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# **Insurance & Banking Subcommittee**

**Wednesday, November 18, 2015**

**1:00 PM**

**Sumner Hall (404 HOB)**

**MEETING PACKET**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Insurance & Banking Subcommittee

**Start Date and Time:** Wednesday, November 18, 2015 01:00 pm  
**End Date and Time:** Wednesday, November 18, 2015 03:00 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 413 Title Insurance by Hager  
HB 431 Fire Safety by Raburn, Combee  
HB 463 Public Records/Nonsworn DFS Investigative Personnel by Lee  
HB 467 Insurance Guaranty Association Assessments by Broxson

Office of Insurance Consumer Advocate - Unexpected Out-of-Network Medical Expenses

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Tuesday, November 17, 2015.

By request of the Chair, all Insurance & Banking Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, November 17, 2015.

**NOTICE FINALIZED on 11/10/2015 4:18PM by McCloskey.Michele**



# **The Florida House of Representatives**

**Regulatory Affairs Committee**

**Insurance & Banking Subcommittee**

**Steve Crisafulli**  
Speaker

**John Wood**  
Chair

## **AGENDA**

November 18, 2015

404 House Office Building

1:00 PM – 3:00 PM

- I. Prayer and Pledge of Allegiance**
- II. Call to Order & Roll Call**
- III. Consideration of the following bill(s):**
  - A. HB 413 Title Insurance by Hager
  - B. HB 431 Fire Safety by Raburn, Combee
  - C. HB 463 Public Records/Nonsworn DFS Investigative Personnel by Lee
  - D. HB 467 Insurance Guaranty Association Assessments by Broxson
- IV. Office of Insurance Consumer Advocate – Unexpected Out-of-Network Medical Expenses**
  - A. Sha’Ron James, Insurance Consumer Advocate
- V. Adjournment**



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A bill to be entitled  
An act relating to title insurance; amending s.  
627.778, F.S.; revising certain limitations on  
assumption of risk by title insurers; authorizing a  
title insurer to obtain reinsurance by a reinsurance  
treaty or other reinsurance agreement under certain  
conditions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section  
627.778, Florida Statutes, is amended, and subsection (4) is  
added to that section, to read:

627.778 Limit of risk.—

(1)(a) A title insurer may not issue any contract of title  
insurance, either as a primary insurer or as a coinsurer or  
reinsurer, upon an estate, lien, or interest in property located  
in this state unless:

1. The contract shows on its face the dollar amount of the  
risk assumed; and

2. The dollar amount of the risk assumed does not exceed  
~~one-half of~~ its surplus as to policyholders, unless the excess  
is simultaneously reinsured in one or more authorized ~~approved~~  
insurers.

(4) Notwithstanding any other provision of this part, a  
title insurer may obtain reinsurance by a reinsurance treaty or

HB413

2016

27 | other reinsurance agreement from an assuming insurer with a  
28 | financial strength rating of "A" or higher by A. M. Best Company  
29 | or an equivalent rating by another national rating service  
30 | acceptable to the office.

31 |       Section 2. This act shall take effect July 1, 2016.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 413 Title Insurance  
**SPONSOR(S):** Hager  
**TIED BILLS:** IDEN./SIM. BILLS: SB 548

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Lloyd <i>LCM</i>	Luczynski <i>ML</i>
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Purchasers of real property and lenders utilize title insurance to protect their interests against claims by others to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend against adverse claims on the subject property's title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.

Title insurers are regulated by the Office of Insurance Regulation (OIR) and are subject to the provisions of Part XIII of ch. 627, F.S. Section 627.778, F.S., among other things, provides that a title insurer cannot assume a risk that exceeds one half of its surplus. However, the title insurer may underwrite a risk that exceeds this limit if it simultaneously reinsures the excess amount. They must do this using one or more approved title insurers. There are 42 jurisdictions that have higher or no limit (21 states) related to a single title insurance risk.

There are multiple private organizations that engage in the evaluation and rating of insurance companies for the purposes of identifying the financial strength of insurers. These financial strength ratings allow potential investors to make informed decisions regarding possible investment in the rated insurer. The rating companies use similar terminology, but each has a proprietary method to establish their rating results.

The bill will increase the risk limit that a single title insurer can assume, whether as a primary risk or as assumed reinsurance or coinsurance, from one half of the dollar value of its surplus to the full amount of its surplus. It will also allow the title insurer to seek reinsurance for any amounts underwritten in excess of their statutory risk limitation from any insurer that has a financial strength rating of "A" or higher by the A.M. Best Company or an equivalent rating by another rating service acceptable to the OIR, rather than just from other authorized title insurers. This expands the number of insurers that may provide title insurance reinsurance from only Florida's title insurers to any insurer that carries the specified financial strength rating.

The bill has no fiscal impact on state or local government. It has an indeterminate positive impact on the private sector.

The bill is effective July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Title Insurance

Title insurance insures owners of real property or others having an interest in real property, such as lenders, against loss by: encumbrance; defective title; invalidity; or adverse claim to title.<sup>1</sup> Title insurance is a policy issued by a title insurer that, after evaluating a search of title, insures against certain covered risks including: forgery; fraud; liens; and encumbrances on a title. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty by the title insurer to defend against adverse claims on the subject property's title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.<sup>2</sup>

Title insurers are regulated by the Office of Insurance Regulation (OIR) and are subject to the provisions of ch. 627, F.S., Part XIII, Title Insurance Contracts. Section 627.778, F.S., among other things, limits the amount of risk that a title insurer can assume regarding insurance covering an estate, lien, or interest in property in the state.<sup>3</sup> The title insurer cannot assume a risk that exceeds one half of its surplus.<sup>4</sup> However, the title insurer may underwrite a risk that exceeds this limit if they simultaneously reinsure the amount of the risk in excess of the limit. They must do this using one or more approved title insurers.<sup>5, 6</sup> This results in the primary and reinsurance title insurance risks competing in the same market with a limited number of insurers.<sup>7</sup>

Florida is among the minority of states, including the District of Columbia, with a single risk limit at this level or that are more restrictive. Forty-two states have higher or no single risk limits (21 states have no limitation in this regard). While Florida's risk limit is similar to the single risk limit found in the National Association of Insurance Commissioners Title Insurers Model Act,<sup>8</sup> Florida's single risk limit does not

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<sup>1</sup> s. 624.608, F.S. Title insurance is also insurance of owners and secured parties of the existence, attachment, perfection and priority of security interests in personal property under the Uniform Commercial Code.

<sup>2</sup> See, e.g., AMERICAN LAND TITLE ASSOCIATION (ALTA), <http://www.alta.org> (last visited Nov. 10, 2015). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies. AMERICAN LAND TITLE ASSOCIATION, Title Insurance: A Comprehensive Overview, <http://www.alta.org/about/TitleInsuranceOverview.pdf> (last visited Nov. 10, 2015).

<sup>3</sup> This limitation is applicable to both primary risk assumed by the title insurer and any reinsurance or coinsurance it issues to other title insurers. s. 627.778(1), F.S.

<sup>4</sup> "Surplus" is the amount by which assets exceed liabilities. BEST'S INSURANCE RESOURCES, Glossary of Insurance Terms, <http://www.ambest.com/resource/glossary.html> (last visited Nov. 13, 2015).

<sup>5</sup> The Insurance Code does not define or commonly use the term "approved insurer." This term is conventionally accepted to mean "authorized insurer," which is defined under section 624.09, F.S., and means an insurer that holds a certificate of authority issued by the OIR.

<sup>6</sup> Title insurance is a mono-line product, meaning that an insurer is prohibited from transacting title insurance in combination with any other line of insurance. s. 627.786, F.S. Since title insurance is a mono-line risk, only other authorized title insurers may be used to reinsure or coinsure title insurance risks.

<sup>7</sup> There are 18 title insurance companies participating in the state according to the OIR web site. FLORIDA OFFICE OF INSURANCE REGULATION, Active Company Search, <http://www.flair.com/CompanySearch/> (last visited Nov. 13, 2015). "Company Type" search term limited to "Title Insurance."

<sup>8</sup> "The net retained liability of a title insurer for a single risk in regard to property, whether assumed directly or as reinsurance, shall not exceed the aggregate of fifty percent (50%) of surplus as regards policyholders plus the statutory premium reserve less the company's investment in title plants, all as shown in the most recent annual statement of the insurer on file with the commissioner." Section 8. A. Single Risk Limit, Title Insurers Model Act, MDL-628, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, *Products & Services*, <http://www.naic.org/store/free/MDL-628.pdf> (last visited Nov. 16, 2015).

take statutory premium reserves into account, which could significantly increase the allowable single risk retention, if utilized.<sup>9</sup>

### Financial Strength Ratings

There are multiple private organizations that engage in the evaluation and rating of insurance companies for the purposes of identifying the financial strength of insurers.<sup>10</sup> These financial strength ratings allow potential investors to make informed decisions regarding possible investment in the rated insurer. The rating companies use similar terminology, but each has a proprietary method to establish their rating results. While the rating results are similar, one should review the rating organization's own explanation of its approach and methods to understand the subtle differences that occur when a particular insurer is rated by multiple rating organizations. A.M. Best's Financial Strength Rating is divided between "Secure," with ratings between A++ and B+, or "Vulnerable," with ratings of B or lower. Among the "Secure" ratings, A++ and A+ are described as "Superior," A and A- are described as "Excellent," and B++ and B+ are described as "Good" in terms of A.M. Best's opinion of the company's ability to meet financial obligations.<sup>11</sup>

### Effect of the Bill

The bill will increase the limit that a single title insurer can assume, whether as a primary risk or as assumed reinsurance or coinsurance, from one half of the dollar value of its surplus to the full amount of its surplus. It will also allow the title insurer to seek reinsurance for any amounts underwritten in excess of their statutory risk limitation from an insurer that has a financial strength rating of "A" or higher by the A.M. Best Company or an equivalent rating by another rating service acceptable to the OIR, rather than just from other authorized title insurers. This expands the number of insurers that may provide title insurance reinsurance from only Florida's title insurers to any insurer that carries the specified financial strength rating.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 627.778, F.S., relating to limit of risk.

**Section 2:** Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

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

##### 1. Revenues:

<sup>9</sup> According to financial data published by the ALTA, nationwide aggregate statutory surplus is approximately \$3.81 billion and statutory reserve is \$3.76 billion. AMERICAN LAND TITLE ASSOCIATION (ALTA), *Industry Financial Data*, <http://www.alta.org/industry/financial.cfm> (last visited Nov. 16, 2015).

<sup>10</sup> Financial strength rating organizations include: A.M. Best ([www.ambest.com](http://www.ambest.com)), Fitch ([www.fitchratings.com](http://www.fitchratings.com)), Moody's Investor Services ([www.moodys.com](http://www.moodys.com)), Standard & Poor's ([www.standardandpoors.com](http://www.standardandpoors.com)), and Demotech ([www.demotech.com](http://www.demotech.com)).

<sup>11</sup> See A.M. BEST COMPANY, Guide to Best's Financial Strength Ratings, <http://www.ambest.com/ratings/guide.pdf>. (Last viewed Nov. 13, 2015).

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill expands the amount of risk that a single title insurer can underwrite and allows reinsurance to be obtained from a larger class of insurers. This should benefit the private sector to the extent that it reduces the burdens on consumers and title insurance companies when they are attempting to underwrite high value risks and it allows title insurers access to more capital when they are required to place excess risk with a reinsurer.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

**Insurance & Banking Subcommittee**

**HB 413 by Rep. Hager  
Title Insurance**

**AMENDMENT SUMMARY  
November 18, 2015**

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**Amendment 1 by Rep. Hager (Line 24):** The amendment removes a proposed exception allowing title insurance reinsurance to be purchased from reinsurers with a specified financial strength rating. Instead, it authorizes title insurance reinsurance to be obtained from any reinsurer eligible to provide reinsurance in Florida.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking  
 2 Subcommittee

3 Representative Hager offered the following:

4  
 5 **Amendment (with title amendment)**  
 6 Remove lines 24-30 and insert:  
 7 insurers or one or more reinsurers that may provide reinsurance  
 8 under s. 624.610.

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10 -----

11 **T I T L E A M E N D M E N T**

12 Remove lines 5-7 and insert:  
 13 title insurer to obtain reinsurance from an eligible reinsurer;  
 14 providing an effective date.



