

# Summary of May 2022 Special Session Changes

Here are the two bills that lawmakers considered and passed during the May 2022 Special Session, with updates and changes from the initial proposals in [blue font](#).

**Property Insurance** – [HB 1-D](#) and [SB 2-D](#) by Rep. Jay Trumbull (R-Panama City) and Senator Jim Boyd (R-Bradenton) are essentially identical bills containing almost all of the proposals on the table in this special session. Rep. Trumbull is a small business owner and the House Appropriations Chairman who will be the point-person in the House on these issues. Senator Boyd is an insurance agent and chair of the Banking and Insurance Committee and the Senate's point-person during this special session.

These measures address access and affordability of property insurance, how to mitigate insurance fraud in Florida's property insurance market, and provide greater monitoring and transparency of insurance regulation, including company insolvencies.

The Senate passed it Tuesday on a 30-9 vote, with the bill's sponsor, Senator Boyd noting "We're on a respirator in the homeowners' market right now, and it's not getting better." Yet there were objections by Democrats to the bad faith provisions and litigation reform, with Senator Gary Farmer (D-Lighthouse Point), an attorney, saying insurance companies would decline claims "like crazy" if they didn't face the potential of lawsuits.

The House approved it Wednesday afternoon on a 95-14 vote, also with mixed feelings. "I think this bill gives us the ability to stabilize the market," said Rep. Jim Mooney (R-Islamorada). But Rep. Angie Nixon (D-Jacksonville) called it "Smoke and mirrors...a dog and pony show. "Unfortunately, that seems to be all we're doing here." Democrats proposed a series of amendments to the bill, including eliminating the bad faith reform, but those were rejected.

**Reinsurance to Assist Policyholders (RAP) Program:** This program provides \$2 billion in no-cost reinsurance coverage to property insurance companies in exchange for those companies reducing policyholder premiums.

- 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.
- The RAP program coverage reimburses 90% of each insurer's covered losses and 10% 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.
- Each insurer's limit of the \$2 billion in RAP coverage is their pro-rata market share among all insurers that participate in the RAP program. Thus, an insurer with 5% of the risk reinsured by RAP coverage would have a limit of coverage of \$100 million.

- All eligible insurers will participate in the RAP program for one year. Insurers that do not have private reinsurance within the RAP layer of coverage for the 2022-2023 contract year must participate during the 2022-2023 contract year. Insurers that have private reinsurance at the RAP layer for the 2022-2023 contract year must defer using RAP program coverage until the 2023-2024 contract year.
- An insurer may not obtain RAP coverage if the Insurance Commissioner certifies it is in “unsound financial condition.”
- Insurers do not pay premiums for RAP program coverage, but must reduce rates to reflect savings. Insurers that participate in the RAP program for 2022-2023 must reduce their rates by June 30, 2022, to reflect the savings from RAP coverage. Insurers that defer using the RAP program until 2023-2024 must reduce rates to reflect savings by May 1, 2023.
- The RAP coverage is funded through a \$2 billion dollar appropriation from the General Revenue Fund. Monies are only transferred to the State Board of Administration (the program administrator) if the RAP program coverage must be paid because of a hurricane.
- If funds are transferred to the State Board of Administration (SBA) because of a hurricane, the SBA may request funds for the administration of the program from the General Revenue Fund, not to exceed \$5 million.
- The RAP program expires July 1, 2025, if no General Revenue funds have been transferred to fund the RAP program. If such funds were transferred, the statute expires July 1, 2029, and all unencumbered RAP Program funds must be transferred back to the General Revenue Fund.

During House debate, Rep. Michael Grieco (D-Miami) called it “corporate welfare” but Rep. Bob Rommel (R-Naples) refuted that. “They (insurance companies) are on life support,” Rommel said. “They barely have a heartbeat.”

There were two technical amendments made on this section; one clarified insurance company participation guidelines and the other on emergency rule-making procedures on RAP.

**My Safe Florida Home Program:** This is a recreation of the 2005 My Safe Florida Home Program, establishing a \$150 million home hardening grant program to help residents make their homes safer and more resilient. This mitigation matching grant program provides a maximum \$10,000 state contribution with the homeowner having to match that with \$5,000. There is also a metric built-in to measure insurance premium savings to homeowners.

- 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. Administered by the Department of Financial Services, it 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.

- Establishes additional eligibility criteria:
- Requires applicants of the program to make their home available for inspection after the mitigation project is complete.
- Requires that a building permit for initial construction of the home must have been made before January 1, 2008.
- Requires the home to have undergone an acceptable hurricane mitigation inspection after July 1, 2008.
- 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.
- Requires the Department of Financial Services to include in the annual report of program activities the average annual amount of insurance premium discounts and the total of such discounts received from insurers.
- Allocates appropriated funds as follows:
  - \$25 million for hurricane mitigation inspections.
  - \$115 million for hurricane mitigation grants.
  - \$4 million for education and consumer awareness.
  - \$1 million for public outreach to contractors, real estate brokers, and sales associates.
  - \$5 million for administrative costs.
- Provides that any unexpended balance of appropriated funds remaining on June 30, 2023, reverts and is appropriated to the Department of Financial Services for the 2023-2024 fiscal year for the My Safe Florida Home program.

