricane Activity in Florida

Between 1980 and 2021, hurricanes in the United States caused approximately $1.1 trillion in damage, including an average cost of $20.5 billion per event and 6,697 deaths.[23] In Florida, Hurricanes Irma and Michael, in 2017 and 2018, respectively, caused approximately $43 billion in insured losses.[24] The current forecast for hurricane activity in the Atlantic Basin for 2022 indicates above-normal activity, including 19 named storms, nine hurricanes, and four major hurricanes.[25]

State Reinsurance Coverage

Background

In 1993, the Legislature created the Florida Hurricane Catastrophe Fund (FHCF), a tax-exempt trust fund administered by the State Board of Administration (SBA), which is governed by a three member Board of Trustees: the Governor, who serves as chair, the Chief Financial Officer, and the Attorney General.[26] The FHCF was created in response to the problems that developed in the residential property insurance industry following property losses incurred through a series of catastrophic events, including Hurricane Andrew in 1992.[27] It was determined that state action was required to correct the inability of the private sector insurance and reinsurance markets to maintain sufficient capacity.[28] The program is intended to provide a stable and ongoing source of reimbursement to insurers for a portion of their catastrophic hurricane losses, creating additional insurance capacity for the state.[29]

The coverage provided by the FHCF is similar to private reinsurance except it is limited to hurricane losses for residential properties.[30] Historically, the FHCF has generated significant premium savings for Florida policyholders by making FHCF protection available to insurers, typically at a lower cost than the market price for comparable reinsurance.[31] The FHCF is able to provide coverage at a lower cost than private market prices because it does not include a profit factor or risk load in its rates and because it is exempt from federal taxes.[32]

As a condition of doing business in Florida, property insurers are required to obtain FHCF coverage by entering into reimbursement contracts with FHCF.[33] The contract year runs from June 1 to May 31.[34] The FHCF charges insurers the actuarially indicated premium[35] for the coverage it provides, based on the insurer's relative exposure to hurricane losses. The FHCF reimburses an insurer for a selected percentage of the insurer's hurricane losses above the insurer's retention (similar to a

---

[23] NOAA, *Fast Facts, Hurricane Costs*, https://coast.noaa.gov/states/fast-facts/hurricane-costs.html (last visited May 16, 2022).
[24] This amounts to approximately $47 billion in 2021 dollars. Insurance Information Institute, *Facts + Statistics: Hurricanes*, https://www.iii.org/fact-statistic/facts-statistics-hurricanes (last visited May 16, 2022).
[25] Colorado State University Tropical Weather & Climate Research, *Seasonal Hurricane Forecasting, Forecast for the 2022 Hurricane Activity*, https://tropical.colostate.edu/forecasting.html (last visited May 16, 2022).
[26] Ch. 93-409, Laws of Fla.; ss. 215.555(3) and 215.44(1), F.S.
[27] S. 215.555(1)(b), F.S.
[28] S. 215.555(1)(c), F.S.
[29] S. 215.555(1)(e), F.S.
[30] State Board of Administration of Florida Florida Hurricane Catastrophe Fund, *2020 Annual Report*, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20210614_2020_FHCFAnnualReport.pdf?ver=2021-06-14-123243-403 (last visited May 18, 2022).
[31] *Id.*
[32] *Id.*
[33] S. 215.555(4)(a), F.S.
[34] State Board of Administration of Florida Hurricane Catastrophe Fund, *supra* note 30.
[35] "Actuarially indicated" means, with respect to premiums paid by insurers for reimbursement provided by the fund, an amount determined according to principles of actuarial science to be adequate, but not excessive, in the aggregate, to pay current and future obligations and expenses of the fund, including additional amounts if needed to pay debt service on revenue bonds issued under s. 215.555, F.S., and to provide required debt service coverage in excess of the amounts required to pay actual debt service on revenue bonds issued under s. 215.555(6), F.S., and determined according to principles of actuarial science to reflect each insurer's relative exposure to hurricane losses.

deductible),[36] up to a maximum payout. The current coverage options are 90 percent, 75 percent, or 45 percent, as selected by the insurer when it executes its FHCF reimbursement contract.[37] In addition to reimbursement for hurricane losses, the FHCF is required to reimburse insurers for loss adjustment expenses at a rate of 10 percent of reimbursed losses.[38]

Temporary Emergency Additional Coverage Layer (TEACO) Program

Over the years, various forms of optional temporary additional coverages from FHCF have been provided. One such program, known as Temporary Emergency Additional Coverage Options ("TEACO"), was the result of a Special Session in 2007 called specifically to address the affordability and availability of property insurance in the State of Florida, and to revise the Florida Building Code.[39] TEACO was among numerous changes to the insurance laws designed to reduce property insurance rates.

Under TEACO, residential property insurers could purchase additional coverage below each insurer's retention for the 2007, 2008, and 2009 contract years. An insurer could select its share of a retention level of $3 billion, $4 billion, or $5 billion, to cover 90 percent, 75 percent, or 45 percent of its losses up to the normal retention for the mandatory FHCF coverage. For the $3 billion retention, the insurer's premium was an 85 percent rate-on-line; for the $4 billion retention, the insurer's premium was an 80 percent rate-on-line; and for the $5 billion retention, the insurer's premium was a 75 percent rate-on-line. The TEACO coverage applied to two hurricanes for each contract year. TEACO coverage was only allowed through May 31, 2010, and has since been repealed.[40] No insurers purchased TEACO coverage while it was available.

Effect of the Bill

The bill authorizes transfers of up to $2 billion from the State's General Revenue Fund (GR) for the Reinsurance to Assist Policyholders (RAP) Program to be administered by the SBA. However, the funds will only be transferred to the SBA if the RAP Program must reimburse qualified insurers because of hurricane loss. Unlike TEACO coverage, RAP Program coverage will be provided at no cost to the qualified insurers. The SBA will enter into contracts with qualified insurers to receive the RAP Program coverage. The bill also allows for a transfer of up to $5 million from GR to the SBA for administration of the RAP program and post-event examinations.

A private property insurer[41] will be qualified for RAP coverage unless OIR determines that the insurer is in an unsound financial condition by June 15, 2022, for insurers that participate in the RAP Program during the 2022-2023 contract year, and by February 1, 2023, for insurers that participate in the RAP Program for the 2023-2024 contract year. OIR shall make a determination of an insurer's soundness based upon the following factors:

- The insurer's compliance with the requirements to qualify for, and hold, a certificate of authority to transact insurance;
- The insurer's compliance with the applicable surplus requirements;
- The insurer's compliance with applicable risk-based capital requirements;
- The insurer's compliance with the applicable premium to surplus requirements; and
- An analysis of quarterly and annual statements, including an actuarial opinion summary.

[36] "Retention" means the amount of losses below which an insurer is not entitled to reimbursement from FHCF and is calculated according to a statutory formula. S. 215.555(2)(e), F.S.
[37] S. 215.555(4)(b), F.S.
[38] S. 215.555(4)(b)1., F.S. Loss adjustment expenses are "[t]he sum insurers pay for investigating and settling insurance claims, including the cost of defending a lawsuit in court." Insurance Information Institute, I.I.I. Glossary, https://www.iii.org/resource-center/iii-glossary/L (last visited May 18, 2022).
[39] Ch. 2007-1, Laws of Fla.
[40] Ch. 2013-60, Laws of Fla.
[41] Citizens Property Insurance Corporation may not participate in the RAP Program.

The RAP Program allows insurers to obtain reimbursement for hurricane losses earlier than they normally would under the FHCF. Insurers that have already purchased private reinsurance that duplicates any coverage provided by the RAP Program coverage are deferred from participation in the Program.. Such insurers shall notify the board in writing of such duplicative coverage no later than June 30, 2022. Insurers that participate in the RAP Program for the 2022-2023 contract year must reduce their policyholder's rates by June 30, 2022, to reflect savings from the RAP Program. Insurers that are deferred until the 2023-2024 contract year must reduce policyholder rates to reflect savings by May 1, 2023. In the event that coverage is not needed under the RAP Program, unused funds revert back to GR unallocated. The bill provides rulemaking authority to implement the RAP Program. Additionally, in order to address a critical need in the state's property insurance market, the SBA is also granted emergency rulemaking authority to expedite the implementation of the Program.