1                                   A bill to be entitled  
 2           An act relating to fire safety; amending s. 633.202,  
 3           F.S.; defining terms; exempting nonresidential farm  
 4           buildings and agricultural pole barns from the Florida  
 5           Fire Prevention Code under specified circumstances;  
 6           providing that a structure used for agritourism  
 7           activity is subject to an annual inspection for  
 8           classification; providing classifications; directing  
 9           the State Fire Marshal to adopt rules administering  
 10          the section; amending s. 633.208, F.S.; authorizing a  
 11          local fire official to consider a specified  
 12          publication when identifying an alternative to a  
 13          firesafety code; providing an effective date.

14  
 15   Be It Enacted by the Legislature of the State of Florida:

16  
 17          Section 1. Subsection (16) of section 633.202, Florida  
 18          Statutes, is amended to read:

19          633.202 Florida Fire Prevention Code.—

20          (16) (a) As used in this subsection, the term:

21                1. "Agricultural pole barn" means a nonresidential farm  
 22 building in which 70 percent or more of the perimeter walls are  
 23 permanently open and allow free ingress and egress.

24                2. "Nonresidential farm building" has the same meaning as  
 25 provided in s. 604.50.

26          (b) A nonresidential farm building structure, ~~located on~~

27 ~~property that is classified for ad valorem purposes as~~  
 28 ~~agricultural, which is part of a farming or ranching operation,~~  
 29 in which the occupancy is limited by the property owner to no  
 30 more than 35 persons, ~~and which is not used by the public for~~  
 31 ~~direct sales or as an educational outreach facility,~~ is exempt  
 32 from the Florida Fire Prevention Code, including the national  
 33 codes and Life Safety Code incorporated by reference. ~~This~~  
 34 ~~paragraph does not include structures used for residential or~~  
 35 ~~assembly occupancies, as defined in the Florida Fire Prevention~~  
 36 ~~Code.~~

37 (c) Notwithstanding any other provision of law, an  
 38 agricultural pole barn is exempt from the Florida Fire  
 39 Prevention Code, including the national codes and the Life  
 40 Safety Code incorporated by reference.

41 (d) Notwithstanding any other provision of law, a  
 42 structure used by an owner for agritourism activity as defined  
 43 in s. 570.86 is subject to an annual inspection for  
 44 classification by the local authority having jurisdiction. A  
 45 structure used for agritourism activity must be classified in  
 46 one of three classes:

47 1. Class 1: A nonresidential farm building used by the  
 48 owner 12 times per year or fewer for agritourism activity with  
 49 up to 100 persons occupying the structure at one time.

50 2. Class 2: A nonresidential farm building used by the  
 51 owner for agritourism activity with up to 300 persons occupying  
 52 the structure at one time.

53           3. Class 3: A new or an additional structure or facility  
 54 constructed or an existing structure used for the primary use of  
 55 housing, sheltering, or otherwise accommodating members of the  
 56 general public. This class is subject to the Florida Fire  
 57 Prevention Code.

58           (e) The State Fire Marshal shall adopt rules to administer  
 59 this section, including, but not limited to:

60           1. The use of alternative lifesafety and fire prevention  
 61 standards for structures in Classes 1 and 2;

62           2. Notification and inspection requirements for structures  
 63 in Classes 1 and 2;

64           3. The application of the Florida Fire Prevention Code for  
 65 Class 3 structures; and

66           4. Any other standards or rules deemed necessary in order  
 67 to facilitate the use of structures for agritourism activities.

68           ~~(17)(b)~~ A tent up to 900 square ~~30 feet by 30 feet~~ is  
 69 exempt from the Florida Fire Prevention Code, including the  
 70 national codes incorporated by reference.

71           Section 2. Subsection (5) of section 633.208, Florida  
 72 Statutes, is amended to read:

73           633.208 Minimum firesafety standards.—

74           (5) With regard to existing buildings, the Legislature  
 75 recognizes that it is not always practical to apply any or all  
 76 of the provisions of the Florida Fire Prevention Code and that  
 77 physical limitations may require disproportionate effort or  
 78 expense with little increase in fire or life safety. Before

HB 431

2016

79 ~~Prior to~~ applying the minimum firesafety code to an existing  
80 building, the local fire official shall determine whether ~~that~~ a  
81 threat to lifesafety or property exists. If a threat to  
82 lifesafety or property exists, the fire official shall apply the  
83 applicable firesafety code for existing buildings to the extent  
84 practical to ensure ~~assure~~ a reasonable degree of lifesafety and  
85 safety of property or the fire official shall fashion a  
86 reasonable alternative that ~~which~~ affords an equivalent degree  
87 of lifesafety and safety of property. The local fire official  
88 may consider the fire safety evaluation systems in NFPA 101A:  
89 Guide on Alternative Approaches to Life Safety, adopted by the  
90 State Fire Marshal, as acceptable systems for the identification  
91 of low-cost, reasonable alternatives. The decision of the local  
92 fire official may be appealed to the local administrative board  
93 described in s. 553.73.

94 Section 3. This act shall take effect July 1, 2016.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 431 Fire Safety  
**SPONSOR(S):** Raburn and others  
**TIED BILLS:** IDEN./SIM. BILLS: SB 822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Bauer <i>JB</i>	Luczynski <i>MJ</i>
2) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer (CFO) as the State Fire Marshal, and requires the State Fire Marshal to adopt the Florida Fire Prevention Code (FFPC) by rule every three years. The FFPC sets forth firesafety standards (including certain national codes) for property and is enforced by local fire officials within each county, municipality, and special fire districts in the state.

Exemptions from the FFPC: Currently, a structure located on agricultural property is exempt from the FFPC if the occupancy is limited to 35 persons and is not used by the public for direct sales or as an educational outreach facility. Tents up to 30 feet by 30 feet are also exempt. Nonresidential farm buildings are currently exempt from the Florida Building Code and county and municipal codes, but not from the FFPC.

The bill creates a new exemption from the FFPC and national codes for *agricultural pole barns*, which are nonresidential farm buildings in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress. In addition, the bill revises the two existing exemptions from the FFPC and national codes by:

- Restating the current exemption for *tents* to be up to 900 square feet, and
- Revising the current exemption for *structures located on agricultural property and limited to a maximum occupancy for 35 persons* to exempt a "nonresidential farm building" with a maximum occupancy of 35 persons and removes the exclusion on use by the public for direct sales or as an educational outreach facility.

Structures Used for Agritourism Activity: Currently, agritourism structures are not exempt from the FFPC.

The bill provides that structures used for agritourism activities are subject to annual inspection and classification by local authorities into one of 3 classes, and requires the State Fire Marshal to adopt rules to implement these classifications:

- *Class 1:* A nonresidential farm building used by the owner 12 times per year or fewer for agritourism activity, with a maximum occupancy of 100 persons.
- *Class 2:* A nonresidential farm building used by the owner for agritourism activity, with a maximum occupancy of 300 persons.
- *Class 3:* A structure used for the primary use of housing, sheltering, or accommodating the general public. Class 3 structures are subject to the FFPC.

Additionally, the bill permits local fire officials to consider certain alternative national life safety approaches as a low-cost, reasonable alternative to minimum firesafety standards, with regard to existing buildings.

The bill has minimal to no fiscal impact on state government. The bill has an indeterminate fiscal impact on local governments by decreasing review fees due to broadened class of structures exempted the FFPC, but may be offset by the annual inspections of structures used for agritourism activity. The bill should have a positive fiscal impact on the private sector.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

###### *State Fire Prevention – State Fire Marshal*

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer (CFO) as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire.<sup>1</sup> Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every three years.<sup>2</sup> The FFPC includes national firesafety and life safety standards set forth by the National Fire Protection Association (NFPA),<sup>3</sup> including the NFPA's Fire Code (1), Life Safety Code (101) and Guide on Alternative Approaches to Life Safety (101A).

###### *Fire Safety Enforcement by Local Governments*

State law requires all municipalities, counties, and special districts with firesafety responsibilities to enforce the FFPC as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.<sup>4</sup> These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S.,<sup>5</sup> but may not enact fire safety ordinances which conflict with ch. 633, F.S., or any other state law.<sup>6</sup>

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.<sup>7</sup> Each county, municipality, and special district with firesafety enforcement responsibilities is also required to employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.<sup>8</sup>

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<sup>1</sup> s. 633.104, F.S.

<sup>2</sup> s. 633.202, F.S.

<sup>3</sup> Founded in 1895, the NFPA is a global, nonprofit organization devoted to eliminating death, injury, property and economic loss due to fire, electrical and related hazards. It has developed over 300 voluntary consensus codes and standards in the areas of fire, electrical, and building safety which are widely used by state and local officials. NATIONAL FIRE PROTECTION ASSOCIATION, *About NFPA*, at <http://www.nfpa.org/about-nfpa> (last viewed Nov. 9, 2015). The NFPA states that the Guide on Alternative Approaches to Life Safety "is intended to be used in conjunction with the Life Safety Code (101), not as a substitute." NATIONAL FIRE PROTECTION ASSOCIATION, *NFPA 101A: Guide on Alternative Approaches to Life Safety*, at <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=101a> (last viewed Nov. 9, 2015).

<sup>4</sup> ss. 633.108 and 633.208, F.S.

<sup>5</sup> s. 633.208, F.S.; see also s. 633.102(21), F.S., for the definition of "minimum firesafety standard" and Rule 69A-60.002, F.A.C.

<sup>6</sup> s. 633.214(4), F.S. A list of local amendments to the FFPC is available at DIVISION OF STATE FIRE MARSHAL, *Local Amendments*: <http://www.myfloridacfo.com/division/sfm/BFP/LocalAmendments.htm> (last viewed Nov. 12, 2015).

<sup>7</sup> s. 633.118, F.S.

<sup>8</sup> s. 633.216(1), F.S.

Since the Legislature recognizes that it is not always practical to apply any or all of the provisions of the FFPC, under the minimum fire safety standards, the local fire officials shall apply the applicable fire safety code for existing buildings to the extent practical to ensure a reasonable degree of life safety and safety of property. The local fire officials are also required to fashion reasonable alternatives that afford an equivalent degree of life safety and safety of property.<sup>9</sup>

#### *Current Exemptions from the FFPC*

Currently, s. 633.202(16), F.S., exempts two types of structures from the FFPC and national codes incorporated by reference:

- A structure located on property that classified as agricultural for ad valorem purposes and which is part of a farming or ranching operation, if the occupancy is limited by the property owner to no more than 35 persons and is not used by the public for direct sales or as an educational outreach facility. Structures used for residential or assembly purposes (as defined in the FFPC) are not included in this exemption.<sup>10</sup>
- Tents up to 30 feet by 30 feet.

“Nonresidential farm buildings” are currently *not* exempt from the FFPC, but are exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations.<sup>11</sup> These structures are defined under s. 604.50, F.S., as any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm for the purposes of the Florida Building Code, or that is classified as agricultural land for assessment purposes, is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

#### *Agritourism Activity*

An “agritourism activity” is any agricultural related activity consistent with a bona fide farm or ranch or in a working forest that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions.<sup>12</sup> “Agritourism activity” does *not* include the construction of new or additional structures or facilities intended primarily to house, shelter transport, or otherwise accommodate members of the general public. Agritourism is one of the many methods farmers use to diversify and expand their income.

In 2007, the Florida Legislature enacted HB 1427, authorizing the Department of Agriculture and Consumer Services (DACCS) to provide marketing advice, technical expertise, promotional support, and product development related to agritourism to assist various entities, including local governments, in their agritourism initiatives.<sup>13</sup> The 2007 legislation does not grant regulatory authority to DACCS or any other state agency over agritourism activities, but directs local governments and agricultural representatives to meet on issues such as conflict resolution and regulatory streamlining.<sup>14</sup> In 2013,

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<sup>9</sup> s. 633.208, F.S.

<sup>10</sup> Chapter 6 of the FFPC defines “residential occupancy” as “an occupancy that provides sleeping accommodations for purposes other than health care or detention and correctional,” and defines “assembly occupancy” as “an occupancy (1) used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or (2) used as a special amusement building, regardless of occupant load.” See NFPA, *Classification of Occupancy and Hazard of Contents*, <http://codesonline.nfpa.org/a/c.ref/ID020101110939/chapter> (last viewed Nov. 12, 2015).

<sup>11</sup> s. 604.50(1), F.S.

<sup>12</sup> s. 570.86(1), F.S. Legislation filed for the 2016 session (CS/HB 59) would expand the definition of “agritourism activity” to include civic or ceremonial activities, such as weddings and charitable fundraisers held on a farm.

<sup>13</sup> Ch. 2007-244, Laws of Fla., codified at s. 570.85, F.S.

