

Executive Summary

2022 Legislative Report – Special Session

Board of Governors Meeting, July 13, 2022

2022 Special Session D

Amidst a rapidly deteriorating property insurance market, Governor DeSantis announced a Special Session on property insurance. Special Session D commenced on May 23rd and concluded on May 25th. In addition to property insurance, during the course of the special session an agreement was reached to include reforms to condominium laws to address the Champlain Towers South tragedy in Surfside.

Leading into the weeklong special session, Governor DeSantis, CFO Patronis, Commissioner Altmaier, Senate President Simpson and Speaker Sprowls entered into lengthy deliberations to identify significant avenues to reform the market and provide relief to Florida consumers. Members of Citizens Executive Leadership Team and Director of Legislative and Cabinet Affairs met with legislative leaders and stakeholders in advance of the special session. The culmination of negotiations concluded with a work product that was contained in [SB 2D](#) and [SB 4D](#). Both bills received strong bipartisan support in each chamber and were swiftly signed into law by Governor DeSantis on May 26th the day after the end of Special Session D.

SB 2D by Chairman Jim Boyd (R-Bradenton) creates the Reinsurance to Assist Policyholders (RAP) Program, appropriates 150 million to the My Safe Florida Home Program for mitigation inspections and a matching grant program. The bill also creates a separate roof deductible and prohibits certain inducements by a contractor as well as changes to requirements by insurers for claims handling. One of the most significant provisions in the bill addresses civil remedy and attorney fees when an AOB is used. SB 2D requires the Office of Insurance Regulation (OIR) to collect more data from insurers and greater transparency on obtaining the new data. Key components of the bill include:

FHCF/RAP Program:

Authorizes a \$2 billion dollar reimbursement layer of reinsurance for hurricane losses directly below the mandatory layer of the Florida Hurricane Catastrophe Fund (FHCF). All eligible insurers must participate in the program.

The FHCF mandatory retention is \$8.5 billion for the 2022-2023 contract year.

Requires the RAP program to reimburse 90 percent of each insurer's covered losses and 10 percent of their loss adjustment expenses up to each individual insurer's limit of coverage for the two hurricanes causing the largest losses for that insurer during the contract year.

Prohibits an insurer from obtaining RAP coverage if the Insurance Commissioner certifies it is in "unsound financial condition."

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MSFH Program:

The My Safe Florida Home Program, which is administered by the Department of Financial Services, will provide financial incentives for Florida residential property owners to obtain free home inspections that would identify mitigation measures and provide grants to retrofit such properties, thereby reducing their vulnerability to hurricane damage and helping decrease the cost of residential property insurance.

Appropriates \$150 million from the General Revenue Fund to the Department of Financial Services' My Safe Florida Home Program to provide hurricane mitigation inspections and matching grants for the performance of hurricane retrofitting on homestead single family homes with a value of \$500,000 or less located in the wind-borne debris region set forth in the Florida Building Code.

Requires that grants awarded under the program provide \$2 in grant funds for every \$1 provided by the homeowner. Exceptions are provided for low-income homeowners. Applicants may receive up to \$10,000 in program money.

Roof Deductible:

Allows property insurers to include in the policy a separate roof deductible of up to two percent of the Coverage A limit of the policy or 50 percent of the cost to replace the roof. The policyholder must also be offered the option to decline the roof deductible by signing a form approved by the Office of Insurance Regulation (OIR). If a roof deductible is added to the policy at renewal, the insurer must provide a notice of change in policy terms and allow the policyholder to decline the separate roof deductible. Requires that policyholders that select a roof deductible must receive an actuarially sound premium credit or discount.

Requires property insurers to conduct any physical inspection of the property related to a claim within 45 days of receiving proof of loss statements. Does not apply to hurricane claims. Also, insurers must notify policyholders of their right to receive any detailed report generated by an insurer's adjuster that estimates the amount of the loss. The report must be provided to the requesting policyholder within the later of seven days after the policyholder requests the report or the completion of the report. The bill also specifies insurers must provide a reasonable explanation of the claim decision in relation to the insurance policy, facts, and law. If the insurer makes a claim payment that is less than contained in the insurer's adjuster estimate of the loss, the insurer must explain the discrepancy.

Roof – Underwriting:

Prohibits an insurer from refusing to issue or refusing to renew a homeowner's insurance policy insuring a residential structure with a roof that is less than 15 years old solely because of the age of the roof.

Requires that, if the roof is at least 15 years old, an insurer must allow a homeowner to have a roof inspection performed by an authorized inspector at the homeowner's expense before requiring the replacement of the roof as a condition of issuing or renewing a homeowner's insurance policy. The insurer may not refuse to issue or refuse to renew a homeowner's insurance policy solely because of roof age if an inspection of the roof of the residential structure performed by an authorized inspector indicates that the roof has five years or more of useful life.

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Civil Remedy:

Requires a claimant to establish a property insurer breached the insurance contract in order for the claimant to prevail in a bad faith claim for extracontractual damages under s. 624.155(1)(b), F.S. Will apply to civil remedy actions based upon a property insurer:

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

Assignment of Benefits (AOB):

Revises the definition of “assignment agreement” to include assignments executed by a party that inspects the property, clarifies that public adjuster fees are not an assignment agreement, and clarifies the requirement to provide a Notice of Intent to Initiate Litigation before filing suit.

Requires that a valid AOB must specify that the assignee will hold harmless the assignor from all liabilities, including attorney fees.