My Safe Florida Home

Background

In 2006, the Legislature created the My Safe Florida Home (MSFH) Program within the Department of Financial Services (DFS), with the intent that the Program provide trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties (mitigation inspections), and grants to eligible applicants, subject to funding availability.[42] The MSFH Program was to "develop and implement a comprehensive and coordinated approach for hurricane damage mitigation."[43] The MSFH program allowed DFS to undertake a public outreach and advertising campaign to inform consumers of the availability, and benefits, of the mitigation inspections and grants.[44] It required the development of brochures for distribution to general contractors, roofing contractors, and real estate brokers and sales associates to explain the benefits of residential hurricane damage mitigation to homeowners.[45]

Hurricane Mitigation Inspections

The purpose of the mitigation inspections was to determine: what mitigation measures were needed; what insurance premium discounts might have been available; and what improvements to existing residential properties were needed to reduce the properties' susceptibility to hurricane damage.[46] The mitigation inspections were to include, at a minimum:

- A report that summarized the results and identified recommended improvements the homeowner could take to mitigate hurricane damage.
- A range of cost estimates regarding the recommended mitigation improvements.
- Insurer-specific information regarding premium discounts correlated to current and recommended hurricane mitigation improvements.[47]

DFS was required to maintain a list of hurricane mitigation inspectors who were authorized to conduct the mitigation inspections for the MSFH Program.[48] DFS entered contracts to provide mitigation inspections with wind certification entities who, at a minimum used hurricane mitigation inspectors who:

- Were certified building inspectors;
- Were licensed as general or residential contractors;
- Were licensed and professional engineers and had passed the appropriate equivalency test of the building code training program;
- Were licensed as a professional architect; or

[42] S. 215.5586, F.S.
[43] *Id.*
[44] S. 215.5586(3), F.S.
[45] S. 215.5586(7), F.S.
[46] S. 215.5586(1)(a), F.S.
[47] *Id.*
[48] S. 215.55186(6), F.S.

- Had at least two years of experience in residential construction or residential building inspection and had received specialized training in hurricane mitigation procedures.[49]

Mitigation Grants

The purpose of the mitigation grants was to retrofit single-family homes to make them less vulnerable to hurricane damage.[50] To be eligible for a grant, the following criteria must have been met:

- The homeowner must have had a homestead exemption on the home to be retrofitted;
- The home must have had an insured value of $300,000 or less, unless the homeowner was classified as a low-income person;
- The home must have undergone an acceptable hurricane mitigation inspection after May 1, 2007;
- The home must have been located in the "wind-borne debris region" as defined in the International Building Code; and
- The building permit application for initial construction of the come must have been made before March 1, 2002.[51]

In addition, the homeowner had to match the grant award on a dollar-for-dollar basis up to $10,000, for the actual cost of the mitigation project, and the state's contribution could not exceed $5,000.[52] Low-income homeowners were eligible for grants of up to $5,000, and were not required to provide a matching amount to receive a grant.[53] Matching fund grants were also available to local governments and nonprofit entities for projects to reduce hurricane damages to single-family homes.[54]

Grants could be used on previously-inspected existing structures or on rebuilds.[55] If recommended by a hurricane mitigation inspection, grants could be used for the following improvements:

- Opening protection.
- Exterior doors, including garage doors.
- Brace gable ends.
- Reinforcing roof-to-wall connections.
- Improving the strength of roof-deck attachments.
- Upgrading roof coverings from code to code plus.
- Secondary water barrier for roofs.[56]

DFS was required to issue an annual report on the activities of the MSFH Program that accounted for the use of any appropriated state funds, the number of inspections requested and performed, the number of grant applications received, and the number and value of grants approved.[57]

The MSFH Program was appropriated $250 million in Fiscal Year 2006-07.[58] As of May 2009, approximately $93 million in MSFH grants were allocated to 32,000 homes, and approximately 400,000 homes received a MSFH home inspection.[59] DFS requested the Risk Management Solutions (RMS), conduct an impact analysis of the MSFH program, and RMS released a report of the impact analysis on

[49] S. 215.5586(1)(b), F.S.
[50] S. 215.5586(2), F.S.
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] Rebuilds were defined as site-built, single-family dwellings under construction to replace homes that were destroyed or significantly damaged by hurricanes and deemed unlivable by a regulatory authority. S. 215.5586(2)(e), F.S.
[56] S. 215.5586(2)(e), F.S.
[57] S. 215.5586(10), F.S.
[58] Risk Management Solutions, *Analyzing the Effects of the My Safe Florida Home Program on Florida Insurance Risk*, May 14, 2009, https://www.sbafla.com/method/portals/methodology/AdditionalMaterialWMC/RMS_MSFH_Report_May_2009.pdf (last visited May 19, 2022).
[59] *Id.*

May 14, 2009 (report).[60] In the report, RMS concluded that the MSFH grants were beneficial to the State of Florida, individual homeowners, and the insurance industry.[61] RMS indicated that the predicted reduction in loss as a result of the grant projects completed far exceeded the grant money spent.[62] While the MSFH Program was never repealed from law, additional funding has not been provided since the initial appropriation.

Effect of the Bill

The bill renews the funding for the MSFH Program by appropriating $150 million in nonrecurring funds from GR to DFS for the program for the 2022-2023 fiscal year. The funds appropriated are allocated as follows:

- $115 million for mitigation grants.
- $25 million for hurricane mitigation inspections.
- $4 million for education and consumer awareness.
- $1 million for public outreach for contractors and estate brokers and sales associates.
- $5 million for administrative costs.

The bill appropriates any unexpended balance of funds from this appropriation remaining on June 30, 2023, to DFS for the 2023-2024 fiscal year to be used for the MSFH Program. The appropriation will expire on October 1, 2024. The bill gives DFS authority to adopt emergency rules to implement the MSFH Program.

The bill makes additional modifications to the MSFH Program as it has existed since 2007. It requires that an application for a mitigation grant include a provision that requires an applicant to make his or her home available for inspection once a mitigation project is completed. The bill changes the monetary limits for eligibility for mitigation grants so that homes with an insured value of $500,000 or less qualify for the program. The bill requires that homes that receive mitigation grants have undergone home inspections after July 1, 2008, and have received permits for initial construction before January 1, 2008. Finally, the bill requires that the homeowner must match grant funds on the basis of $1 from the homeowner for every $2 provided by the state up to a maximum state contribution of $10,000 towards the actual cost of the mitigation project undertaken on the eligible home.

The bill enhances the reporting requirements for DFS under the MSFH Program by requiring that the report include the average annual amount of insurance premium discounts and total annual amount of insurance premium discount that homeowners received from insurers as a result of the mitigation funded by the MSFH Program. The portion of the bill pertaining to the MSFH Program is effective on July 1, 2022.

Roof Damage Coverage and Claims

OIR has reported a significant increase in the number of roof damage claims, many of which include litigation.[63] These roof damage claims include claims made by residential property owners after being solicited to file an insurance claim that they may not otherwise have filed but for the promise of a new roof at no cost to the property owner.[64] Ways that some insurers have attempted to address these issues are by limiting coverage for roofs or refusing to write policies on homes with roofs over a certain age.

[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] Report from David Altmaier, Florida Insurance Commissioner, to Chair Blaise Ingoglia, Commerce Committee, regarding cost drivers affecting Florida's insurance rates, p. 7 (Feb. 24, 2021).
[64] *Id.* A "free" roof replacement may be achieved by giving a residential property owner whose policy provides for replacement cost coverage for a roof a gift card or something else valued at the amount of the deductible under the policy so that the entire cost of a new roof is paid by the insurer and the individual soliciting the residential property owner.

Roof Age

Background

Homeowners have increasingly complained about insurer's refusal to write or renew their policies based upon the age of the roofs on their homes, even when inspections have shown that the roofs have useful life remaining.[65] Homeowners have also indicated that insurers are refusing to issue or renew policies unless they replace roofs that are more than a certain number of years old.