<sup>14</sup> s. 570.87, F.S.

the Florida Legislature enacted SB 1106, codified in part as s. 570.85, F.S.<sup>15</sup> The statute prohibits a local government from *adopting* ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land that has been classified as agricultural land under Florida's greenbelt law.<sup>16</sup> The statute also provides limited liability protection for landowners conducting agritourism activities on their property.<sup>17</sup>

It does not appear that either ch. 633, F.S., or the FFPC specifically address agritourism activity. However, the FFPC and national codes provide that events held in any location, whether agricultural or not, that are considered assembly, mercantile, or business in nature, require a building to change occupancy type. When this occurs, the property owner must bring the building up to the new fire prevention code standards for that occupancy type. This may require the installation of several fire protection features such as fire sprinklers, fire alarm systems, or egress capacity.<sup>18</sup>

### **Effect of the Bill**

The bill broadens the types of structures exempt from the FFPC by amending the two existing exemptions to the FFPC, creates an agricultural pole barn exemption to the FFPC, and creating a 3-tier classification system for structures used for agritourism activity. Additionally, the bill allows local fire officials to consider the fire safety evaluation systems found in the NFPA's Guide on Alternative Approaches to Life Safety (101A) as an acceptable systems for identifying reasonable alternatives to current minimum firesafety standards in s. 633.208, F.S., with regard to existing buildings.

- *Agricultural pole barns*: The bill exempts "agricultural pole barns" from the FFPC, including the national codes and the Life Safety Code incorporated by reference. The bill defines "agricultural pole barns" as a nonresidential farm building in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress.
- *Nonresidential farm buildings*: The bill amends the current FFPC exemption in s. 633.202(16), F.S., for structures located on agricultural property, to provide that "nonresidential farm buildings" (which the bill provides has the same meaning as s. 604.50, F.S.) that the property owner limits occupancy to more than 35 persons are exempt from the FFPC. The bill also removes the exclusion on use of by the public for direct sales or as educational outreach facilities.

By providing that the term "nonresidential farm building" has the same meaning as in s. 604.50, F.S., the bill exempts from the FFPC and national codes:

Any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c) [the Building Code] or that *is used primarily for agricultural purposes*, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, and is not intended to be used as a residential dwelling.

As such, buildings such as barns, greenhouses, shade houses, farm offices, storage buildings, or poultry houses would be exempt from the FFPC, if used primarily for agricultural purposes.

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<sup>15</sup> Ch. 2013-179, Laws of Fla.

<sup>16</sup> s. 570.85, F.S. CS/HB 59 (2016) would also prohibit local governments from *enforcing* local ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise agritourism activities on agricultural land.

<sup>17</sup> s. 570.88, F.S.

<sup>18</sup> Florida Department of Financial Services, Agency Analysis of 2016 House Bill 413, p. 1 (Nov. 12, 2015). The FFPC and national codes define *assembly occupancy* as an occupancy used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or (2) used as a special amusement building, regardless of occupant load (e.g., dance halls, museums, skating rinks). *Mercantile occupancy* means an occupancy used for the display and sale of merchandise (e.g., drugstores and supermarkets). *Business occupancy* means an occupancy used for the transaction of business other than mercantile (e.g., city and town halls, doctors' offices).

- *Tents*: The bill also restates the current FFPC exemption for 30 feet by 30 feet tents from the FFPC to 900 square feet.
- *Structures used for agritourism activity*: The bill requires structures used by their owner for “agritourism activity” (as defined in s. 570.86, F.S.) to be subject to annual inspection for classification by the local authority having jurisdiction, notwithstanding any other provision of law. The local authority must classify such structures in one of three classes, described in further detail below.
- *Rulemaking authority for State Fire Marshal regarding agritourism structures*: The bill requires the State Fire Marshal to adopt rules relating to agritourism structures, “including, but not limited to” the use of alternative life safety and fire prevention standards and notification and inspection requirements for Class 1 and Class 2 structures, as well as the application of the FFPC to Class 3 structures, and any other standards or rules necessary to facilitate the use of structures for agritourism activities.

<b>Structure</b>	<b>Requirements</b>	<b>Occupancy Limit</b>	<b>FFPC Applicability</b>
<i>Agricultural pole barn</i>  (treated as a nonresidential farm building in the bill)	70% or more of the perimeter walls are permanently open and allow free ingress/egress.	None	Exempt
<i>Tent</i>	Up to 900 square feet.	None	Exempt
<i>Nonresidential farm building</i>  (bill refers to the term as defined in s. 604.50, F.S.)	Used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land for tax purposes, and is not intended to be used as a residential dwelling.	Up to 35 persons	Exempt
<i>Class 1 structure used for agritourism activity</i>	Nonresidential farm building used by the owner for agritourism activity 12 times per year or fewer.	Up to 100 persons	Classified as Class 1 by local fire inspection authority; subject to alternative standards in State Fire Marshal rules.
<i>Class 2 structure used for agritourism activity</i>	Nonresidential farm building used by the owner for agritourism activity.	Up to 300 persons	Classified as Class 2 by local fire inspection authority; subject to alternative standards in State Fire Marshal rules.
<i>Class 3 structure used for agritourism activity</i>	New/additional or existing structure or facility used for the primary purpose of housing, sheltering, or otherwise accommodating the general public.	None	Classified as Class 3 by local fire inspection authority; subject to the FFPC and State Fire Marshal rules.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 633.202, F.S., relating to the Florida Fire Prevention Code.

Section 2. Amends s. 633.208, F.S., relating to minimum firesafety standards.

Section 3. Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires the State Fire Marshal to adopt rules relating to the classification and inspection of structures used for agritourism activity, but DFS noted this would be a minimal impact.<sup>19</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. The bill may decrease review fees arising from the exemption of nonresidential farm buildings from the FFPC, but may be offset by the new annual inspections of structures used for agritourism activity.

2. Expenditures:

See above.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate positive fiscal impact on agricultural property owners, since bill allows some agritourism structures to be subject to alternative lifesafety and fire prevention standards instead of the FFPC.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill requires the State Fire Marshal to adopt rules to administer the bill's new exemptions from the FFPC, "including, but not limited to" the three new classes of agritourism structures.

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<sup>19</sup> Florida Department of Financial Services, Agency Analysis of 2016 House Bill 431, p.2 (Nov. 12, 2016).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

## INSURANCE & BANKING SUBCOMMITTEE

### HB 431 by Rep. Raburn Fire Safety

#### AMENDMENT SUMMARY November 18, 2015

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**Amendment 1 by Rep. Raburn (Strike-all amendment):** Conforms the bill to the Senate companion bill, SB 822. The Senate bill contains the same exemptions from the Florida Fire Prevention Code (FFPC) as the House bill for agricultural pole barns, tents up to 900 square feet, and nonresidential farm buildings, and also permits local fire officials to consider alternative national life safety approaches.

However, the Senate bill does not contain a three-level classification system for structures used for "agritourism activity." Instead, the Senate bill provides that structures on a "farm" (as defined in s. 823.14(3)(a), F.S.) used by the owner for "assembly, business, or mercantile activity" must be classified in one of three classes, with occupancy and use requirements similar to that of the House bill's 3-level agritourism structures:

- Class 1 structures are not inspected by local authorities and are not subject to the FFPC;
- Class 2 structures are inspected by local authorities, but are not subject to the FFPC;
- and
- Class 3 structures are subject to local inspection and are subject to the FFPC.

The amendment also requires the State Fire Marshal to adopt rules to implement the 3-class "assembly, business, and mercantile" structures, including alternative life safety and fire prevention standards for Class 1 and Class 2 structures.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Insurance & Banking  
Subcommittee

Representative Raburn offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Subsection (16) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.-

(16) (a) As used in this subsection, the term:

1. "Agricultural pole barn" means a nonresidential farm building in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress.

2. "Nonresidential farm building" has the same meaning as provided in s. 604.50.

(b) Notwithstanding any other provision of law, a nonresidential farm building A structure, located on property



Amendment No. 1

19 ~~that is classified for ad valorem purposes as agricultural,~~  
20 ~~which is part of a farming or ranching operation,~~ in which the  
21 occupancy is limited by the property owner to no more than 35  
22 ~~persons, and which is not used by the public for direct sales or~~  
23 ~~as an educational outreach facility,~~ is exempt from the Florida  
24 Fire Prevention Code, including the national codes and Life  
25 Safety Code incorporated by reference. ~~This paragraph does not~~  
26 ~~include structures used for residential or assembly occupancies,~~  
27 ~~as defined in the Florida Fire Prevention Code.~~

28 (c) Notwithstanding any other provision of law, an  
29 agricultural pole barn is exempt from the Florida Fire  
30 Prevention Code, including the national codes and the Life  
31 Safety Code incorporated by reference.

32 (d) Notwithstanding any other provision of law, a structure  
33 on a farm as defined in s. 823.14(3)(a) which is used by an  
34 owner for assembly, business, or mercantile activity must be  
35 classified in one of the following classes:

36 1. Class 1: A nonresidential farm building that is used by  
37 the owner 12 times per year or fewer for assembly, business, or  
38 mercantile activity with up to 100 persons occupying the  
39 structure at one time. This class is not subject to the Florida  
40 Fire Prevention Code.

41 2. Class 2: A nonresidential farm building that is used by  
42 the owner for assembly, business, or mercantile activity with up  
43 to 300 persons occupying the structure at one time. A structure  
44 in this class is subject to annual inspection for classification  
45 by the local authority having jurisdiction. This class is not  
46 subject to the Florida Fire Prevention Code.

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Amendment No. 1

47       3. Class 3: A new or an additional structure or facility  
48 constructed, or an existing structure, which is used primarily  
49 for housing, sheltering, or otherwise accommodating members of  
50 the general public. A structure or facility in this class is  
51 subject to annual inspection for classification by the local  
52 authority having jurisdiction. This class is subject to the  
53 Florida Fire Prevention Code.

54       (e) The State Fire Marshal shall adopt rules to administer  
55 this section, including, but not limited to:

56       1. The use of alternative lifesafety and fire prevention  
57 standards for structures in Classes 1 and 2;

58       2. Notification and inspection requirements for structures  
59 in Class 2;

60       3. The application of the Florida Fire Prevention Code for  
61 structures in Class 3; and

62       4. Any other standards or rules deemed necessary in order  
63 to facilitate the use of structures for assembly, business, or  
64 mercantile activities.

65       (17) ~~(b)~~ A tent up to 900 square 30 feet by 30 feet is  
66 exempt from the Florida Fire Prevention Code, including the  
67 national codes incorporated by reference.

68       Section 2. Subsection (5) of section 633.208, Florida  
69 Statutes, is amended to read:

70       633.208 Minimum firesafety standards.—

71       (5) With regard to existing buildings, the Legislature  
72 recognizes that it is not always practical to apply any or all  
73 of the provisions of the Florida Fire Prevention Code and that  
74 physical limitations may require disproportionate effort or

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Amendment No. 1

75 expense with little increase in fire or life safety. Before  
 76 ~~Prior to~~ applying the minimum firesafety code to an existing  
 77 building, the local fire official shall determine whether ~~that~~ a  
 78 threat to lifesafety or property exists. If a threat to  
 79 lifesafety or property exists, the fire official shall apply the  
 80 applicable firesafety code for existing buildings to the extent  
 81 practical to ensure ~~assure~~ a reasonable degree of lifesafety and  
 82 safety of property or the fire official shall fashion a  
 83 reasonable alternative that ~~which~~ affords an equivalent degree  
 84 of lifesafety and safety of property. The local fire official  
 85 may consider the fire safety evaluation systems found in NFPA  
 86 101A: Guide on Alternative Approaches to Life Safety, adopted by  
 87 the State Fire Marshal, as acceptable systems for the  
 88 identification of low-cost, reasonable alternatives. The  
 89 decision of the local fire official may be appealed to the local  
 90 administrative board described in s. 553.73.

91 Section 3. This act shall take effect July 1, 2016.

92  
93  
94 -----  
 95 T I T L E A M E N D M E N T

96 Remove everything before the enacting clause and insert:

97 An act relating to firesafety; amending s. 633.202,  
 98 F.S.; defining terms; revising provisions relating to  
 99 certain structures located on agricultural property  
 100 which are exempt from the Florida Fire Prevention  
 101 Code; requiring that certain structures used for  
 102 assembly, business, or mercantile activity be



## Amendment No. 1

103 classified; specifying that certain structures are  
104 subject to annual inspection for classification;  
105 providing classifications; revising certain dimensions  
106 of a tent that is exempt from the code; requiring that  
107 the State Fire Marshal adopt rules; amending s.  
108 633.208, F.S.; authorizing a local fire official to  
109 consider a specified publication when identifying an  
110 alternative to a firesafety code; providing an  
111 effective date.  
112



1                                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           119.071, F.S.; providing an exemption from public  
 4           records requirements for the personal identifying and  
 5           location information of certain nonsworn investigative  
 6           personnel of the Department of Financial Services and  
 7           the names and personal identifying and location  
 8           information of the spouses and children of such  
 9           personnel; providing for future review and repeal of  
 10          the exemption; providing a statement of public  
 11          necessity; providing an effective date.