There was one technical amendment on the My Safe Florida Home program.

**Contractor Solicitation of Roof Claims:** This section seeks to curb unscrupulous roof claims by clarifying advertising and solicitation restrictions in the legislature's 2021 [SB 76](#) reform law that a federal judge [enjoined from enforcement](#) last summer on free-speech grounds.

- Prohibits contractors from making written or electronic communications that encourage or induce a consumer to contact a contractor or public adjuster for the purposes of making a property insurance claim for roof damage unless such solicitation provides notice that:
  - The consumer is responsible for the payment of any deductible.
  - It is insurance fraud punishable as a third-degree felony for a contractor to pay or waive an insurance deductible.
  - It is insurance fraud punishable as a third-degree felony to intentionally file an insurance claim containing false, fraudulent, or misleading information.

**Separate Roof Deductibles:** Creating a non-catastrophe roof deductible was a stumbling block in this year's regular session of the legislature,

with disagreement between the Senate and House on making it mandatory or customer-optional. This bill would include the deductible in the standard policy and a resulting premium discount, with the policyholder needing to actively opt-out if they choose to do so.

- Allows property insurers to include in the policy a separate roof deductible of up to 2% of the Coverage A limit of the policy or 50% 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 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.
- Provides that the roof deductible does not apply to:
  - A total loss to the primary structure in accordance with the valued policy law under s. 627.702, F.S., which is caused by a covered peril.
  - A loss caused by a hurricane.
  - A roof loss resulting from a tree fall or other hazard that damages the roof and punctures the roof deck.
  - A roof loss requiring the repair of less than 50% of the roof.
- Specifies that when a roof deductible is applied, no other deductibles under the policy may be applied.
- Requires a roof deductible provision to be clear and unambiguous.
- Requires the inclusion of the following disclosures:
  - On the page immediately behind the declarations page, notice that a roof deductible may result in high out-of-pocket expenses to the policyholder.
  - On the policy declarations page, prominent display of the actual dollar value of the roof deductible at issuance and renewal.
- Allows an insurer to limit payment on a roof claim to actual cash value until the policyholder pays the roof deductible.

**Roofs – Insurer Underwriting:** This was another topic of debate in the regular session in an effort to dis-incentivize unscrupulous roofers from submitting insurance claim damages for normal wear-and-tear of roofs.

- 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.
- 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.

There was a technical amendment that clarified roof age for purposes of repair or replacement purposes.

### **Insurer Claims Handling:**

- 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.
- Requires insurers to 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.
- 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.

### **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 extra contractual 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.

**Attorney Fees – Assignment of Benefits (AOB):** This section builds on [2019 AOB Reform](#) passed by the Florida Legislature that has not been as effective as desired. It intends to close loopholes that have allowed contractors to make an end-run around AOBs using Directions to Pay or other designees, such as attorneys themselves.

- 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 Fees – Fee Multipliers:** This is a renewed attempt to put the brakes on a growing abuse of attorney fee awards, through Contingency Risk Multipliers. It provides that a strong presumption is created that a lodestar fee (billable hours x reasonable hourly rate) is sufficient and reasonable in judgments or decrees against insurance companies. Florida is the only state, based on a past judicial decree, that doesn't follow the federal lodestar standard. (See [\*Florida Appeals Court Slashes \\$600,000 Attorney Fee on \\$52,000 Claim\*](#))

- 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.

**Attorney Fees – Dismissal for Failure to Provide Notice:**

- 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.

**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.

**Regulation of Insurers and Insurer Transparency:** This section would improve insurance company accountability and create a new insurance company stability unit within the Office of Insurance Regulation (OIR) to increase regulatory oversight, with a focus on the financial stability of companies. However, it does not fund any new positions. It also addresses concerns raised in this past week's article [\*When Florida's property insurers fail, few ask why.\*](#)