Effect of the Bill

The bill defines the term "authorized inspector" as an inspector approved by an insurer and who is any of the following:

- A licensed home inspector;
- A certified building code inspector;
- A licensed general, building, or residential contractor;
- A licensed professional engineer;
- A licensed professional architect; or
- Any other individual or entity that the insurer recognizes as possessing the necessary qualifications to properly complete a general inspection of a residential structure insured with a homeowners' insurance policy.

- The bill prohibits an insurer from refusing to issue or refusing to renew a homeowners' policy insuring a residential structure with a roof that is less than 15 years old solely because of the age of the roof. For a roof that is at least 15 years old, the bill requires an insurer to allow a homeowner to have a roof inspection performed by an authorized inspector at the homeowners' expense before requiring a homeowner to replace a roof as a condition of issuing or renewing a homeowners' insurance policy. Additionally, if an inspection of the roof performed by an authorized inspector shows that the roof has at least 5 years of useful life remaining, the insurer may not refuse to issue or renew a homeowners' policy solely because of roof age. The age of the roof will be determined using either:
    - The last date for which 100 percent of the roof's surface was built or replaced in compliance with the building code in effect at the time, or
    - The the initial date of a partial roof replacement when subsequent partial builds or replacements were completed that resulted in 100 percent of the roof's surface being built or replaced.

  The bill's provisions regarding roof inspections apply to homeowners' insurance policies issued or renewed on or after July 1, 2022.

Solicitation for Roof Damage Insurance Claims

Background

Beginning in 2021, [66] certain property insurance practices by contractors, public adjusters, public adjuster apprentices, and those unlicensed persons acting on their behalf have been limited. The law provides that a contractor, including a general, building, residential, or roofing contractor, or someone acting on the contractor's behalf, may not:

- Solicit a residential property owner to file an insurance claim.
- Offer an incentive to a residential property owner for allowing the inspection of the residential property owner's roof or for making an insurance claim for roof damage.

---

[65] *See e.g.,* Lawrence Mower, *Progressive Stops Renewing Some Home Policies in Florida as Lawmakers Target Roof Claims*, Tampa Bay Times (Feb. 8, 2022), https://www.tampabay.com/news/florida-politics/2022/02/08/progressive-stops-renewing-some-home-policies-in-florida-as-lawmakers-target-roof-claims/ (last visited May 21, 2022).

[66] S. 489.147, F.S.

- Offer or accept any compensation or reward for referral of services for which property insurance proceeds are payable.
- Interpret policy provisions, advise an insured about policy provisions, or adjust claims on behalf of an insurer unless licensed as a public adjuster.
- Provide an insured with an agreement authorizing repairs without providing a good faith estimate of the cost of repairs.

This recently enacted statute has been challenged in federal court. The court issued a preliminary injunction as to the portion of the statute pertaining to soliciting a residential property owner to file an insurance claim.[67]

Additionally, the law prohibits a contractor from entering into a contract with a residential property owner to repair or replace a roof without including notice in the contract that the contractor is prohibited from engaging in the above acts. If the contractor fails to include the notice in the contract, the property owner may void the contract within 10 days of its execution.

Effect of the Bill

The bill provides clarification regarding prohibited insurance practices by contractors. Such contractors may not make written or electronic communications that encourage or induce a consumer to contact a contractor or public adjuster for the purposes of making a property insurance claim for roof damage unless such communication provides notice that:

- The consumer is responsible for payment of any insurance deductible owed;
- It is third-degree felony insurance fraud for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to a property covered by a property insurance policy; and
- It is third-degree felony insurance fraud to intentionally file and insurance claim containing any false, incomplete, or misleading information.

Deductibles in Property Insurance Policies

Background

With certain exceptions, prior to issuing a personal lines residential property insurance policy, the insurer must offer alternative deductible amounts applicable to hurricane losses equal to $500, 2 percent, 5 percent, and 10 percent of the policy dwelling limits. For such policies covering a risk valued at less than $500,000, a hurricane deductible may not be greater than 10 percent of the policy dwelling limits unless the policyholder personally writes and provides to the insurer, in his or her own handwriting the following statement: "I do not want the insurance on my home to pay for the first (specify dollar value) of the damage from hurricanes. I will pay those costs. My insurance will not."[68]

Current law does not specifically address the inclusion of a separate roof deductible in a personal lines residential insurance policy. It states only that prior to issuing a personal lines residential property insurance policy on or after April 1, 1997, or prior to the first renewal of a residential property insurance policy on or after April 1, 1997, the insurer must have offered a deductible equal to $500 applicable to losses from perils other than hurricane.[69] The insurer must also provide the policyholder with notice of the availability of the deductibles on a form approved by OIR at least once every 3 years.[70] The failure to provide such notice constitutes a violation of the Insurance Code but does not affect the coverage

[67] *Gale Force Roofing & Restoration, LLC. V. Brown*, 548 F.Supp.3d 1143, (N.D. Fla., 2021).
[68] S. 627.701(4)(d), F.S.
[69] S. 627.701(7), F.S.
[70] *Id.*

provided under the policy.[71] An insurer may require a higher deductible only as part of a deductible program lawfully in effect on June 1, 1996, or as part of a similar deductible program.[72]

Effect of the Bill

The bill permits the policyholder to either write or type the statement required to waive the 10 percent limit on a hurricane deductible. The proposed change should give insurers and policyholders more options for conducting business electronically.

The bill establishes that unless OIR determines that the deductible provision is clear and unambiguous, a property insurer may not issue a property insurance policy which contains a deductible provision that applies solely to roof damages.

The bill requires that a residential policy that contains a separate roof deductible must include, on the page immediately following the declarations page, containing no other policy language, in boldfaced type no smaller than 18-point font, the following statement: "YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR HOME WHICH CONTAINS A SEPARATE DEDUCTIBLE FOR ROOF LOSSES. BE ADVISED THAT THIS MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU. PLEASE DISCUSS WITH YOUR INSURANCE AGENT." Additionally, for any roof deductible policy, an insurer must compute and prominently display on the declarations page or premium renewal notice the actual dollar value of the roof deductible of the policy.

An insurer may issue a residential policy that contains a separate roof deductible policy only if all of the following requirements have been met:

- The insurer has complied with the offer requirements regarding a deductible applicable to losses other than a hurricane.
- The roof deductible may not exceed the lesser of 2 percent of the coverage A limit of the policy[73] or 50 percent of the cost to replace the roof.
- The premium that a policyholder is charged for the policy includes an actuarially sound credit or premium discount for the roof deductible.
- The roof deductible applies only to a claim adjusted on a replacement cost basis.[74]

The roof deductible does not apply to any of the following events:

- A total loss to a primary structure which is caused by a covered peril.
- A roof loss resulting from a hurricane.
- A roof loss resulting from a tree fall or another hazard that damages the roof and punctures the roof deck.
- A roof loss requiring the repair of less than 50 percent of the roof.

The bill specifies that if a roof deductible applies, no other deductible under the policy may be applied to the loss. Additionally, where a separate roof deductible applies, the insurer may limit claim payment as to the roof to the actual cash value of the loss to the roof until the insurer receives proof that the policyholder has paid the roof deductible. Proof of such payment may include a canceled check, money order receipt, credit card statement, or copy of an executed installment plan contract or other financing arrangement that requires full payment of the deductible over some time period.

---

[71] *Id.*

[72] *Id.*

[73] Coverage A pays for direct physical loss to the dwelling. Property and Casualty Insurance Essentials 326 (The National Alliance Research Academy 9th ed. 2016.

[74] Replacement cost is usually defined in a policy as the cost to repair or replace the damaged property with materials of like kind and quality, without any deduction for depreciation. In contract, actual cash value is the cost to repair or replace the damaged property with material of like kind and quality, minus the cost of depreciation due to use, wear, obsolescence, or age. *See* National Association of Insurance Commissioners, *Rebuilding After a Storm: Know the Difference Between Replacement Cost and Actual Cash Value When it Comes to Your Roof*, https://content.naic.org/article/rebuilding-after-storm-know-difference-between-replacement-cost-and-actual-cash-value-when-it-comes (last visited May 20, 2022).