12  
 13 Be It Enacted by the Legislature of the State of Florida:

14  
 15           Section 1. Paragraph (d) of subsection (4) of section  
 16           119.071, Florida Statutes, is amended to read:

17           119.071 General exemptions from inspection or copying of  
 18           public records.—

19           (4) AGENCY PERSONNEL INFORMATION.—

20           (d)1. For purposes of this paragraph, the term "telephone  
 21           numbers" includes home telephone numbers, personal cellular  
 22           telephone numbers, personal pager telephone numbers, and  
 23           telephone numbers associated with personal communications  
 24           devices.

25           2.a.(I) The home addresses, telephone numbers, social  
 26           security numbers, dates of birth, and photographs of active or

27 | former sworn or civilian law enforcement personnel, including  
 28 | correctional and correctional probation officers, personnel of  
 29 | the Department of Children and Families whose duties include the  
 30 | investigation of abuse, neglect, exploitation, fraud, theft, or  
 31 | other criminal activities, personnel of the Department of Health  
 32 | whose duties are to support the investigation of child abuse or  
 33 | neglect, and personnel of the Department of Revenue or local  
 34 | governments whose responsibilities include revenue collection  
 35 | and enforcement or child support enforcement; the home  
 36 | addresses, telephone numbers, social security numbers,  
 37 | photographs, dates of birth, and places of employment of the  
 38 | spouses and children of such personnel; and the names and  
 39 | locations of schools and day care facilities attended by the  
 40 | children of such personnel are exempt from s. 119.07(1).

41 |       (II) The names of the spouses and children of active or  
 42 | former sworn or civilian law enforcement personnel and the other  
 43 | specified agency personnel identified in sub-sub-subparagraph  
 44 | (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 45 | State Constitution.

46 |       (III) Sub-sub-subparagraph (II) is subject to the Open  
 47 | Government Sunset Review Act in accordance with s. 119.15, and  
 48 | shall stand repealed on October 2, 2018, unless reviewed and  
 49 | saved from repeal through reenactment by the Legislature.

50 |       (IV) The home addresses, telephone numbers, social  
 51 | security numbers, dates of birth, and photographs of current or  
 52 | former nonsworn investigative personnel of the Department of

53 Financial Services whose duties include the investigation of  
 54 fraud, theft, workers' compensation coverage requirements and  
 55 compliance, other criminal activities, or state regulatory  
 56 requirement violations; the names, home addresses, telephone  
 57 numbers, social security numbers, photographs, dates of birth,  
 58 and places of employment of the spouses and children of such  
 59 personnel; and the names and locations of schools and child care  
 60 facilities attended by the children of such personnel are exempt  
 61 from s. 119.07(1) and s. 24(a), Art. I of the State  
 62 Constitution. This sub-sub-subparagraph is subject to the Open  
 63 Government Sunset Review Act in accordance with s. 119.15 and  
 64 shall stand repealed on October 2, 2021, unless reviewed and  
 65 saved from repeal through reenactment by the Legislature.

66       b. The home addresses, telephone numbers, dates of birth,  
 67 and photographs of firefighters certified in compliance with s.  
 68 633.408; the home addresses, telephone numbers, photographs,  
 69 dates of birth, and places of employment of the spouses and  
 70 children of such firefighters; and the names and locations of  
 71 schools and day care facilities attended by the children of such  
 72 firefighters are exempt from s. 119.07(1).

73       c. The home addresses, dates of birth, and telephone  
 74 numbers of current or former justices of the Supreme Court,  
 75 district court of appeal judges, circuit court judges, and  
 76 county court judges; the home addresses, telephone numbers,  
 77 dates of birth, and places of employment of the spouses and  
 78 children of current or former justices and judges; and the names

79 and locations of schools and day care facilities attended by the  
 80 children of current or former justices and judges are exempt  
 81 from s. 119.07(1).

82 d.(I) The home addresses, telephone numbers, social  
 83 security numbers, dates of birth, and photographs of current or  
 84 former state attorneys, assistant state attorneys, statewide  
 85 prosecutors, or assistant statewide prosecutors; the home  
 86 addresses, telephone numbers, social security numbers,  
 87 photographs, dates of birth, and places of employment of the  
 88 spouses and children of current or former state attorneys,  
 89 assistant state attorneys, statewide prosecutors, or assistant  
 90 statewide prosecutors; and the names and locations of schools  
 91 and day care facilities attended by the children of current or  
 92 former state attorneys, assistant state attorneys, statewide  
 93 prosecutors, or assistant statewide prosecutors are exempt from  
 94 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

95 (II) The names of the spouses and children of current or  
 96 former state attorneys, assistant state attorneys, statewide  
 97 prosecutors, or assistant statewide prosecutors are exempt from  
 98 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

99 (III) Sub-sub-subparagraph (II) is subject to the Open  
 100 Government Sunset Review Act in accordance with s. 119.15, and  
 101 shall stand repealed on October 2, 2018, unless reviewed and  
 102 saved from repeal through reenactment by the Legislature.

103 e. The home addresses, dates of birth, and telephone  
 104 numbers of general magistrates, special magistrates, judges of

105 compensation claims, administrative law judges of the Division  
 106 of Administrative Hearings, and child support enforcement  
 107 hearing officers; the home addresses, telephone numbers, dates  
 108 of birth, and places of employment of the spouses and children  
 109 of general magistrates, special magistrates, judges of  
 110 compensation claims, administrative law judges of the Division  
 111 of Administrative Hearings, and child support enforcement  
 112 hearing officers; and the names and locations of schools and day  
 113 care facilities attended by the children of general magistrates,  
 114 special magistrates, judges of compensation claims,  
 115 administrative law judges of the Division of Administrative  
 116 Hearings, and child support enforcement hearing officers are  
 117 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 118 Constitution if the general magistrate, special magistrate,  
 119 judge of compensation claims, administrative law judge of the  
 120 Division of Administrative Hearings, or child support hearing  
 121 officer provides a written statement that the general  
 122 magistrate, special magistrate, judge of compensation claims,  
 123 administrative law judge of the Division of Administrative  
 124 Hearings, or child support hearing officer has made reasonable  
 125 efforts to protect such information from being accessible  
 126 through other means available to the public.

127 f. The home addresses, telephone numbers, dates of birth,  
 128 and photographs of current or former human resource, labor  
 129 relations, or employee relations directors, assistant directors,  
 130 managers, or assistant managers of any local government agency

131 or water management district whose duties include hiring and  
 132 firing employees, labor contract negotiation, administration, or  
 133 other personnel-related duties; the names, home addresses,  
 134 telephone numbers, dates of birth, and places of employment of  
 135 the spouses and children of such personnel; and the names and  
 136 locations of schools and day care facilities attended by the  
 137 children of such personnel are exempt from s. 119.07(1) and s.  
 138 24(a), Art. I of the State Constitution.

139 g. The home addresses, telephone numbers, dates of birth,  
 140 and photographs of current or former code enforcement officers;  
 141 the names, home addresses, telephone numbers, dates of birth,  
 142 and places of employment of the spouses and children of such  
 143 personnel; and the names and locations of schools and day care  
 144 facilities attended by the children of such personnel are exempt  
 145 from s. 119.07(1) and s. 24(a), Art. I of the State  
 146 Constitution.

147 h. The home addresses, telephone numbers, places of  
 148 employment, dates of birth, and photographs of current or former  
 149 guardians ad litem, as defined in s. 39.820; the names, home  
 150 addresses, telephone numbers, dates of birth, and places of  
 151 employment of the spouses and children of such persons; and the  
 152 names and locations of schools and day care facilities attended  
 153 by the children of such persons are exempt from s. 119.07(1) and  
 154 s. 24(a), Art. I of the State Constitution, if the guardian ad  
 155 litem provides a written statement that the guardian ad litem  
 156 has made reasonable efforts to protect such information from

157 | being accessible through other means available to the public.  
 158 |       i. The home addresses, telephone numbers, dates of birth,  
 159 | and photographs of current or former juvenile probation  
 160 | officers, juvenile probation supervisors, detention  
 161 | superintendents, assistant detention superintendents, juvenile  
 162 | justice detention officers I and II, juvenile justice detention  
 163 | officer supervisors, juvenile justice residential officers,  
 164 | juvenile justice residential officer supervisors I and II,  
 165 | juvenile justice counselors, juvenile justice counselor  
 166 | supervisors, human services counselor administrators, senior  
 167 | human services counselor administrators, rehabilitation  
 168 | therapists, and social services counselors of the Department of  
 169 | Juvenile Justice; the names, home addresses, telephone numbers,  
 170 | dates of birth, and places of employment of spouses and children  
 171 | of such personnel; and the names and locations of schools and  
 172 | day care facilities attended by the children of such personnel  
 173 | are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 174 | Constitution.  
 175 |       j.(I) The home addresses, telephone numbers, dates of  
 176 | birth, and photographs of current or former public defenders,  
 177 | assistant public defenders, criminal conflict and civil regional  
 178 | counsel, and assistant criminal conflict and civil regional  
 179 | counsel; the home addresses, telephone numbers, dates of birth,  
 180 | and places of employment of the spouses and children of such  
 181 | defenders or counsel; and the names and locations of schools and  
 182 | day care facilities attended by the children of such defenders

183 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
 184 the State Constitution.

185 (II) The names of the spouses and children of the  
 186 specified agency personnel identified in sub-sub-subparagraph  
 187 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 188 State Constitution. This sub-sub-subparagraph is subject to the  
 189 Open Government Sunset Review Act in accordance with s. 119.15  
 190 and shall stand repealed on October 2, 2019, unless reviewed and  
 191 saved from repeal through reenactment by the Legislature.

192 k. The home addresses, telephone numbers, and photographs  
 193 of current or former investigators or inspectors of the  
 194 Department of Business and Professional Regulation; the names,  
 195 home addresses, telephone numbers, and places of employment of  
 196 the spouses and children of such current or former investigators  
 197 and inspectors; and the names and locations of schools and day  
 198 care facilities attended by the children of such current or  
 199 former investigators and inspectors are exempt from s. 119.07(1)  
 200 and s. 24(a), Art. I of the State Constitution if the  
 201 investigator or inspector has made reasonable efforts to protect  
 202 such information from being accessible through other means  
 203 available to the public. This sub-subparagraph is subject to the  
 204 Open Government Sunset Review Act in accordance with s. 119.15  
 205 and shall stand repealed on October 2, 2017, unless reviewed and  
 206 saved from repeal through reenactment by the Legislature.

207 l. The home addresses and telephone numbers of county tax  
 208 collectors; the names, home addresses, telephone numbers, and

209 | places of employment of the spouses and children of such tax  
 210 | collectors; and the names and locations of schools and day care  
 211 | facilities attended by the children of such tax collectors are  
 212 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 213 | Constitution if the county tax collector has made reasonable  
 214 | efforts to protect such information from being accessible  
 215 | through other means available to the public. This sub-  
 216 | subparagraph is subject to the Open Government Sunset Review Act  
 217 | in accordance with s. 119.15 and shall stand repealed on October  
 218 | 2, 2017, unless reviewed and saved from repeal through  
 219 | reenactment by the Legislature.

220 |         m. The home addresses, telephone numbers, dates of birth,  
 221 | and photographs of current or former personnel of the Department  
 222 | of Health whose duties include, or result in, the determination  
 223 | or adjudication of eligibility for social security disability  
 224 | benefits, the investigation or prosecution of complaints filed  
 225 | against health care practitioners, or the inspection of health  
 226 | care practitioners or health care facilities licensed by the  
 227 | Department of Health; the names, home addresses, telephone  
 228 | numbers, dates of birth, and places of employment of the spouses  
 229 | and children of such personnel; and the names and locations of  
 230 | schools and day care facilities attended by the children of such  
 231 | personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
 232 | the State Constitution if the personnel have made reasonable  
 233 | efforts to protect such information from being accessible  
 234 | through other means available to the public. This sub-

235 | subparagraph is subject to the Open Government Sunset Review Act  
 236 | in accordance with s. 119.15 and shall stand repealed on October  
 237 | 2, 2019, unless reviewed and saved from repeal through  
 238 | reenactment by the Legislature.