- Requires the OIR to publish all orders, specified insurance industry data, and reports issued by the newly created Property Insurance Stability Unit.
- Specifies that publication of the annual statistical report must be done by July 1 of each year and requires the OIR to include within that report an analysis of the availability of reinsurance to domestic insurers selling homeowners' and condominium unit owners' insurance in Florida.
- Requires that the OIR include within its annual report additional data regarding insurers against which delinquency or similar proceedings were instituted, a concise statement of the circumstances that led to each insurer's delinquency, a summary of actions taken by the insurer and the OIR to avoid delinquency, and that results or status of each delinquency proceeding.
- Requires the OIR to maintain and make available upon request reports relating to the health of the homeowners' and condominium unit owners' insurance market that include specified information regarding market trends and the percentage of policies written by voluntary carriers and Citizens Property Insurance Corporation.
- Directs the OIR to make data publicly available detailing the statewide number of policies, amount of premium, number of cancellations, and other data for each property insurer. Specifies such information is not a trade secret.
- Creates a Property Insurance Stability Unit within the OIR to aid in the detection and prevention of insurer insolvencies in the homeowners' and condominium unit owners' insurance market. Insurers must be referred to the unit for enhanced monitoring upon the occurrence of specified events. The unit must:
  - Provide enhanced monitoring when the OIR identifies significant concerns about various aspects of the insurer.
  - Conduct a target market conduct exam when there is reason to believe the insurer may be in an unsound financial condition.
  - Closely monitor insurer financial data.
  - Conduct annual catastrophe stress tests of domestic insurers.
  - Update wind mitigation credits.
  - Review the causes of insolvency and business practices of insurers referred to the Division of Rehabilitation and Liquidation within the Department of Financial Services.
- Twice annually, provide a report on the status of the homeowners' and condominium unit owners' insurance market.
- Requires the OIR to execute an affidavit identifying the grounds for initiating delinquency proceedings against an insurer.
- For an insolvency involving a domestic property insurer, the Department of Financial Services must:
  - Begin an analysis of the history and causes of the insolvency no later than the initiation of delinquency proceedings against the insurer;
  - Review the OIR's regulatory oversight of the insurer.
  - Submit an initial report analyzing the history and causes of the insolvency no later than two months after the initiation of the delinquency proceeding;
  - Provide a special report within ten days of identifying any condition or practice that may lead to insolvency in the property insurance marketplace; and

- Submit a final report analyzing the history and causes of the insolvency and the OIR's regulatory oversight within 30 days of the conclusion of the insolvency proceeding.

### **Conflict with Laws Passed During the 2022 Regular Session:**

- Provides that if any law amended by this act was also amended by a law enacted during the 2022 Regular Session of the Legislature, such laws shall be construed as if enacted during the same session of the Legislature, and full effect shall be given to each if possible.

**Effective Date:** Except as otherwise provided, the act becomes effective upon becoming a law.

**Roof Repair, Replacement, and Recovering Requirements** – [HB 3-D](#) and [SB 4-D](#) by Rep. Jay Trumbull (R-Panama City) and Senator Jim Boyd (R-Bradenton) are essentially identical bills containing the remaining proposal on the table this session: changes in Florida's Building Codes to allow flexibility in the state's 25% Roof Repair/Replacement Rule. Current law requires an entire roof be replaced if 25% or more of it is damaged. This has provided incentives for both the roofers and the trial attorneys to replace a roof that otherwise is simply showing signs of wear and tear or is an older roof without proper maintenance. As a result, some insurance companies have been paying claims of upwards of \$50,000 where the actual damage might just be a few thousand dollars.

These measures create a statutory exception to the Florida Building Code so that roofs that are more than 25% damaged but already comply with the 2007 Florida Building Code may be repaired instead of being required to be replaced.

- Section 1. Amends s. 553.844, F.S. to require the Florida Building Code to provide that 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. The bill also prohibits a local government from adopting by ordinance an administrative or technical amendment to the exception created by the bill.
- Section 2. This act takes effect upon becoming a law.

The House added a bill ([HB 5-D](#)) on high-rise condominium building re-inspections and condo/HOA association practices, including reserve accounts and studies to fund milestone inspections and repair. It builds on efforts made in the regular session that ultimately failed to pass and was in response to the Surfside condo collapse that killed 98 people in June of 2021. The Senate incorporated it in SB 4-D and passed it unanimously and sent it back to the House, which laid 5-D on the table and adopted SB 4-D unanimously as well.

It imposes “milestone inspections” for buildings three stories or taller. Those within three miles of a coast will be structurally inspected on their 25<sup>th</sup> anniversary and every 10 years afterward; the rest on their 30<sup>th</sup> anniversary and every 10 years afterward. If engineers or architects see “any substantial structural deterioration” in initial inspections, the bill requires additional inspections. Those inspections “may be as extensive or as limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound and safe for its intended use and to recommend a program for fully assessing and repairing distressed and damaged portions of the building,” according to the bill.

Inspection reports would have to be given to condominium associations and local building officials. Report summaries would have to be distributed to condominium unit owners.

Rather than require associations to move forward with repairs (which was a sticking point that killed a similar bill in the regular session this year) the bill states county commissions “may” pass ordinances that would require condominium associations to move forward with repairs for structural deterioration.

There was one technical amendment made on this bill pertaining to condominiums.

***Courtesy of: LMA Bill Watch of 5-25-22***