Pursuant to the bill, an insurer may offer a separate roof deductible at the time of initial policy issuance with the ability for the policyholder to opt-out and reject the separate roof deductible by signing a form approved by OIR. At the time of renewal, an insurer may add a separate roof deductible to a policy if the insurer provides a notice of change in policy terms to the policyholder.[75] The insurer must also offer the policyholder the ability to opt-out and reject the separate roof deductible at the time of renewal by signing a form approved by OIR.

The bill requires that OIR expedite the review of any filing of insurance forms that contain only a separate roof deductible. OIR may adopt model forms or guidelines that provide options for a roof deductible that insurers may use for form filings. If an insurer makes a filing pursuant to one of these model forms or guidelines, OIR must review the filing within the initial 30-day review period authorized under law for policy form review.

Bad Faith

Background

Obligations of the Insurer to Insured

A liability insurer generally owes two major contractual duties to its insured in exchange for premium payments—the duty to indemnify and the duty to defend. The duty to indemnify refers to the insurer's obligation to issue payment to either the insured or a beneficiary on a valid claim. The duty to defend refers to the insurer's duty to provide a defense for the insured in court against a third party with respect to a claim within the scope of the insurance contract.[76] The Florida Supreme Court explained the difference between indemnity policies and liability policies:

> Under indemnity policies, the insured defended the claim and the insurance company simply paid a claim against the insured after the claim was concluded. Under liability policies, however, insurance companies took on the obligation of defending the insured, which, in turn, made insureds dependent on the acts of the insurers; insurers had the power to settle and foreclose an insured's exposure or to refuse to settle and leave the insured exposed to liability in excess of policy limits.[77]

Historically, damages in actions for breaches of insurance contracts were limited to those contemplated by the parties when they entered into the contract.[78] As liability policies began to replace indemnity policies as the standard insurance policy form, courts recognized that insurers owed a duty to act in good faith towards their insureds.[79]

Common Law and Statutory Bad Faith

Florida courts for many years have recognized an additional duty that does not arise directly from the insurance contract, the common law duty of good faith on the part of an insurer to the insured in negotiating settlements with third-party claimants.[80] The common law rule is that a third-party beneficiary who is not a formal party to a contract may sue for damages sustained as the result of the acts of one of the parties to the contract.[81] This is known as a third-party claim of bad faith.

---

[75] Notices of change in policy terms are required under s. 627.43141, F.S.
[76] *See* 16 Williston on Contracts s. 49:103 (4th Ed.).
[77] *State Farm Mutual Automobile Insurance Company v. Laforet*, 658 So.2d 55, 58 (Fla. 1995).
[78] *Id.*
[79] *Id*.
[80] *Auto. Mut. Indem. Co. v. Shaw*, 184 So. 852 (Fla. 1938).
[81] *Thompson v. Commercial Union Insurance Company*, 250 So.2d 259 (Fla. 1971).

At common law, the insured could not raise a bad faith claim against the insurer outside of the third-party claim context.[82] In 1982, the Legislature enacted s. 624.155, F.S. Section 624.155, F.S., recognizes a claim for bad faith against an insurer not only in the instance of settlement negotiations with a third party but also for an insured seeking payment from his or her own insurance company. This is known as a first-party claim of bad faith.

Section 624.155(1)(b), F.S., (commonly referred to as statutory bad faith) provides that any party may bring a bad faith civil action for extracontractual damages against an insurer for:

- Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests;
- Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or
- Except as to liability coverages, failing to promptly settle claims, when the obligation to settle the claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.[83]

In order to bring a bad faith claim under the statute, a plaintiff must first give the insurer 60 days written notice of the alleged violation. The insurer has 60 days after the required notice is filed to pay the damages or correct the circumstances giving rise to the violation.[84] Because first-party claims are only statutory, a first-party insurer bad faith cause of action does not exist until the 60-day cure period provided in the statute expires without payment by the insurer.[85] A third-party bad faith claim arises when an insurer fails in good faith to settle a third party's claim against the insured within policy limits and exposes the insured to liability in excess of his or her insurance coverage.[86] Third-party claims exist both in statute and at common law, so the insurer cannot guarantee avoidance of a bad faith claim by curing within the statutory period.[87]

In interpreting what it means for an insurer to act fairly toward its insured, Florida courts have held that when the insured's liability is clear and an excess judgment is likely due to the extent of the resulting damage, the insurer has an affirmative duty to initiate settlement negotiations.[88] If a settlement is not reached, the insurer has the burden of showing that there was no realistic possibility of settlement within policy limits.[89] Failure to settle on its own, however, does not mean that an insurer acts in bad faith. Negligent failure to settle does not rise to the level of bad faith. Negligence may be considered by the jury because it is relevant to the question of bad faith but a cause of action based solely on negligence is not allowed.[90]

Florida courts have also considered whether conditions precedent must be met before bad faith causes of action become ripe for litigation. In *Cammarata v. State Farm Fla. Ins. Co.,* the Court held an insurer's liability for coverage and the extent of damages must be determined before a statutory bad faith cause of action was ripe.[91] However, it also held that breach of contract need not necessarily be determined. For example, in *Cammarata* "the appraisal award 'constituted a favorable resolution of an action for insurance benefits so that [the insured]…satisfied the necessary prerequisite to filing a bad faith claim".[92]

---

[82] *Laforet*, 658 So.2d at 58-59.
[83] S. 624.155(1)(b)1.-3., F.S.
[84] *S.* 624.155(3)(d), F.S.
[85] *Talat Emterprises vv. Aetna Casualty and Surety Company*, 753 So.2d 1278, 1284 (Fla. 2000).
[86] *Opperman v. Nationwide Mutual Fire Insurance Company,* 515 So.2d 263, 265 (Fla. 5th DCA 1987).
[87] *Macola v. Government Employees Insurance Company,* 953 So.2d 451 (Fla. 2006).
[88] *Powell v. Prudential Property and Casualty Insurance Company*, 584 So.2d 12, 14 (Fla. 3d DCA 1991).
[89] *Id*.
[90] *DeLaune v. Liberty Mutual Insurance Company*, 314 So.2d 601,603 (Fla. 4th DCA 1975).
[91] *Cammarata v. State Farm Fla. Ins. Co.*, 152 So.3d 606, 607 (Fla. 4th DCA 2014). In *Cammarata*, the claim was settled through the appraisal process using a neutral umpire appointed by the court at the request of the parties.
[92] *Id.* at 612.

Effect of the Bill

The bill establishes that in order to prevail in a claim for extracontractual damages under s. 624.155(1)(b), F.S., (commonly referred to as bad faith) a claimant must establish that the property insurer breached the insurance contract. While the bill does not address the *Cammarata* decision directly because it does not address conditions precedent to bringing suit, the bill has the effect of receding from the decision to the extent it requires that a breach of contract be established in order to prevail in such a lawsuit. Furthermore, the bill may eliminate the ability of a claimant to bring a statutory bad faith lawsuit where the parties have settled through informal means, or in the alternative dispute resolution or appraisal processes because a breach of contract would not likely have been determined during those processes. Because the bill only affects statutory causes of action for bad faith, it does not limit third-party common law causes of action for bad faith.

Insurer Annual Statement

Background

Every insurer authorized to do business in Florida must file an annual financial statement with OIR on or before March 1, and quarterly financial statements on March 31, June 30, and September 30. An audited financial report is due by June 1 each year. Such statements must conform with the requirements established by the National Association of Insurance Commissioners, which OIR adopts by rule.[93] As of January 1, 2022, insurers selling personal lines or commercial residential property insurance also must file with OIR a supplemental report to their required annual financial reports with detailed claims information so OIR can track litigation and claims trends in the property insurance market.[94]

Since 2014, some insurers have been filing county-level data related to the rates an insurer charges for commercial or homeowners' property insurance as trade secret information, as such information could reveal an insurer's strategic plan or exposures in specific regions of the state. This results in a significant loss of public information about policies and rates at the county level.[95] The Legislature responded to the insurers' practice of submitting data as trade secret information by amending ss. 624.307 and 624.315, F.S., to allow information marked as trade secret to be reported or otherwise available in aggregate form as long as an individual insurer's information marked as trade secret would not be revealed.