239 |       n. The home addresses, telephone numbers, dates of birth,  
 240 | and photographs of current or former impaired practitioner  
 241 | consultants who are retained by an agency or current or former  
 242 | employees of an impaired practitioner consultant whose duties  
 243 | result in a determination of a person's skill and safety to  
 244 | practice a licensed profession; the names, home addresses,  
 245 | telephone numbers, dates of birth, and places of employment of  
 246 | the spouses and children of such consultants or their employees;  
 247 | and the names and locations of schools and day care facilities  
 248 | attended by the children of such consultants or employees are  
 249 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 250 | Constitution if a consultant or employee has made reasonable  
 251 | efforts to protect such information from being accessible  
 252 | through other means available to the public. This sub-  
 253 | subparagraph is subject to the Open Government Sunset Review Act  
 254 | in accordance with s. 119.15 and shall stand repealed on October  
 255 | 2, 2020, unless reviewed and saved from repeal through  
 256 | reenactment by the Legislature.

257 |       3. An agency that is the custodian of the information  
 258 | specified in subparagraph 2. and that is not the employer of the  
 259 | officer, employee, justice, judge, or other person specified in  
 260 | subparagraph 2. shall maintain the exempt status of that

261 information only if the officer, employee, justice, judge, other  
 262 person, or employing agency of the designated employee submits a  
 263 written request for maintenance of the exemption to the  
 264 custodial agency.

265 4. The exemptions in this paragraph apply to information  
 266 held by an agency before, on, or after the effective date of the  
 267 exemption.

268 5. Except as otherwise expressly provided in this  
 269 paragraph, this paragraph is subject to the Open Government  
 270 Sunset Review Act in accordance with s. 119.15, and shall stand  
 271 repealed on October 2, 2017, unless reviewed and saved from  
 272 repeal through reenactment by the Legislature.

273 Section 2. The Legislature finds that it is a public  
 274 necessity to exempt from public records requirements the home  
 275 addresses, telephone numbers, social security numbers, dates of  
 276 birth, and photographs of current or former nonsworn  
 277 investigative personnel of the Department of Financial Services  
 278 whose duties include, or result in, a determination or  
 279 adjudication of public assistance fraud, insurance fraud,  
 280 failure to comply with workers' compensation law requirements,  
 281 failure to comply with licensure or registration requirements  
 282 for industries regulated by the department, and other instances  
 283 of administrative and criminal misconduct; the names, home  
 284 addresses, telephone numbers, social security numbers,  
 285 photographs, dates of birth, and places of employment of the  
 286 spouses and children of such personnel; and the names and

287 | locations of schools and child care facilities attended by the  
288 | children of such personnel. The Legislature finds that the  
289 | release of such personal identifying and location information  
290 | might place these nonsworn investigative personnel of the  
291 | department and their family members in danger of physical and  
292 | emotional harm from disgruntled individuals who have contentious  
293 | reactions to actions taken by such personnel, or whose business  
294 | or professional practices have come under the scrutiny of such  
295 | personnel. The Legislature further finds that the harm that may  
296 | result from the release of such personal identifying and  
297 | location information outweighs any public benefit that may be  
298 | derived from the disclosure of the information.

299 | Section 3. This act shall take effect upon becoming a law.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 463 Public Records/Nonsworn DFS Investigative Personnel  
**SPONSOR(S):** Lee  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 592

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Peterson <i>KP</i>	Luczynski <i>ML</i>
2) Government Operations Subcommittee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Current law provides public record exemptions for identification and location information of certain current or former public employees and their spouses and children.

HB 463 expands the current public records exemptions to include current and former nonsworn investigative personnel of the Department of Financial Services whose duties include investigation of fraud, theft, workers' compensation compliance, other criminal activities, or state regulatory requirements. The exemption covers the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of the personnel; the names, home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and child care facilities attended by their children.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

The bill may have an insignificant fiscal impact on the DFS.

The bill takes effect upon becoming law.

**Article I, section 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Public Records**

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.<sup>1</sup> The Legislature, however, may by general law exempt records from the constitutional requirements.<sup>2</sup> An exemption must state with specificity the public necessity justifying the exemption and may be no broader than necessary to accomplish the stated purpose of the law.<sup>3</sup> A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.<sup>4</sup>

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.<sup>5</sup> A public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served, if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protects personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protects trade or business secrets.

The Act directs the Legislature to consider the following as part of the review process:

- What specific records or meetings are affected by the exemption?
- What specific parties does the exemption affect?
- What is the public purpose of the exemption?
- Can the information contained in the records or meetings be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Finally, the Act requires the automatic repeal of an exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

##### **Exemptions for Agency Personnel Identification and Location Information**

Current law provides public records exemptions for identification and location information of certain current or former agency personnel and their spouses and children.<sup>6</sup> Categories of personnel covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;
- Firefighters;

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(c).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> s. 119.15, F.S..

<sup>6</sup> See s. 119.071(4)(d), F.S.

- Justices and judges;
- Local and statewide prosecuting attorneys;
- Magistrates, administrative law judges, and child support hearing officers;
- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem;
- Specified Department of Juvenile Justice personnel;
- Public defenders and criminal conflict and civil regional counsel;
- Investigators or inspectors of the Department of Business and Professional Regulation;
- County tax collectors;
- Employees of the Department of Health who make eligibility determinations for social security disability benefits; investigate or prosecute complaints against practitioners; or inspect health care facilities; and
- Impaired practitioner consultants and employees of a consultant who make determinations regarding a health care practitioner's safety and skill to practice.

Although the types of exempt information vary, the following information is exempt<sup>7</sup> from public records requirements for all personnel listed above:

- Home addresses and telephone numbers<sup>8</sup> of the named personnel;
- Home addresses, telephone numbers, and places of employment of the spouses and their children; and,
- Names and locations of schools and day care facilities attended by their children.

If exempt information is held by an agency that is not the employer of the protected person, he or she must submit a written request to that agency to maintain the public records exemption.<sup>9</sup>

Currently, personal information of the DFS nonsworn investigative personnel and their spouses and children is not exempt from public disclosure, unless subject to another exemption.<sup>10</sup>

### Effect of the Bill

HB 463 expands the current public records exemptions for identification and location information of specified agency personnel to include current and former nonsworn investigative personnel of the Department of Financial Services (DFS) whose duties include investigation of fraud, theft, workers' compensation compliance, other criminal activities, or state regulatory requirements. The bill currently affects 206 employees in the Divisions of: Insurance Agent & Agency Services;<sup>11</sup> Accounting & Auditing;<sup>12</sup> Funeral, Cemetery & Consumer Services;<sup>13</sup> Workers Compensation;<sup>14</sup> and Public Assistance Assistance Fraud.<sup>15,16</sup>

<sup>7</sup> There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See 85-62 Fla. Op. Att'y Gen. (1985).

<sup>8</sup> The term "telephone numbers" includes home, personal cellular, and personal pager telephone numbers, and telephone numbers associated with personal communications devices. See s. 119.071(4)(d)1., F.S.

<sup>9</sup> s. 119.071(4)(d)3., F.S.

<sup>10</sup> For example, the exemption related to former law enforcement officers.

<sup>11</sup> The Division of Insurance Agent & Agency Services conducts administrative investigations of its licensees, which include insurance agents and agencies; insurance adjusters; bail bond agents and agencies; navigators; title agents, agencies, and escrow accounts; and warranty sales. Disciplinary action, including license revocation and a permanent ban from the insurance industry, may result. Approximately, 10-20% of the division's cases are referred for criminal investigation.

<sup>12</sup> The Office of Fiscal Integrity within the Division of Accounting & Auditing investigates suspicion of theft, attempted theft, or the misappropriation of state funds.

While the bill does not define “investigative personnel,” the DFS defines it to include investigators who have authority to issue enforcement actions and their supervisors. Supervisors are included because they review enforcement actions and periodically accompany investigators in the field and the State Attorney’s office. The term does not include support staff or others who do not carry a badge.<sup>17</sup>

The bill exempts the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of the personnel; the names, home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and child care facilities attended by their children.

These personnel conduct face-to-face interviews, collect evidence, inspect and assess compliance, conduct surveillance, and prepare reports that cause consequences for the target of an investigation. These efforts may result in arrest and prosecution for crimes up to and including first degree felonies; loss of commerce and property; monetary fines; or the suspension or loss of professional licenses.<sup>18</sup>

The DFS has provided numerous examples from each of the affected divisions of employees who have been threatened as a result of their duties and who have feared repercussion. Threats range from weapons brandished; verbal threats to harm the person or his or her family; harassment; to intimidation. Threats have been made directly and indirectly, including telephone messages left on personal phone lines. In at least one instance, the target of the investigation used a public records request to obtain an investigator’s personnel file.<sup>19</sup>

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 119.071, F.S., to provide an exemption from public records requirements for the personal identifying and location information of certain nonsworn investigative personnel of the DFS.

**Section 2:** Provides a public necessity statement.

**Section 3:** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

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<sup>13</sup> The Division of Funeral, Cemetery & Consumer Services regulates the deathcare industry in Florida. The division investigates complaints from the public regarding conduct of licensees, such as allegations of fraudulent activities or improper handling of human remains. Disciplinary action, including license revocation, may result.

<sup>14</sup> Investigators in the Division of Workers’ Compensation enforce the statutory requirement that employers secure workers’ compensation coverage for their employees. Investigators issue stop-work orders, ceasing all the business operations of the employer if the employer lacks workers’ compensation coverage. Mandatory fines may also be imposed.

<sup>15</sup> The Division of Public Assistance Fraud investigates recipients of Supplemental Nutrition Assistance Program, Medicaid, School Readiness, Social Security Administration disability programs, and Temporary Assistance for Needy Families, and merchants, daycare providers and employees of the Department of Children & Families or Early Learning Coalitions alleged to have committed fraud.

<sup>16</sup> Email from Elizabeth Boyd, Legislative Affairs Director, Florida Department of Financial Services, RE: HB 463 (Nov. 9, 2015) (on file with the House Insurance & Banking Subcommittee).

<sup>17</sup> *Id.*

<sup>18</sup> Florida Department of Financial Services, Agency Analysis of 2015 House Bill 463, p.1 (Nov. 10, 2015) (on file with the House Insurance & Banking Subcommittee).

<sup>19</sup> Email from Elizabeth Boyd, Legislative Affairs Director, Florida Department of Financial Services, RE: HB 463 (Nov. 5, 2015) (on file with the House Insurance & Banking Subcommittee).

The bill may create a minimal fiscal impact on the DFS for training that may be provided to employees who are responsible for complying with public records requests. In addition, the DFS could incur costs for labor associated with redacting the exempt information prior to releasing a record.

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

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution, requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information relating to the identification and location of certain personnel of the DFS. The exemption does not appear to be in conflict with the constitutional requirement that the exemption must be no broader than necessary to accomplish its purpose.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Social security numbers held by an agency are currently confidential and exempt from public records disclosure.<sup>20</sup> Because they are protected already and protected by the higher standard of "confidential and exempt," the bill should be amended to remove them.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

**INSURANCE AND BANKING SUBCOMMITTEE**

**HB 463 by Rep. Lee  
Public Records/Nonsworn DFS Investigative Personnel**

**AMENDMENT SUMMARY  
November 18, 2015**

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**Amendment 1 by Rep. Lee (Lines 50 - 57):** Revises the scope of the exemption to remove social security numbers and photographs of the spouse and children, and removes language related to the types of investigations.