Prohibits assignment of the right to obtain attorney fees in suits arising out of a property insurance policy to persons other than a named or omnibus insured or a named beneficiary under the policy. Result is that assignment agreements may occur, but the assignee vendor will no longer be able to recover attorney fees in suits against an insurer. Applies to property insurance lawsuits brought by vendor assignees against authorized insurers and surplus lines insurers.

Eliminates statutory language detailing the methodology for awarding attorney fees to plaintiffs or defendants in litigation brought by an assignee of benefits under a property insurance policy. The language is no longer necessary because the bill prohibits assignment of the right to recover attorney fees in suits arising out of a property insurance policy.

Attorney Fee Multiplier:

Creates a new standard for the award of an attorney fee multiplier in property insurance litigation. The bill creates a presumption that in property insurance cases, attorney fee awards based on the Lodestar methodology are sufficient and reasonable. Attorney fee multipliers may only be awarded under rare and exceptional circumstances with evidence that competent counsel could not be hired in a reasonable manner. Allows a court to award attorney fees when a first-party claimant’s property insurance suit is dismissed without prejudice for failure to provide a Notice of Intent to Initiate Litigation.

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Provides that a defendant insurer may obtain attorney fees and costs associated with securing a dismissal without prejudice for failure to provide the required Notice of Intent to Initiate Litigation at least 10 days before filing a suit against a property insurer.

SB 2D passed the Senate 30-9 and the House of Representatives 95-14. The bill took effect on May 26, 2022, unless otherwise noted.

SB 4D by Chairman Jim Boyd (R-Bradenton):

Requires the Florida Building Code to provide when 25 percent or more of a roofing system or roof section is being repaired, replaced, or recovered, only the portion of the roofing system or roof section undergoing such work must be constructed in accordance with the current Florida Building Code in effect at that time. Currently, the Florida Building Code provides that not more than 25 percent of the total roof area or roof section of any existing building or structure shall be repaired, replaced or recovered in any 12-month period unless the entire existing roofing system or roof section is replaced to conform to requirements of this code.

Creates an exception to this provision. The exception applies to roof systems and roof sections built, repaired, or replaced in accordance with the requirements of the 2007 Florida Building Code or subsequent editions.

Prohibits a local government from adopting by ordinance an administrative or technical amendment to the exception created by the bill.

Specific to Condominiums SB 4D Includes the Following:

Creates a statewide building milestone inspection requirement for condominiums and cooperative buildings that are three stories or higher in height 30 years after initial occupancy and 25 years after initial occupancy for buildings located within three miles of the coast.

Requires inspections every 10 years after a building's initial "phase 1" inspection.

Requires an additional, more intensive inspection, or a "phase 2 inspection," if a building's phase 1 inspection reveals substantial structural deterioration.

Requires building officials to provide written notice to associations when buildings must be inspected.

Requires phase 1 and phase 2 inspection reports be submitted to building officials and unit owners.

Provides local building officials with ability to assess penalties for failing to comply with the requirements for phase 1 and phase 2 inspections.

Requires condominiums and cooperatives to conduct structural integrity reserve studies every 10 years for buildings that are three stories or higher in height and prohibits waiver of funding for certain structural reserves.

Requires developers to complete structural integrity reserve studies for every building that is three stories or higher, prior to turning over an association to the unit owners.

Repeals the ability of developers to waive the collection of all types of reserve funds.

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Requires structural integrity reserve study inspections, and phase 1 and phase 2 inspections to be performed by licensed engineers or architects.

Provides that structural integrity reserve studies, and phase 1 and phase 2 inspection reports are a part of an association's official records and must be provided to a potential purchaser of a unit.

Provides that failing to perform a required structural integrity reserves study, or phase 1 or phase 2 inspection is breach of a board member or officer's fiduciary duty.

Requires a community association manager to provide a milestone inspection report to a local building official, if the manager receives the report.

The bill passed the Senate 38-0 and the House of Representatives 110-0. The effective date is also May 26, 2022.

Other Special Session D Bills – Included for reference only as none of these bills received a hearing and may include concepts which could be refiled during the next regular session.

HB 11D by Representative Gottlieb (D- Sunrise) Revises calculation of amount of losses below which insurer is not entitled to reimbursement from FHCF for certain contract years; requires formula for determining actuarially indicated premiums to include cash build-up factor in certain contract years; authorizes insurers to file certain insurance rating plans based on certain windstorm mitigation construction standards under certain circumstances; revises conditions for determining ineligibility of condominiums for wind-only coverage; authorizes licensed personal lines or general lines agents to solicit, negotiate, advertise, or sell motor vehicle service agreements, home warranty contracts, & service warranty contracts without sales representative license.

HB 13D by Representative Bartleman (D-Weston) and SB 20D by Senator Book (D-Plantation) Requires OIR to conduct studies concerning coverage for personal lines residential structures; provides reporting requirements.

HB 15D by Representative Hinson (D-Gainesville) Provides requirement for property insurers before insurers may require certain property replacements as condition of issuance or renewal of homeowners' insurance policies; prohibits property insurers from refusing to issue or renew policies unless specified requirements are met.

HB 17D by Representative Hinson (D-Gainesville) Requires DFS & OIR of Financial Services Commission to hold annual conference focusing on certain topics; requires certain insurers to attend such conference.

HB 19D by Representative Hart (D-Tampa) Provides that Florida Building Code may not require entire roofing system or roof section of certain existing buildings or structures to be repaired, replaced, or recovered to meet Florida Building Code; provides requirements for Florida Building Commission.

The 2023 Legislative Session will convene March 7, 2023 thru May 5, 2023. The Organizational Session will take place on November 22nd after the general election.