Effect of the Bill

The bill requires OIR to make publicly available, on a statewide basis, aggregated property insurance data that has been submitted as a trade secret by each insurer or insurer group. This makes the following language available from annual and quarterly financial statements available: the number of policies in force, canceled, and nonrenewed each month; the number of policies cancelled and nonrenewed due to hurricane risk each month; the number of new policies written each month; the dollar value of structure exposure under policies that include wind coverage; and the number of policies that exclude wind coverage. The bill states that policy information aggregated on a statewide basis is not trade secret. The bill does not provide a deadline for the publication of aggregated data.

Claims Investigation

Background

The Insurance Code provides explicit direction related to the investigation of claims. When a policyholder submits a claim, the property insurer has 14 calendar days to review and acknowledge

[93] S. 624.424(1), F.S., and R. 69O-137, F.A.C.
[94] S. 624.424(11), F.S.
[95] *Office of Insurance Regulation v. State Farm Florida Insurance Company*, 213 So.3d 1104 (1st DCA, 2017).

communications from a policyholder, unless payment is made within that time or something beyond the insurer's control prevents such acknowledgment.[96]

If a policyholder submits a proof of loss statement, the insurer must confirm that the claim is covered, or denied, or is being investigated, within 30 days. If the proof of loss statement requires further investigation, the insurer must begin the investigation within 14 days, and, if a physical investigation of the property is needed, the licensed adjuster assigned to the claim must provide the policyholder with his or her name and license number.[97]

An initial estimate of covered damages must include the following statutory language: "THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF THE COVERED DAMAGES TO YOUR INSURED PROPERTY AND MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US."[98]

If the insurer provides payment that is not the full and final resolution of a claim, the insurer must include the following statutory language: "WE ARE CONTINUING TO EVALUATE YOUR CLAIM INVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US."[99]

The insurer must pay or deny any initial, reopened, or supplemental property insurance claim or portion of the claim within 90 days of receipt.[100]

Effect of the Bill

Inspections

The bill requires that if an insurer wishes to conduct a physical inspection of damage for claims other than those related to a hurricane deductible, an insurer must do so within 45 days after it receives a proof of loss statement for a claim.

Claims Transparency

The bill also requires the insurer to provide additional claims information to policyholders. Within seven days of assigning an adjuster to investigate a claim, the insurer must notify the policyholder that he or she may request a copy of the adjuster's detailed estimate of the amount of loss. If a policyholder requests a copy of the adjuster's detailed estimate, the insurer must provide the estimate within seven days of the policyholder's request, or, if the investigation is ongoing, within seven days of completion of the estimate. However, the insurer is not required to create a detailed estimate of the amount of the loss if one is not reasonably necessary to the claim investigation.

When an insurer decides to pay, partially pay, or deny a claim, the insurer must provide a written explanation to the policyholder that explains the reason for the determination. If the insurer pays less than the amount specified in the detailed estimate of the amount of loss, the insurer must explain the reason for the difference between the estimate and the payment.

[96] S. 627.70131(1), F.S.
[97] S. 627.70131(3), F.S.
[98] S. 627.70131(6)(a), F.S.
[99] S. 627.70131(6)(b), F.S.
[100] S. 627.70131(7)(a), F.S.

Assignment Agreements

Background

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows a policyholder to assign the post-loss benefits of the policy, such as the right to be paid, to another party. This assignment is often called an assignment of benefits (AOB). An AOB is an instrument that assigns or transfers post-loss benefits under a residential or commercial property insurance policy to or from a person who protects, repairs, restores, or replaces property or mitigates against further property damage.[101]

Once an assignment agreement is executed, the assignee can take action to enforce the insurance policy. Accordingly, if an insurer refuses to pay an assignee for a claim submitted under the policy, the assignee may file a lawsuit against the insurer. An assignee must give an insurer and the assignor prior written notice of at least 10 business days before filing suit on a claim (pre-suit notice).[102] The pre-suit notice may not be served before the insurer has made a determination of coverage.[103] It must specify the damages in dispute, the amount claimed, and a pre-suit settlement demand, and must include an itemized, detailed, written invoice or estimate of the work performed or to be performed.[104]

The law requires pre-suit notice to be sent by certified mail, return receipt requested, or by electronic delivery, but does not specify the mailing address or email address where the pre-suit notice must be sent.[105] The lack of a specific address may delay an insurer's or assignor's receipt of the notice, and thus reduce an insurer's time to respond to the notice.

Effect of the Bill

The bill adds inspection to the list of services included in the definition of assignment agreement to address the concern that certain individuals providing services, but who did not otherwise engage in protecting, repairing, restoring, or replacing insured property following a loss, were not subject to the requirements of the AOB law. The bill establishes that the list of services in statute, is not exhaustive. The bill specifies that fees charged by a public adjuster are not included in the definition of assignment agreement.

The bill requires that the pre-suit notice, if sent by certified mail, be sent to the name and mailing address specified by an insurer in its policy forms, and if sent by email, be sent to the email address specified by an insurer in its policy forms.

Attorney Fees

General Background

In certain situations, a court may require one party to pay the opposing party's attorney fees. The traditional English Rule entitled a prevailing party to attorney fees as a matter of right. Florida, however,

[101] *S.* 627.7152(1)(b), F.S.
[102] S. 627.7152(9)(b), F.S.
[103] *Id.*
[104] *Id.*
[105] *See id.*

with a majority of other U.S. jurisdictions, adopted the American Rule, under which each party is responsible for its own attorney fees unless a statute provides an entitlement to fees.

Contingency Fees

A contingency fee is an attorney fee that is charged only if the lawsuit is successful or favorably settled out of court.[106] In turn, an attorney and a client may enter into a contingency fee contract, agreeing that the client will pay the attorney a fee only if the attorney successfully recovers for the client.

The Florida Supreme Court, through its Rules Regulating the Florida Bar, allows contingency fee contracts but restricts their use.[107] Rule 4-1.5(f) prohibits contingency fees in criminal defense and certain family law proceedings.[108] The rule also requires a contingency fee agreement to:

- Be in writing.
- State the method by which the fee is to be determined.
- State whether expenses are to be deducted before or after the contingency fee is calculated.
- In certain types of cases, include other provisions ensuring the client is aware of the agreement's terms.[109]

Upon conclusion of a contingency fee case, the attorney must provide the client a written statement stating the outcome of the case, the amount remitted to the client, and how the attorney calculated the amount.[110]

Statutorily Provided Attorney Fees

Several Florida and federal statutes state that a prevailing party in court proceedings is entitled to attorney fees as a matter of right.[111] These statutes are known as "fee-shifting statutes" and often entitle the prevailing party to a reasonable attorney fee.[112] When a fee-shifting statute applies, the court must determine and calculate what constitutes a reasonable attorney fee.

Lodestar Approach

In 1985, the Florida Supreme Court held that courts should calculate the amount of statutorily-authorized attorney fees under the "lodestar approach."[113] Under this approach, the first step is for the court to determine the number of hours reasonably expended on the case. The second step requires the court to determine a reasonable hourly rate. The number of hours reasonably expended (determined in the first step), multiplied by the reasonable hourly rate (determined in the second step), produces the "lodestar amount," which is considered an objective basis for what the attorney fee amount should be.