**Amendment 2 by Rep. Lee (Lines 275 - 288):** Makes conforming changes to the statement of public necessity and adds further description of the justification for the exemption.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking  
 2 Subcommittee

3 Representative Lee offered the following:

4

5 **Amendment**

6 Remove lines 50-57 and insert:

7 (IV) The home addresses, telephone numbers, dates of birth,  
 8 and photographs of current or former nonsworn investigative  
 9 personnel of the Department of Financial Services; the names,  
 10 home addresses, telephone numbers, dates of birth,



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Insurance & Banking  
Subcommittee

Representative Lee offered the following:

**Amendment**

Remove lines 275-288 and insert:

addresses, telephone numbers, dates of birth, and photographs of  
current or former nonsworn investigative personnel of the  
Department of Financial Services; the names, home addresses,  
telephone numbers, dates of birth, and places of employment of  
the spouses and children of such personnel; and the names and  
locations of schools and child care facilities attended by the  
children of such personnel. The efforts of these personnel can  
lead to arrest and prosecution for crimes up to and including  
first-degree felonies, the loss of commerce and property,  
monetary fines, or the suspension or loss of professional  
licenses. The department has documented numerous examples of



Amendment No. 2

18 personnel who have been threatened as a result of their duties  
19 and who have feared repercussion. Threats range from weapons  
20 brandished; verbal threats to harm the personnel or their  
21 family; harassment; to intimidation. In at least one instance,  
22 the target of the investigation used a public records request to  
23 access an investigator's personnel file. As a result, the  
24 Legislature finds that the



1                                   A bill to be entitled  
 2       An act relating to insurance guaranty association  
 3       assessments; amending s. 631.914, F.S.; authorizing  
 4       the Office of Insurance Regulation to levy assessments  
 5       for certain purposes; revising and providing  
 6       requirements for the levy of assessments; requiring  
 7       insurers to collect policy surcharges and pay  
 8       assessments to the association; revising requirements  
 9       for reporting premium for assessment calculations;  
 10      revising and providing requirements and limitations  
 11      for remittance of assessments to the association;  
 12      providing an effective date.

13  
 14   Be It Enacted by the Legislature of the State of Florida:

15  
 16           Section 1. Section 631.914, Florida Statutes, is amended  
 17   to read:

18           631.914 Assessments.—

19           (1)(a) To the extent necessary to secure the funds for the  
 20   payment of covered claims, and also to pay the reasonable costs  
 21   to administer the same, the Office of Insurance Regulation  
 22   ~~department~~, upon certification by the board, shall levy  
 23   assessments on each insurer initially estimated in the  
 24   proportion that the insurer's net direct written premiums in  
 25   this state bears to the total of said net direct written  
 26   premiums received in this state by all such workers'

27 | compensation insurers for the preceding calendar year.  
 28 | Assessments levied against insurers and self-insurance funds  
 29 | pursuant to this paragraph must be computed and levied on the  
 30 | basis of the full policy premium value on the net direct written  
 31 | premium amount as set forth in the state for workers'  
 32 | compensation insurance without consideration of any applicable  
 33 | discount or credit for deductibles. Insurers and self-insurance  
 34 | funds must report premiums in compliance with this paragraph.  
 35 | Assessments shall be remitted to and administered by the board  
 36 | of directors in the manner specified by the approved plan of  
 37 | operation and paragraph (d). ~~The board shall give each insurer~~  
 38 | ~~so assessed at least 30 days' written notice of the date the~~  
 39 | ~~assessment is due and payable.~~ Each assessment shall be a  
 40 | uniform percentage applicable to the net direct written premiums  
 41 | of each insurer writing workers' compensation insurance.  
 42 |       ~~1. Beginning July 1, 1997,~~ Assessments levied against  
 43 | insurers ~~and, other than self-insurance funds,~~ shall not exceed  
 44 | in any calendar year more than 2 percent of that insurer's net  
 45 | direct written premiums in this state for workers' compensation  
 46 | insurance ~~during the calendar year next preceding the date of~~  
 47 | ~~such assessments.~~  
 48 |       (b) Member insurers shall collect surcharges at a uniform  
 49 | percentage rate for a period of 12 months beginning on January  
 50 | 1, April 1, July 1, or October 1, whichever is the first day of  
 51 | the following calendar quarter as specified in an order issued  
 52 | by the office directing insurers to pay an assessment to the

53 | association. The surcharge may not begin until 90 days after the  
 54 | board of directors certifies the assessment.

55 | ~~2. Beginning July 1, 1997, assessments levied against~~  
 56 | ~~self-insurance funds shall not exceed in any calendar year more~~  
 57 | ~~than 1.50 percent of that self-insurance fund's net direct~~  
 58 | ~~written premiums in this state for workers' compensation~~  
 59 | ~~insurance during the calendar year next preceding the date of~~  
 60 | ~~such assessments.~~

61 | ~~3. Beginning July 1, 2003, assessments levied against~~  
 62 | ~~insurers and self-insurance funds pursuant to this paragraph are~~  
 63 | ~~computed and levied on the basis of the full policy premium~~  
 64 | ~~value on the net direct premiums written in the state for~~  
 65 | ~~workers' compensation insurance during the calendar year next~~  
 66 | ~~preceding the date of the assessment without taking into account~~  
 67 | ~~any applicable discount or credit for deductibles. Insurers and~~  
 68 | ~~self-insurance funds must report premiums in compliance with~~  
 69 | ~~this subparagraph.~~

70 | ~~(b) Assessments shall be included as an appropriate factor~~  
 71 | ~~in the making of rates.~~

72 | ~~(c)1. Effective July 1, 1999, If assessments otherwise~~  
 73 | ~~authorized in paragraph (a) are insufficient to make all~~  
 74 | ~~payments on reimbursements then owing to claimants in a calendar~~  
 75 | ~~year, then upon certification by the board, the office~~  
 76 | ~~department shall levy additional assessments of up to 1.5~~  
 77 | ~~percent of the insurer's net direct written premiums in this~~  
 78 | ~~state during the calendar year next preceding the date of such~~

79 ~~assessments against insurers to secure the necessary funds.~~

80 (d) The association may use an installment method to  
 81 require the insurer to remit the assessment as written or may  
 82 require the insurer to remit the assessment to the association  
 83 before collecting the policyholder surcharge. If the assessment  
 84 is remitted before the surcharge is collected, the assessment  
 85 remitted must be based on an estimate of the assessment due  
 86 based on the proportion of each insurer's net direct written  
 87 premium in this state for the preceding calendar year as  
 88 described in paragraph (a) and adjusted following the end of the  
 89 12-month period during which the assessment is levied.

90 1. If the association elects to use the installment  
 91 method, the office may, in the order levying the assessment on  
 92 insurers, specify that the assessment is due and payable  
 93 quarterly as premium is written throughout the assessment year.  
 94 Insurers shall collect surcharges at a uniform percentage rate  
 95 specified by order as described in paragraph (b). Insurers are  
 96 not required to advance funds if the association and the office  
 97 elect to use the installment option. Assessments levied under  
 98 this subparagraph are paid after policy surcharges are billed,  
 99 and the recognition of assets is based on actual premium written  
 100 offset by the obligation to the association.

101 2. If the association elects to require insurers to remit  
 102 the assessment prior to surcharging the policyholder, the  
 103 following shall apply:

104 a. The levy order shall provide each insurer so assessed

105 at least 30 days written notice of the date the initial  
106 assessment payment is due and payable by the insurer.

107 b. Insurers shall collect surcharges at a uniform  
108 percentage rate specified by the order, as described in  
109 paragraph (b).

110 c. Insurers must submit a reconciliation report to the  
111 association within 120 days after the end of the 12-month  
112 assessment period. The report must indicate the amount of the  
113 initial payment made to the association and the amount of  
114 written premium pursuant to paragraph (a) for the assessment  
115 year. If the insurer's calculated assessment is more than the  
116 amount initially paid to the association, the insurer shall pay  
117 the excess amount to the association. If the insurer's  
118 calculated assessment is less than the initial amount paid to  
119 the association, the association shall credit the insurer that  
120 amount against future assessments.

121 d. An insurer is not liable for any uncollectible  
122 assessments.

123 e. Assessments levied under this subparagraph are paid  
124 before policy surcharges are billed and result in a receivable  
125 for policy surcharges to be billed in the future. This amount,  
126 to the extent it is likely that it will be realized, meets the  
127 definition of an admissible asset as specified in the National  
128 Association of Insurance Commissioners' Statement of Statutory  
129 Accounting Principles No. 4. The asset shall be established and  
130 recorded separately from the liability. If an insurer is unable

131 to fully recoup the amount of the assessment, the amount  
 132 recorded as an asset shall be reduced to the amount reasonably  
 133 expected to be recouped.

134 (2) Assessments levied under this section are not premium  
 135 and are not subject to any premium tax, fees, or commissions.  
 136 Insurers shall treat the failure of an insured to pay an  
 137 assessment surcharge or the recoupment of an assessment  
 138 surcharge as a failure to pay the premium.

139 (3) Assessments levied under this section may only be  
 140 levied upon insurers. This section does not create a cause of  
 141 action by a policyholder with respect to the levying of, or a  
 142 policyholder's duty to pay, assessments.

143 ~~2. To assure that insurers paying assessments levied under~~  
 144 ~~this paragraph continue to charge rates that are neither~~  
 145 ~~inadequate nor excessive, each insurer that is to be assessed~~  
 146 ~~pursuant to this paragraph, or a licensed rating organization to~~  
 147 ~~which the insurer subscribes, may make, within 90 days after~~  
 148 ~~being notified of such assessments, a rate filing for workers'~~  
 149 ~~compensation coverage pursuant to ss. 627.072 and 627.091. If~~  
 150 ~~the filing reflects a percentage rate change equal to the~~  
 151 ~~difference between the rate of such assessment and the rate of~~  
 152 ~~the previous year's assessment under this paragraph, the filing~~  
 153 ~~shall consist of a certification so stating and shall be deemed~~  
 154 ~~approved when made. Any rate change of a different percentage~~  
 155 ~~shall be subject to the standards and procedures of ss. 627.072~~  
 156 ~~and 627.091.~~

157            ~~(4)+2~~(a) The board may exempt any insurer from an  
158 assessment if, in the opinion of the office ~~department~~, an  
159 assessment would result in such insurer's financial statement  
160 reflecting an amount of capital or surplus less than the minimum  
161 amount required by any jurisdiction in which the insurer is  
162 authorized to transact insurance.

163            (b) The board may temporarily defer, in whole or in part,  
164 assessments against an insurer if, in the opinion of the office  
165 ~~department~~, payment of the assessment would endanger the ability  
166 of the insurer to fulfill its contractual obligations. In the  
167 case of a self-insurance fund, the trustees of the fund  
168 determined to be endangered must immediately levy an assessment  
169 upon the members of that self-insurance fund in an amount  
170 sufficient to pay the assessments to the corporation.

171            (c) The board may allow an insurer to pay an assessment on  
172 a quarterly basis.

173            Section 2. This act shall take effect July 1, 2016.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 467 Insurance Guaranty Association Assessments  
**SPONSOR(S):** Broxson  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 828

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Lloyd <i>Lu...</i>	Luczynski <i>ML</i>
2) Finance & Tax Committee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

The Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) services workers' compensation claims by injured workers in this state against insolvent workers' compensation insurers and self-insurance funds. The FWCIGA is obligated to pay eligible injured workers 100 percent of their workers' compensation benefits. The FWCIGA reports that they are currently servicing 45 open insolvent insurer estates with 433 open claims.

The FWCIGA is funded through the liquidation of insolvent insurers and assessments on workers' compensation insurance companies and self-insurance funds. The Department of Financial Services (DFS), upon certification by the FWCIGA, may order an assessment to collect necessary funds. The assessment is payable 30 days following written notice to the insurers. Insurers are required to pay the assessment in advance of recovering it from their insureds. The assessment is capped for insurers at 2 percent net direct written premium for the previous calendar year and at 1.5 percent for self-insurance funds. There has not been an assessment since 2005.

If levied, the assessment is built into the rates approved by the Office of Insurance Regulation (OIR) and collected as part of the premiums paid by the insured. Being part of premiums paid, they are subject to a 1.75 percent premium tax. This is unique among the various guaranty association assessments authorized by statute.

Revisions to the FWCIGA assessment process include:

- Shifting order authority and recommendations related to insurer financial conditions from the DFS to the OIR.
- Increasing the assessment cap for self-insurance funds from 1.5 percent of direct written premium to 2 percent.
- Changing the assessment cap from 2 percent of the prior year's net direct written premium to that of the calendar year of the assessment.
- Establishing two assessment payment methods, as follows:
  - Single assessment payment— in this method, the insurer pays the assessment and then recovers it through policy surcharges. It is subject to an end of period reconciliation and a possible corrective payment.
  - Installment method - in this method, the insurer collects the surcharges and then remits them to the FWCIGA quarterly to fund the assessment in an ongoing manner.
- Changing the assessment recovery process from a component of premium to a policy surcharge. Surcharges would begin 90 days after the FWCIGA certifies the need for an assessment and collected at a uniform rate for 12 months. Insurers would not be liable for uncollectible surcharges.

The bill does not impact local government revenue and likely has minimal negative impact state revenue. It has positive and negative impacts on the private sector.

The bill is effective July 1, 2016.