[106] *See* Black's Law Dictionary 338 (8th ed. 2004).
[107] R. Regulating Fla. Bar 4-1.5(f).
[108] R. Regulating Fla. Bar 4-1.5(f)(3).
[109] R. Regulating Fla. Bar 4-1.5(f)(1) and (4).
[110] R. Regulating Fla. Bar 4-1.5(f)(1).
[111] *See, e.g.,* s. 627.428, F.S. (providing that an insured who prevails against an insurer is entitled to "a reasonable sum" of attorney fees); s. 501.2105, F.S. (providing that the prevailing party in an action under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is entitled to "a reasonable legal fee"); 42 U.S.C. s. 1988(b) (providing that a prevailing party seeking to enforce specified civil rights statutes may recover "a reasonable attorney's fee").
[112] *See* s. 627.428, F.S., which is sometimes referred to as the "one-way attorney fees statute."
[113] *Fla. Patient's Comp. Fund v. Rowe*, 472 So.2d 1145 (Fla. 1985).

Contingency Risk Multiplier

Background

In certain cases, the court increases the lodestar amount by applying a contingency risk multiplier.[114] The concept of the contingency risk multiplier arose from judicial interpretations of statutory authorization of attorney fees in particular cases,[115] but the Legislature may also expressly provide for use of a contingency risk multiplier in certain cases.[116] In a 1990 case, the Florida Supreme Court discussed three different types of cases and whether a contingency risk multiplier should be applied in each case, as follows:

- *Public policy enforcement cases.* These cases may involve discrimination, environmental issues, and consumer protection issues. In these cases, a contingency risk multiplier is usually inappropriate.
- *Family law, eminent domain, estate, and trust cases*. In these cases, a contingency risk multiplier is usually inappropriate.
- *Tort and contract claims, including insurance cases*. In these cases, a contingency risk multiplier may be applied if the plaintiff can demonstrate the following factors show a need for the multiplier:
  - Whether the relevant market requires a contingency risk multiplier to obtain counsel;
  - Whether the attorney can mitigate the risk of nonpayment; and
  - Whether any other factors established in *Rowe*[117] support the use of the multiplier.[118]

Further, in the same decision, the Court noted that the size of the contingency risk multiplier varies from 1.0 to 2.5 based on the likelihood of success at the outset of the case, as follows:

- 1.0 to 1.5, if the trial court determines that success was more likely than not at the outset
- 1.5 to 2.0, if the trial court determines that the likelihood of success was approximately even at the outset
- 2.0 to 2.5, if the trial court determines that success was unlikely at the outset.[119]

Therefore, under current law, an attorney is more likely to receive a higher contingency risk multiplier—and thus a higher attorney risk award—if he or she takes a case that at the outset seems unlikely to succeed.

---

[114] The Court may also adjust the amount based on the results obtained by the attorney. *Standard Guar. Ins. Co. v. Quanstrom*, 555 So.2d 828, 830-31 (Fla. 1990). Contingency risk multipliers are also referred to as contingency fee multipliers.

[115] The rationale for using a contingency risk multiplier to increase an attorney fee award is that plaintiffs and plaintiffs' attorneys generally do not recover any money unless they prevail. The attorney fee multiplier induces attorneys to take a risk on cases they might not otherwise take, allowing would-be plaintiffs to find attorneys willing to represent them.

[116] *See* s. 790.33(3)(f)1, F.S. (explicitly authorizing a contingency fee multiplier in certain cases relating to the preemption of firearm and ammunition regulation).

[117] The *Rowe* factors were based upon Disciplinary Rule 2-106(b) of the Florida Bar (which is now Rule of Professional Conduct 4-1.5), and were as follows:

- Time and labor required, novelty and difficulty of the question involved, and the skill and requisite to perform the legal service properly.
- Likelihood, if apparent to the client, that the acceptance of employment would preclude other employment by the lawyer.
- Fee customarily charged in the locality for similar legal services.
- Amount involved and results obtained.
- Time limitations imposed by the client and circumstances.
- Nature and length of the professional relationship with the client.
- Experience, reputation, and ability of the lawyer(s) providing services.
- Whether the fee is a fixed or contingency fee.

Rowe, 472 So.2d at 1150–1151.

[118] *Quanstrom*, 555 So.2d at 833-35.

[119] *Id.* at 834.

Federal Court Treatment of the Contingency Risk Multiplier

Part of the Florida Supreme Court's rationale for adopting the contingency risk multiplier framework in 1985 was that, at the time, it was being applied in federal courts.[120] However, in 1992, the U.S. Supreme Court decided *Burlington v. Dague*, in which it rejected the use of a contingency risk multiplier under certain federal fee-shifting statutes. *Dague* essentially signaled that the Supreme Court was closing the door on the contingency risk multiplier's use in most, if not all, federal cases.[121]

In 2010, in the case of *Perdue v. Kenny A. ex. rel. Winn,* a case involving a class action lawsuit filed on behalf of 3,000 children in the Georgia foster care system, the U.S. Supreme Court again addressed the contingency risk multiplier issue.[122] The plaintiffs argued in the underlying case that the foster care system in two counties was constitutionally deficient. The case went to mediation, and the parties entered a consent decree resolving all issues. Subsequently, the plaintiffs' attorneys sought attorney fees under 42 U.S.C. s. 1988.[123]

The federal district court calculated the fees using the lodestar approach, arriving at a $6 million figure, and then applied a 1.75 contingency risk multiplier, for a total attorney fee of $10.5 million. The district court justified the contingency risk multiplier by finding that the attorneys had:

- Advanced $1.7 million with no ongoing reimbursement.
- Worked on a contingency basis, and therefore were not guaranteed payment.
- Displayed a high degree of skill, commitment, dedication, and professionalism.
- Achieved extraordinary results.[124]

On review, the U.S. Supreme Court reversed the district court's calculation of attorney fees, remanding the case because the district court did not provide adequate justification for the 75 percent increase. The Court reiterated that "there is a strong presumption that the lodestar figure is reasonable," but that such presumption "may be overcome in those *rare circumstances* in which the lodestar does not adequately take into account a factor that may properly be considered in determining a reasonable fee."[125] The Court also determined that a contingency risk multiplier may be applicable in “exceptional” circumstances.[126]

Thus, the *Perdue* Court determined that the application of contingency risk multipliers may sometimes be appropriate, while also issuing several warnings about contingency risk multipliers, as follows:

- When a trial court fails to give detailed explanations for why it applies a contingency risk multiplier, "widely disparate awards may be made, and awards may be influenced . . . by a judge's subjective opinion regarding particular attorneys or the importance of the case."[127]
- "[U]njustified enhancements that serve only to enrich attorneys are not consistent" with the aims of a statute that seek to compensate plaintiffs.[128]
- In many cases, attorney fees "are not paid by the individuals responsible for the constitutional or statutory violations on which the judgment is based . . . . Instead, the fees are paid . . . by state and local taxpayers," resulting in a diversion of funds from other government programs.[129]

---

[120] *See Rowe*, 472 So.2d at 1146 ("[W]e . . . adopt the federal lodestar approach for computing reasonable attorney fees").
[121] *See City of Burlington v. Dague*, 112 S. Ct. 2638 (1992) ("Thus, enhancement for the contingency risk posed by each case would encourage meritorious claims to be brought, but only at the social cost of indiscriminately encouraging nonmeritorious claims to be brought as well . . . [W]e hold that enhancement for contingency is not permitted under the fee-shifting statutes at issue").
[122] *Perdue v. Kenny A. ex rel. Winn*, 130 S. Ct. 1662 (2010).
[123] 42 U.S.C. s. 1988(b) allows the court to award attorney fees to the prevailing party in certain civil rights actions.
[124] *Perdue*, 130 S. Ct. at 1670.
[125] *Id.* at 1673 (emphasis added).
[126] *Id.*
[127] *See id.* at 1676.
[128] *See id.*
[129] *See id.* at 1677.