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

STORAGE NAME: h0467.IBS.DOCX

DATE: 11/16/2015

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Florida Workers' Compensation Insurance Guaranty Association**

In 1997, the Legislature passed the Florida Workers' Compensation Insurance Guaranty Association Act.<sup>1</sup> It combined the Florida Self-Insurance Fund Guaranty Association<sup>2</sup> and the workers' compensation account<sup>3</sup> of the Florida Insurance Guaranty Association. The Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)<sup>4</sup> services workers' compensation claims against insolvent<sup>5</sup> workers' compensation insurers<sup>6</sup> and self-insurance funds.<sup>7</sup> The FWCIGA is obligated to pay eligible injured workers 100 percent of their workers' compensation benefits, however, employer claims for return of unearned premium are limited to \$50,000.<sup>8</sup> The FWCIGA reports that they are currently servicing 45 open insolvent insurer estates with 433 open claims.<sup>9</sup>

##### **FWCIGA Assessments**

The FWCIGA is funded through the liquidation of insolvent insurers, including a portion of the estates of insolvent insurers coming from insolvencies that occur in other states. If these funds are insufficient to service claims, the Department of Financial Services (DFS),<sup>10</sup> upon certification by the FWCIGA, may order an assessment to collect necessary funds from insurers and self-insurance funds writing workers' compensation coverage in the state.<sup>11</sup> Following its creation, the FWCIGA sought and received assessment orders from the DFS each year from 1998 through 2005. There has not been an assessment since 2005.<sup>12</sup>

Assessments are based on the full policy premium value of the direct written premiums for workers' compensation issued in the state by the subject insurer or self-insurance fund, without consideration of discounts or credits. This puts each insurer and self-insurer on par for assessment purposes, since some insurers issue large deductible policies and use various discounts to adjust the amount of premiums charged to employers and self-insurance fund coverage is not priced in the same way as insurers. The assessment is distributed based on the share of direct written premium issued in the

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<sup>1</sup> ch. 631, Part V, F.S. (1997).

<sup>2</sup> ch. 631, Part V, F.S. (1996).

<sup>3</sup> s. 631.55(2)(a), F.S. (1996).

<sup>4</sup> The FWCIGA is administered by a board of directors. The board is made up of the following 11 members: the Insurance Consumer Advocate (or their designee), one designee of the Chief Financial Officer, six persons selected by private carriers from among the top 20 workers' compensation insurers (two of whom represent foreign insurers authorized to write in the state), two persons selected by the self-insurance funds, and one person with commercial insurance experience appointed by the Governor. The board elects its chair and members may be removed by the Governor for cause. Members serve four year terms and may be reappointed. If a member is associated with an insurer that becomes insolvent, they are terminated from the board as of the date of the related insolvency. s. 631.912, F.S.

<sup>5</sup> "Insolvent insurer" means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. s. 631.904(4), F.S.

<sup>6</sup> "Insurer" means an insurance carrier or self-insurance fund authorized to insure under chapter 440. For purposes of this act, "insurer" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, or an individual self-insurer as defined in s. 440.385. s. 631.904(5), F.S.

<sup>7</sup> "Self-insurance fund" means a group self-insurance fund authorized under s. 624.4621, a commercial self-insurance fund writing workers' compensation insurance authorized under s. 624.462, or an assessable mutual insurer authorized under s. 628.6011. For purposes of this act, the term "self-insurance fund" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, an independent educational institution self-insurance fund as defined in s. 624.4623, an electric cooperative self-insurance fund as described in s. 624.4626, or an individual self-insurer as defined in s. 440.385. s. 631.904(6), F.S.

<sup>8</sup> s. 631.913(1), F.S.

<sup>9</sup> FLORIDA WORKERS' COMPENSATION INSURANCE GUARANTY ASSOCIATION, *Reports*, <http://fwciga.org/reports> (last visited Nov. 15, 2015).

<sup>10</sup> The DFS is responsible for regulating certain insurance activities under the Insurance Code, such as eligibility and conduct of insurance agents and agencies, regulation of workers' compensation benefits and compliance, and policing fraud.

<sup>11</sup> s. 631.914, F.S.

<sup>12</sup> FLORIDA WORKERS' COMPENSATION INSURANCE GUARANTY ASSOCIATION, *Assessments*, <http://fwciga.org/assessments> (last visited Nov. 15, 2015).

previous calendar year. The assessment is capped in relation to net direct written premium for the previous calendar year; it cannot exceed 2 percent for insurers or 1.5 percent for self-insurance funds. However, if the assessment is insufficient to meet the funding need of the FWCIGA, an additional assessment of up to 1.5 percent of the net direct written premium for the previous calendar year can be ordered by the DFS, upon certification of the FWCIGA. Insurers are entitled to receive 30 days written notice prior to an assessment becoming due and payable,<sup>13</sup> however, the FWCIGA may allow an insurer to pay the assessment quarterly.<sup>14</sup>

If levied, FWCIGA assessments are a component of the workers' compensation rate approved by the Office of Insurance Regulation (OIR).<sup>15, 16</sup> This is unique among the various guaranty association assessments authorized by statute.<sup>17</sup> To maintain workers' compensation rates that are neither inadequate nor excessive, the assessment is a factor that the OIR must take into account when ordering rates and a mid-year rate filing may be made within 90 days after insurers are notified of the assessment.<sup>18</sup>

Since, the assessment is built into the rate, and therefore the premium collected by the insurer, the value of the assessment is subject to the state's insurance premium tax.<sup>19</sup>

The FWCIGA may exempt an insurer from an assessment if, in the opinion of the DFS, the assessment would compromise the solvency of the insurer. Similarly, the FWCIGA may defer all or part of an assessment applicable to a particular insurer if, in the opinion of the DFS, the assessment would endanger an insurer's ability to meet its contractual obligations.<sup>20</sup>

## Insurance Premium Tax

Florida requires insurance companies to pay tax on:<sup>21</sup>

- Insurance premiums;
- Premiums for title insurance;
- Assessments, including membership fees, policy fees, and gross deposits received from subscribers to reciprocal or interinsurance agreements; and
- Annuity premiums or considerations.

Florida applies the premium tax to premiums written in Florida at the following rates:<sup>22</sup>

- 1.75 percent of premiums for:
  - Gross property and casualty,<sup>23</sup> less reinsurance and returned premiums;
  - Life;
  - Accident and health; and
  - Prepaid limited health.

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<sup>13</sup> s. 631.914(1)(a), F.S.

<sup>14</sup> s. 631.914(2)(c), F.S.

<sup>15</sup> s. 631.914(1)(b), F.S.

<sup>16</sup> The OIR, which is overseen by the Financial Services Commission, has responsibilities concerning insurance regulation related to licensing insurance companies, solvency, ratemaking, and market conduct, among other things.

<sup>17</sup> There are three other similar guaranty assessments authorized by statute. They benefit the Florida Insurance Guaranty Association (s. 631.57, F.S.), the Florida Life and Health Insurance Guaranty Association (s. 631.718, F.S.), and the Florida Health Maintenance Organization Consumer Assistance Plan (s. 631.819, F.S.).

<sup>18</sup> If a mid-year filing is made and the entirety of the rate change requested is equal to the difference between the previous assessment and the new one, the rate filing is deemed approved. s. 631.914(1)(c), F.S.

<sup>19</sup> s. 624.509, F.S.

<sup>20</sup> s. 631.914(2), F.S. If an assessment is deferred in relation to a particular self-insurance fund, the fund must immediately levy an assessment against its members in an amount sufficient to fund the FWCIGA assessment.

<sup>21</sup> s. 624.509(1), F.S.

<sup>22</sup> ss. 624.46226, 624.4625, 624.475, 624.509(1), and 627.357, F.S.; see also FLORIDA REVENUE ESTIMATING CONFERENCE, *2015 Florida Tax Handbook*, <http://www.edr.state.fl.us/Content/revenues/reports/tax-handbook/index.cfm> (last visited Nov. 16, 2015).

<sup>23</sup> Workers' compensation insurance is casualty insurance. s. 624.605(1)(c), F.S.

- 1.6 percent of premiums for:
  - Commercial self-insurance;
  - Group self-insurance;
  - Medical malpractice self-insurance; and
  - Assessable mutual insurance.
- 1 percent of premiums for annuities.

The law authorizes numerous insurance premium tax credits and deductions that allow insurance companies to reduce their premium tax liability.<sup>24</sup> The state distributes revenue from the insurance premium tax to the General Revenue Fund.<sup>25</sup>

FWCIGA assessments are a component of the approved workers' compensation rate<sup>26</sup> and are collected by insurers as part of taxable premium. They are taxed at 1.75 percent.

### **Effect of the bill**

The bill shifts the authority to order assessments and opine on the financial condition of the subject insurers from the DFS to the OIR.

The assessment would be limited to 2 percent of the insurer's net direct written premium in any given calendar year, rather than the previous year's net direct written premium. Also, the bill increases the cap for self-insurance funds from 1.5 percent of net direct written premium to 2 percent. The change in the base from the previous year to current calendar year accommodates changing levels of premium volume insurers write from year to year and includes insurers in assessment participation if they are writing premiums during the assessment period, but did not the previous year.

The bill creates two methods for the FWCIGA to use for collecting assessments. FWCIGA is given sole discretion to choose which method will be used to fund the assessment. The two methods are as follows:

- Single payment, subject to true-up (pay and recover) – under this method, the insurer pays the assessment to the FWCIGA and then recovers its payment from its insureds through policy surcharges. The assessment payment is due and payable no earlier than 30 days following written notice of the assessment order. The insurer is required to submit a reconciliation report within 120 days following the end of the 12 month assessment recovery period showing the amount initially paid and the amount of the surcharge collected. This results in a "true-up" of the actual assessment amount due to the FWCIGA and an additional payment by the insurer, if the initial calculation and payment was too low, or a credit against future FWCIGA assessments, if the initial calculation and payment was too high. The insurer is not liable for uncollectable surcharges. For accounting purposes, the billed surcharges are a receivable and an asset for the purposes of the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles Number 4<sup>27</sup> and would be recorded separately from liabilities for OIR reports.

<sup>24</sup> Credit for payments to the Municipal Firefighters' Pension Fund (s. 175.141, F.S.) and Municipal Police Officers' Retirement Fund (s. 185.12, F.S.); Corporate Income Tax Credit (s. 624.509(4), F.S.); Florida Employees' Salary Credit (s. 624.509(5), F.S.); New Markets Tax Credit (s. 288.9916, F.S.); Capital Investment Tax Credit (s. 220.191, F.S.); Community Contribution Tax Credit (s. 624.5105, F.S.); Child Care Tax Credit (s. 624.5107, F.S.); Credit for Contributions to Scholarship-Funding Organizations (s. 624.51055, F.S.); Credit for Workers' Compensation Assessments (440.51, F.S.); and Credit for Florida Life and Health Insurance Guaranty Association Assessments (s. 631.72, F.S.).

<sup>25</sup> s. 624.509(3), F.S.

<sup>26</sup> s. 631.914(1)(b) and (c), F.S.

<sup>27</sup> NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS & THE CENTER FOR INSURANCE POLICY AND RESEARCH, *Statutory Accounting Principles*, [http://www.naic.org/cipr\\_topics/topic\\_statutory\\_accounting\\_principles.htm](http://www.naic.org/cipr_topics/topic_statutory_accounting_principles.htm) (last visited Nov. 15, 2015).

- Installment (collect and remit) – under this method, the insurer would bill the insured for the surcharge as policies are written and remit the collected surcharges to the FWCIGA quarterly. The insurer is not required to advance funds to the FWCIGA.

Under both methods, collection of surcharges begins 90 days after the FWCIGA certifies the need for an assessment to the OIR. Insurers are required to collect the surcharge quarterly at a uniform rate over the 12 months following the assessment.

The bill changes the FWCIGA assessment recovery from a component of the workers' compensation rates approved by the OIR to a surcharge per policy. It specifically provides that the surcharges collected to recover insurer paid FWCIGA assessments are not premium and not subject to the premium tax. However, failure of an insured to pay the surcharge is treated as the non-payment of premium, which could result in policy cancellation.

The bill provides that only insurers may be assessed by the FWCIGA. It also provides that a policyholder is not given a cause of action regarding FWCIGA assessments or related surcharges.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 631.914, F.S., relating to assessments.

**Section 2:** Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill likely has a negative impact on premium tax revenues. The amount of the impact has not yet been estimated. However, since no FWCIGA assessments have occurred in the last ten years, there have been no assessments contributing to premium collections or the premium tax revenue during that time.

##### 2. Expenditures:

None.

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

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the OIR,<sup>28</sup> certain changes to workers' compensation forms would be required in response to the bill causing workers' compensation insurers to revise and refile all of their forms for approval by the OIR. Large deductible programs would also have to be revised and refiled for OIR for approval.