Recent Florida Supreme Court Treatment of the Contingency Risk Multiplier

In 2017, the Florida Supreme Court rejected the U.S. Supreme Court's *Dague* decision, instead holding that the contingency risk multiplier in Florida courts is not subject to the "rare and exceptional circumstances" requirement.[130] The Court acknowledged that, based upon its decision to maintain the applicability of the contingency risk multiplier without the restrictions implemented by the *Dague* decision, Florida "separat[ed] from federal precedent in this area."[131]

While SB 76 (2021) changed the formula generally applicable to attorney fee awards in first-party property insurance litigation after the bill became effective,[132] those changes did not impact the applicability of the contingency risk multiplier to cases.[133]

Effect of the Bill

For property insurance litigation, the bill applies a standard for awarding a contingency risk multiplier that is similar to the standard applied in federal courts, in that it allows for the multiplier only in "rare and exceptional" circumstances.[134] The bill provides that the award of attorney fees creates a strong presumption that the lodestar amount awarded by a court in a property insurance policy case is sufficient and reasonable, and thus that the court should not ordinarily apply a contingency risk multiplier. The plaintiff can overcome this presumption only in a rare and exceptional circumstance, and only if he or she can demonstrate that he or she could not have otherwise reasonably retained competent counsel.

Attorney Fees for First- and Third-Party Property Insurance Litigation

In 2019 and 2021, the Legislature adopted special rules for disputes involving residential or commercial property insurance policies, to address litigation trends, which are significantly higher in Florida than in any other state. In 2019, for example, Florida accounted for 76.45 percent of all homeowners' lawsuits opened against insurance companies in the United States. That was not an anomaly. Florida accounted for 79.91 percent of such lawsuits in 2018; 68.07 percent of such lawsuits in 2017; and 64.43 percent of such lawsuits in 2016.[135]

In 2019, the Legislature addressed the assignment of benefits, a practice in which a policyholder assigns his or her benefits under a property insurance contract to a construction contractor who makes repairs and has the right to file a lawsuit to demand increased claim payments and attorney fees. The cost of such litigation is passed on to policyholders through rate increases.[136]

The law addresses the assignment of benefit process by requiring a 10-day pre-suit notice to the insurer and providing that a judge may only award attorney's fees as a sanction for filing a frivolous lawsuit or according to the following schedule:

- If the difference between the judgment obtained by the assignee and the pre-suit settlement offer is less than 25 percent of the disputed amount, the insurer is entitled to an award of reasonable attorney fees;

---

[130] *See Joyce v. Federated Nat'l Ins. Co.*, 228 So.3d 1122 (Fla. 2017) ("[W]ith all due deference to the United States Supreme Court, we do not accept the *Dague* majority's rationale for rejecting contingency fee multipliers").
[131] *Id. at*, 1132
[132] Ch. 2021-77, Laws of Fla.
[133] *See* ss. 627.428 and 627.70152, F.S.
[134] In essence, the bill shifts the standard for the use of a contingency risk multiplier in property insurance cases away from that of the *Joyce* case.
[135] Correspondence from Florida Insurance Commissioner David Altmaier to the Hon. Blaise Ingoglia, Chair of the Insurance and Banking Subcommittee of the Florida House of Representatives (April 2, 2021) https://www.floir.com/siteDocuments/ChairIngoglia04022021.pdf?utm_medium=email&utm_source=govdelivery (last visited May 16, 2022).
[136] Note: Under s. 627.062(7), F.S., insurers may not include the costs of any bad faith action or judgment that includes punitive damages in its rate base and cannot use the costs of such litigation to justify a rate or rate change.

- If the difference between the judgment obtained by the assignee and the pre-suit settlement offer is at least 25 percent but less than 50 percent of the disputed amount, no party is entitled to an award of attorney fees;
- If the difference between the judgment obtained by the assignee and the pre-suit settlement offer is at least 50 percent of the disputed amount, the assignee is entitled to an award of reasonable attorney fees; and
- If the insurer fails to inspect the property or provide written or oral authorization for repairs within 7 calendar days after the first notice of loss then the insurer waives the right to an award of attorney fees.

In 2021, the Legislature adopted similar requirements for residential and commercial property insurance disputes where there is no assignment of benefits. Thus, all policyholders in the admitted and surplus lines markets must provide a 10-day pre-suit notice to the insurer if they intend to file a lawsuit, and a judge may only award attorney's fees as a sanction for filing a frivolous lawsuit or according to the following schedule:

- If the difference between the judgment obtained by the insured and the pre-suit settlement offer by the insurer is less than 20 percent of the disputed amount, each party pays its own attorney fees and costs.
- If the difference between the judgment obtained by the insured and the pre-suit settlement offer by the insurer is at least 20 percent but less than 50 percent of the disputed amount, the insurer pays the claimant's attorney fees equal to the percentage of the disputed amount obtained times the total attorney fees and costs.
- If the difference between the judgment obtained by the insured and the pre-suit settlement offer by the insurer is at least 50 percent of the disputed amount, the insurer pays the claimant's full attorney fees and costs.[137]

Attorney Fees When a First-party Claimant Fails to Follow Pre-suit Procedures

Background

SB 76 (2021) became effective on July 1, 2022, and requires that a notice of intent to litigate be provided to an insurer by all first-party plaintiffs who have made claims under policies issued on or after July 1, 2022, before a lawsuit may be filed. However, some insurers have indicated that such plaintiffs or their attorneys have failed to provide the required notices, and that such failure requires the insurers to incur attorney fees and costs associated with going to court to have these lawsuits dismissed.

Effect of the Bill

When a first-party claimant's lawsuit is dismissed for failure to provide a notice of intent to litigate as required by s. 627.70152(5), F.S, the court may award to the insurer reasonable attorney fees and costs associated with securing the dismissal of the lawsuit.

Attorney Fees in Litigation when a Claimant has Signed an Assignment Agreement

Effect of the Bill

The bill eliminates attorney fee awards in litigation involving a property insurance claim that is assigned to a third party. It removes from statute language that created a specific attorney-fee award structure for such litigation. In effect, therefore, if litigation occurs between a third-party assignee and an insurer, each party will bear its own attorney fees and costs.

[137] S. 627.70152, F.S. SB 76 was signed by the governor on June 11, 2021, and became effective July 1, 2021. Portions of the law related to roof solicitations and incentives to persuade a residential property owner to file a roof damage insurance claim were preliminarily enjoined by *Gale Force Roofing & Restoration, LLC. V. Brown*, 548 F.Supp.3d 1143, (N.D. Fla., 2021).

The bill also prohibits the transfer or assignment of the right to receive attorney fees in lawsuits arising under a property insurance policy to anyone other than a named insured or beneficiary under the policy. This prohibition applies whether a lawsuit arises under a policy issued by an admitted insurer or a surplus lines insurer. The result is that while a policyholder may sign an assignment agreement, the assignee will no longer be able to recovery attorney fees in lawsuits against an insurer.

Property Insurance Stability Unit

Background

OIR uses a variety of tools to monitor and evaluate the solvency of the insurance carriers it regulates. These include, but are not limited to, annual and quarterly financial statements filed by licensees; risk-based capital reports that are used to monitor an insurer's total adjusted capital; own-risk solvency assessments that evaluate risks associated with the insurer's business plan; reinsurance agreements; financial exams conducted no less than once every five years; and targeted market conduct exams conducted when the regulator identifies an issue that merits additional scrutiny.[138]

Effect of the Bill

The bill creates a Property Insurer Stability Unit (Unit) within OIR to closely monitor property and casualty insurers writing policies for homeowners and condo owners. If OIR identifies significant concerns about an insurer's solvency, rates, proposed contracts, underwriting rules, market practices, claims handling, consumer complaints, litigation practices, or any other issue related to compliance with the Insurance Code, the Unit will provide enhanced monitoring to identify and address business practices or market conditions that could lead to insolvency.

To aid in the detection and prevention of insolvencies of property insurers, the Unit must:

- Conduct target market exams of an insurer's claims practices, investment activities, underwriting rules, or any other business activity when there is reason to believe the insurer may be in an unsound financial condition.
- Closely monitor all risk-based capital reports, own-risk solvency assessments, reinsurance agreements, and financial statements filed by insurers selling homeowners' and condo owners' insurance in Florida.
- Have primary responsibility for annual Catastrophe Stress Tests of all Florida-domiciled insurers and out-of-state insurers that have a significant market share in Florida.
    - The Unit shall cooperate with the Florida Commission on Hurricane Loss Projection Methodology to select the hurricane scenarios that are used in the annual stress test, and
    - Catastrophic stress testing shall determine 1) whether an individual insurer can survive a one in 130-year probable maximum loss (PML), and a second event 50-year return PML following a first event that exceeds a 100-year return PML, and 2) the impact of the selected hurricane scenarios on Citizens, the Florida Hurricane Catastrophe Fund, the Florida Insurance Guaranty Association, and taxpayers.
- Update wind mitigation credits required by s. 627.711, F.S., and associated rules.
- Review the causes of insolvency and business practices of insurers that have been referred to the DFS Division of Rehabilitation and Liquidation and make recommendations to prevent similar failures in the future.
- Every six months, provide a report on the status of the homeowners and condo owners insurance market to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, the chairs of the legislative committees with jurisdiction over matters of insurance, and the Governor, showing the:

[138] Ss. 624.316, 624.3161, 624.424, 624.4085, 624.610, and 628.8015, F.S.

- Availability of reinsurance in the residential and commercial property insurance market; Average premiums charged for homeowners' and condo owners' insurance in each of Florida's 67 counties;
- Litigation practices of insurance carriers and any trends related to lawsuits filed by and against insurance companies;
- Names of any insurer(s) against which delinquency proceedings were instituted, including the grounds for rehabilitation pursuant to s. 631.051, the date that each insurer was deemed impaired under ss. 631.011(12) or 631.011(13), or insolvent under s. 631.011(14), a concise statement of the circumstances that led to the property insurer's delinquency, and a summary of the actions taken by the insurer and OIR to avoid delinquency;
- Number of property and casualty insurance carriers referred to the Unit for enhanced monitoring, including the reason for the referral;
- Number of referrals to the Unit that were deemed appropriate for enhanced monitoring, including the reason(s) for such monitoring;
- Percentage of homeowners' and condo owners' who obtain insurance from Citizens;
- Percentage of homeowners' and condo owners' who obtain insurance in the voluntary market;
- Profitability of the homeowners' and condo owners' lines of insurance in Florida, including a comparison similar lines of insurance in other hurricane-prone states (Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas) and with the national average;
- Recommendations for improvements to the regulation of homeowners and condo owners' insurance market and an indication of whether such improvements require any changes to existing laws or rules;
- Results of the latest annual Catastrophe Stress Tests of all Florida-domiciled insurers and out-of-state insurers that have a significant market share in Florida; and
- Trends that may warrant attention in the future.

Reports of the Unit are due on January 1 and July 1 of each year.

Property Insurer Insolvency

Background

Part I of ch. 631, F.S., relates to insurer insolvency and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.[139] Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the DFS is responsible for rehabilitating or liquidating insurance companies.[140] This process involves the initiation of a delinquency proceeding and the placement of an insurer under the control of the DFS as the receiver. The typical causes of insurer insolvency include undercapitalization, uncollectible or inflated assets, insufficient loss reserves for risks assumed, fraudulent transactions, failure to monitor agents, and mismanagement by directors and/or officers.[141]

Upon a determination by OIR that one or more grounds exist for the initiation of delinquency proceedings and that such proceedings must be initiated, OIR must notify DFS of such determination and must provide DFS with all necessary documentation an evidence.[142] DFS subsequently initiates

[139] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).
[140] Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.
[141] Department of Financial Services, Agency Analysis of 2017 House Bill 837, p.2 (Feb. 20, 2017).
[142] S. 631.031, F.S.

delinquency proceedings by either applying to the appropriate court for an order directing such an insurer to show cause why the proceedings should not be initiated or petitioning the court for the entry of a consent order.[143]

Under current law, DFS must prepare a summary report containing any information it has relating to the history and causes of a domestic insurer's insolvency, including the business practices of the insurer which led to the insolvency.[144] The report must be completed by the conclusion of an insolvency proceeding against such insolvent domestic insurer.[145]

Effect of the Bill

Whenever OIR notifies DFS that grounds exist for the initiation of delinquency proceedings for a domestic property insurer under s. 631.031, F.S., the bill requires OIR to include an affidavit with the notification that identifies:

- The grounds for rehabilitation;
- The date that the insurer was deemed impaired of capital or surplus, or insolvent;[146]
- A concise statement of the circumstances that led to the insurer's delinquency; and
- A summary of the actions taken by the insurer and OIR to avoid delinquency.

The bill modifies DFS's reporting requirements for insolvent domestic property insurers. It requires that, upon DFS's appointment as the receiver of a domestic property insurer, DFS must begin an analysis of the cause of the insolvency. DFS must submit an initial report analyzing the history and causes of the insolvency to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OIR no later than 4 months after DFS is appointed by the court as receiver. DFS must update the initial report at least annually until the submission of the final report. The report may not be used as evidence in any proceeding brought by DFS to recover assets on behalf of the receivership estate.

Additionally, the bill requires that DFS provide a special report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OIR within 10 days upon identifying any condition that may lead to insolvency in the property insurance marketplace. DFS must submit a final report analyzing the history and causes of the insolvency to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OIR within 30 days of the conclusion of the insolvency proceeding. DFS must also review OIR's regulatory oversight of any domestic property insurer for which delinquency proceedings are initiated.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

[143] *Id.*
[144] S. 631.398(3), F.S.
[145] *Id.*
[146] "Impairment of capital" means that the minimum surplus required to be maintained in s. 624.408 has been dissipated and the insurer is not possessed of assets at least equal to all its liabilities together with its total issued and outstanding capital stock, if a stock insurer, or the minimum surplus or net trust fund required by s. 624.407, if a mutual, reciprocal, or business trust insurer. "Impairment of surplus" means that the surplus of a stock insurer, the additional surplus of a mutual or reciprocal insurer, or the addition al net trust fund of a business trust insurer does not comply with the requirements of s. 624.408. "Insolvency" means that all the assets of the insurer, if made immediately available, would not be sufficient to discharge all its liabilities or that the insurer is unable to pay its debts as they become due in the usual course of business. When the context of any provision of this code so indicates, insolvency also incl udes and, is defined as "impairment of surplus, and "impairment of capital".

The bill provides for the expenditure of State funds in two ways. It authorizes the transfer of up to $2 billion from GR to the SBA for the RAP Program if coverage payments are necessary. It also allows the transfer of up to $5 million from GR to the SBA for the administration of the RAP Program and post-event examinations for covered events that require RAP coverage. However, the funds are required to revert back to GR if they are not expended.

The bill renews the funding for the MSFH Program by appropriating $150 million in nonrecurring funds from GR to DFS for the 2022-2023 fiscal year. The funds appropriated are allocated as follows:

- $115 million for mitigation grants.
- $25 million for hurricane mitigation inspections.
- $4 million for education and consumer awareness.
- $1 million for public outreach for contractors and estate brokers and sales associates.
- $5 million for administrative costs.

The bill appropriates any unexpended balance of funds from the MSFH Program appropriation remaining on June 30, 2023, to DFS for the 2023-2024 fiscal year to be used for the MSFH Program. The appropriation will expire on October 1, 2024.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill addresses bad faith, attorney fees in litigation where an assignment agreement has been signed, and the application of a contingency risk multiplier, litigation costs related to property insurance claims will likely decrease.

Property insurance rates are based upon multiple factors, including litigation costs. To the extent the bill reduces litigation costs for property insurance cases, it may cause property insurance rates to decrease. The bill may also result in a reduced incentive for attorneys to litigate property insurance cases. This may cause fewer property insurance cases to be litigated, which might further reduce property insurance rates. However, this could have the unintended consequence of making it more difficult to obtain an attorney for certain property insurance cases.

The establishment of the RAP Program, which requires participating insurers to reduce rates charged to policyholders in accordance with the reinsurance benefits the insurers receive, will have a positive impact on insurers and policyholders. Additionally, to the extent that homes that participate in the MSFH Program receive mitigation credits under their insurance policies and are less exposed to risk as a result of mitigation retrofitting using grant funds, the MSFH Program will also have a positive direct economic impact on homeowners.

D. FISCAL COMMENTS:

None.