In regard to the payment of assessment and collection of surcharges, the bill has a positive impact on insurers by allowing them to avoid the loss of investment opportunities whenever the installment method is chosen by the FWCIGA.

D. FISCAL COMMENTS:

While the OIR predicts that workers' compensation insurers will have to refile all of their forms and large deductible plans for OIR approval, the OIR has not provided an estimate of the fiscal impact this could have on the state.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 81, the bill uses the term "as written" in relation to payment of the assessment. This term may be unclear or ambiguous. This term would be clear if it was replaced with terminology used in other parts of the bill or was replaced by a cross-reference to an applicable statute.

The full sentence beginning on line 97 and ending on line 100 appears to be duplicative of and redundant to the statement regarding statutory accounting principles found on lines 123 to 133. Deletion or revision of one or the other would resolve the apparent duplication.

On lines 115 through 120, replacing the term "calculated assessments" with the term "reconciled assessment obligation" would improve clarity. Also, the term "excess amount" is used when context indicates that an underpayment is being corrected. A revision will improve clarity.

Lines 121 and 122 contain a limitation of liability benefiting insurers. This provision is only applicable to the single payment method and there is no corollary provision in the installment method. This difference may result in a statutory construction where insurers are liable for uncollectible surcharges when administering the installment method. Also, the term "uncollectable assessment" is used when context appears to indicate that "uncollectible surcharges" is the intended meaning.

The bill establishes billed surcharges as an asset for statutory accounting purposes, but it does not revise the definition of "assets" that is generally applicable to insurers under s. 625.012, F.S. Revising s. 625.012(15), F.S., would improve consistency between the statutes.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

**Insurance & Banking Subcommittee**

**HB 467 by Rep. Broxson  
Insurance Guaranty Association Assessments**

**AMENDMENT SUMMARY  
November 18, 2015**

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**Amendment 1 by Rep. Broxson (Line 81):** The amendment revises certain terms and restructures two sentences to accurately achieve the purpose of the bill and improve clarity. It also makes a provision of the bill regarding uncollectible assessment related surcharges under the installment method applicable to both proposed assessment methods.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking  
 2 Subcommittee

3 Representative Broxson offered the following:

4

5 **Amendment**

6 Remove lines 81-142 and insert:

7 require the insurer to remit the assessment as premium is  
 8 written or may require the insurer to remit the assessment to  
 9 the association before collecting the policyholder surcharge. If  
 10 the assessment is remitted before the surcharge is collected,  
 11 the assessment remitted must be based on an estimate of the  
 12 assessment due based on the proportion of each insurer's net  
 13 direct written premium in this state for the preceding calendar  
 14 year as described in paragraph (a) and adjusted following the  
 15 end of the 12-month period during which the assessment is  
 16 levied.

17 1. If the association elects to use the installment



## Amendment No. 1

18 method, the office may, in the order levying the assessment on  
19 insurers, specify that the assessment is due and payable  
20 quarterly as premium is written throughout the assessment year.  
21 Insurers shall collect surcharges at a uniform percentage rate  
22 specified by order as described in paragraph (b). Insurers are  
23 not required to advance funds if the association and the office  
24 elect to use the installment option. Assessments levied under  
25 this subparagraph are paid after policy surcharges are  
26 collected, and the recognition of assets is based on actual  
27 premium written offset by the obligation to the association.

28 2. If the association elects to require insurers to remit  
29 the assessment prior to surcharging the policyholder, the  
30 following shall apply:

31 a. The levy order shall provide each insurer so assessed  
32 at least 30 days written notice of the date the initial  
33 assessment payment is due and payable by the insurer.

34 b. Insurers shall collect surcharges at a uniform  
35 percentage rate specified by the order, as described in  
36 paragraph (b).

37 c. Insurers must submit a reconciliation report to the  
38 association within 120 days after the end of the 12-month  
39 assessment period. The report must indicate the amount of the  
40 initial payment made to the association and the amount of  
41 written premium pursuant to paragraph (a) for the assessment  
42 year. If the insurer's reconciled assessment obligation is more  
43 than the amount initially paid to the association, the insurer



Amendment No. 1

44 shall pay the excess surcharges collected to the association. If  
45 the insurer's reconciled assessment obligation is less than the  
46 initial amount paid to the association, the association shall  
47 credit the insurer that amount against future assessments.

48 d. Assessments levied under this subparagraph are paid  
49 before policy surcharges are billed and result in a receivable  
50 for policy surcharges to be billed in the future. The amount of  
51 billed surcharges, to the extent it is likely that it will be  
52 realized, meets the definition of an admissible asset as  
53 specified in the National Association of Insurance  
54 Commissioners' Statement of Statutory Accounting Principles No.  
55 4. The asset shall be established and recorded separately from  
56 the liability. If an insurer is unable to fully recoup the  
57 amount of the assessment, the amount recorded as an asset shall  
58 be reduced to the amount reasonably expected to be recouped.

59 (2) Assessments levied under this section are not premium  
60 and are not subject to any premium tax, fees, or commissions.  
61 Insurers shall treat the failure of an insured to pay assessment  
62 related surcharges as a failure to pay premium. An insurer is  
63 not liable for any uncollectible assessment related surcharges.

64 (3) Assessments levied under this section may only be  
65 levied upon insurers. This section does not create a cause of  
66 action by a policyholder with respect to the levying of an  
67 assessment or a policyholder's duty to pay assessment related  
68 surcharges.





Insurance Consumer Advocate:

# RECOMMENDATIONS FOR A BALANCED APPROACH TO UNEXPECTED MEDICAL EXPENSES

NOVEMBER 18, 2015

FLORIDA HOUSE OF REPRESENTATIVES

INSURANCE AND BANKING SUBCOMMITTEE



Sha'Ron James

Insurance Consumer Advocate

# What Is Balance Billing?

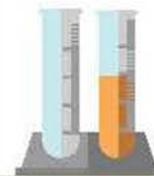
**3 scenarios**  
under which a consumer can  
face a balance billing issue:



Consumer is informed about the out-of-network service and is ok with being balance billed.



Emergency services performed at an in-network facility with out-of-network providers.



Scheduled or pre-authorized service performed at an in-network facility with services provided by an out-of-network provider.

# Impact on Florida Consumers

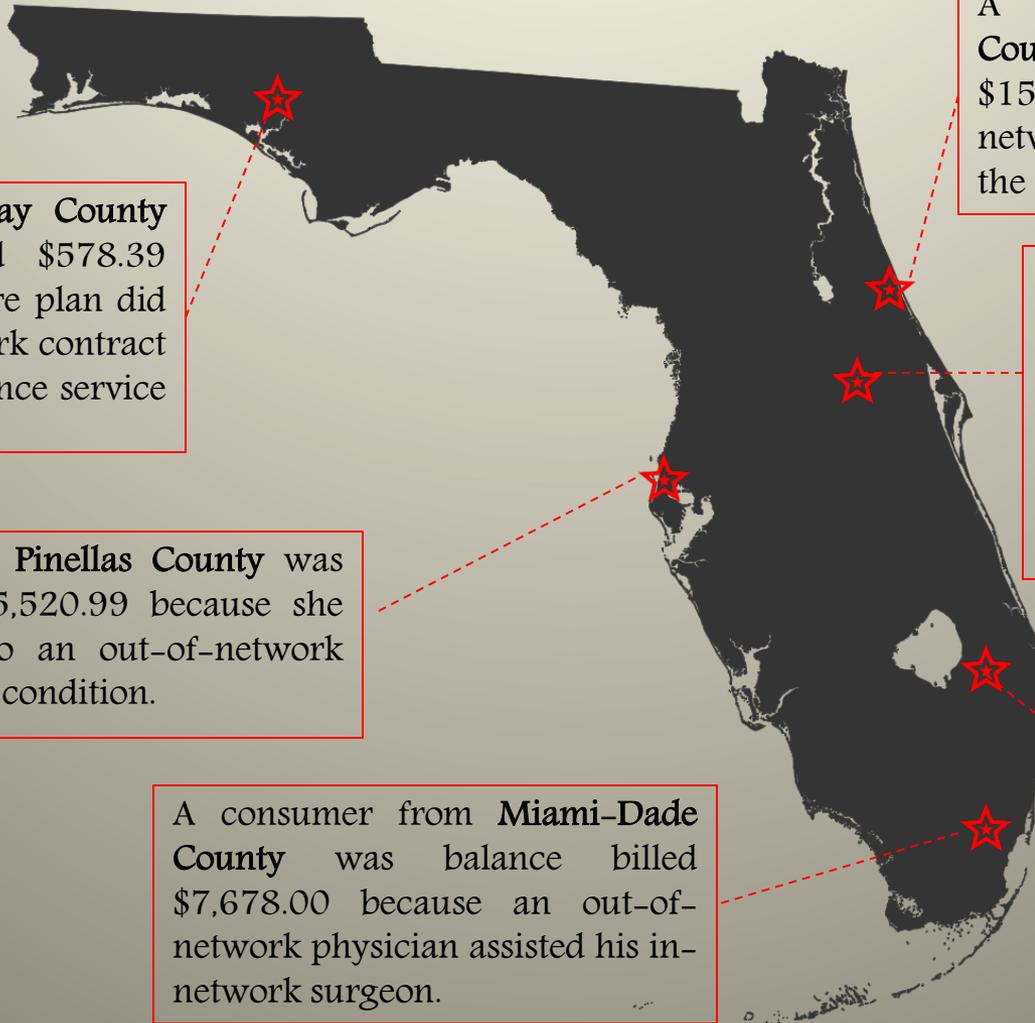
Stress

Financial Hardship

Forgo Medical Treatment



# Florida Consumer Experiences



A consumer from **Bay County** was balance billed \$578.39 because her healthcare plan did not have an in-network contract with the only ambulance service in her area.

A consumer from **Pinellas County** was balance billed \$5,520.99 because she was transferred to an out-of-network hospital due to her condition.

A consumer from **Miami-Dade County** was balance billed \$7,678.00 because an out-of-network physician assisted his in-network surgeon.

A consumer from **Volusia County** was balance billed \$15,901.74 due to an out-of-network assisting physician at the in-network facility.

A consumer from **Orange County** experienced an emergency where she could not speak and was transported to an out-of-network hospital. She was balance billed \$22,326.42.

A consumer from **Palm Beach County** was balance billed \$81,890.95 because the neurosurgeons at her in-network hospital were out-of-network.



Insurance Consumer Advocate's Forum  
October 15, 2015

# Stakeholder Input and Recommendations

	Prohibition/ Limitations on Balance Billing	Disclosure/ Transparency	Dispute Resolution Process	Fair & Reasonable Rates	Network Adequacy
Consumer Advocates	✓			✓	✓
State Regulators	✓			✓	✓
Doctors	✓	✓	✓	✓	
Hospitals	✓-			✓	
Insurers	✓	✓	✓	✓	✓
Educators	✓	✓	✓	✓	✓

## Consumer Advocates

- Florida CHAIN

## Doctors

- Florida College of Emergency Physicians
- Florida Medical Association

## Educators

- Georgetown University

## Hospitals

- Florida Hospital Association

## Insurers

- America's Health Insurance Plans
- Florida Association of Health Plans

## State Regulators

- Division of Consumer Services
- Division of Rehabilitation and Liquidation

v- with limitation

# Current State Laws

	Prohibition/ Limitations on Balance Billing	Disclosure/ Transparency	Dispute Resolution Process	Fair & Reasonable Rates	Network Adequacy
Florida			✓ -		✓ -
Illinois	✓	✓	✓		✓
New York	✓	✓	✓	✓	✓
Texas	✓	✓	✓	✓	✓

v- (Dispute Resolution Process): Statewide Provider and Health Plan Claim Dispute Resolution Program (MAXIMUS), §408.7057, F. S.

v- (Network Adequacy): Florida law currently addresses network adequacy requirements in the managed care context only

# ICA Recommendations

Prohibition/ Limitations on Balance Billing	Disclosure/ Transparency	Dispute Resolution Process	Fair & Reasonable Rates	Network Adequacy
✓	✓	✓	✓	✓



Office of the  
**INSURANCE CONSUMER ADVOCATE**  
Sha'Ron James

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Insurance Consumer Advocate:

# RECOMMENDATIONS FOR A BALANCED APPROACH TO UNEXPECTED MEDICAL EXPENSES

NOVEMBER 18, 2015

FLORIDA HOUSE OF REPRESENTATIVES

INSURANCE AND BANKING SUBCOMMITTEE

## Questions?