The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

BUDGET
Senator Alexander, Chair
Senator Negron, Vice Chair

MEETING DATE: Tuesday, March 22, 2011
TIME: 10:15 a.m.—12:15 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Alexander, Chair; Senator Negron, Vice Chair; Senators Altman, Benacquisto, Bogdanoff, Fasano, Flores, Gaetz, Hays, Joyner, Lynn, Margolis, Montford, Rich, Richter, Simmons, Siplin, Sobel, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/CS/SB 408** Budget Subcommittee on General Government Appropriations / Banking and Insurance / Richter (Similar H 803, Compare H 707, H 4115, CS/S 858, S 1462)	Property and Casualty Insurance; Revises the definition of "losses," relating to the Florida Hurricane Catastrophe Fund, to exclude certain losses. Revises the amount of surplus funds required for domestic insurers applying for a certificate of authority after a certain date. Authorizes the Office of Insurance Regulation to reduce the surplus requirement under specified circumstances. Authorizes the office to disapprove a rate filing because the coverage is inadequate or the insurer charges a higher premium due to certain discriminatory factors, etc. BI 01/25/2011 BI 02/07/2011 Temporarily Postponed BI 02/22/2011 Fav/CS BGA 03/11/2011 Fav/CS BC 03/15/2011 BC 03/22/2011 RC	
2	**CS/SB 94** Health Regulation / Gaetz (Identical H 199, Compare S 1972)	Blood Establishments; Redefines "blood establishment" and defines "volunteer donor." Prohibits local governments from restricting access to public facilities or infrastructure for certain activities based on whether a blood establishment is operating as a for-profit organization or not-for-profit organization. Authorizes the Department of Legal Affairs to assess a civil penalty against a blood establishment that fails to disclose specified information on the Internet, etc. HR 01/11/2011 Fav/CS CA 02/08/2011 Favorable BHA 03/15/2011 Favorable BC 03/22/2011	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/CS/SB 170** Budget Subcommittee on Criminal and Civil Justice Appropriations / Judiciary / Bennett (Similar H 443)	Electronic Filing and Receipt of Court Documents; Requires each state attorney and public defender to implement a system by which the state attorney and public defender can electronically file court documents with the clerk of the court and receive court documents from the clerk of the court. Provides legislative expectations that the state attorneys and public defenders consult with specified entities. Defines the term "court documents," etc. JU 02/08/2011 Fav/CS BJA 03/17/2011 Fav/CS BC 03/22/2011	
4	**CS/SB 618** Criminal Justice / Evers (Compare H 1233, H 4157, S 1850)	Juvenile Justice; Repeals provisions relating to legislative intent for serious or habitual juvenile offenders in the juvenile justice system, definitions of terms for a training school and the serious or habitual juvenile offender program, the serious or habitual juvenile offender program in the juvenile justice system, the intensive residential treatment program for offenders less than 13 year of age, and the designation of persons holding law enforcement certification within the Office of the Inspector General to act as law enforcement officers, etc. CJ 03/09/2011 Fav/CS BJA 03/17/2011 Favorable BC 03/22/2011	
5	**CS/SB 782** Transportation / Latvala (Compare CS/H 601)	Fallen Officers Memorial/Road Designations; Designates the Sgt. Thomas J. Baitinger, Officer Jeffrey A. Yaslowitz, and Officer David S. Crawford Memorial Highway in Pinellas County. Designates the Officer Jeffrey A. Kocab and Officer David J. Curtis Memorial Highway in Hillsborough County. TR 02/22/2011 Fav/CS BTA 03/17/2011 Favorable BC 03/22/2011 RC	

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/15/2011	.	
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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 249 and 250
insert:

(6) REVENUE BONDS.—

(b) *Emergency assessments*—

1. If the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct

premiums for all property and casualty lines of business in this state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums. As used in this subsection, the term "property and casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers by s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program. The assessment shall be specified as a percentage of direct written premium and is subject to annual adjustments by the board in order to meet debt obligations. The same percentage shall apply to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

2. A premium is not subject to an annual assessment under this paragraph in excess of 6 percent of premium with respect to obligations arising out of losses attributable to any one contract year, and a premium is not subject to an aggregate annual assessment under this paragraph in excess of 10 percent of premium. An annual assessment under this paragraph shall continue as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.


850230

3. Emergency assessments shall be collected from policyholders. Emergency assessments shall be remitted by insurers as a percentage of direct written premium for the preceding calendar quarter as specified in the order from the Office of Insurance Regulation. The office shall verify the accurate and timely collection and remittance of emergency assessments and shall report the information to the board in a form and at a time specified by the board. Each insurer collecting assessments shall provide the information with respect to premiums and collections as may be required by the office to enable the office to monitor and verify compliance with this paragraph.

4. With respect to assessments of surplus lines premiums, each surplus lines agent shall collect the assessment at the same time as the agent collects the surplus lines tax required by s. 626.932, and the surplus lines agent shall remit the assessment to the Florida Surplus Lines Service Office created by s. 626.921 at the same time as the agent remits the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessment on each insured procuring coverage and filing under s. 626.938 shall be remitted by the insured to the Florida Surplus Lines Service Office at the time the insured pays the surplus lines tax to the Florida Surplus Lines Service Office. The Florida Surplus Lines Service Office shall remit the collected assessments to the fund or corporation as provided in the order levied by the Office of Insurance Regulation. The Florida Surplus Lines Service Office shall verify the proper application of such emergency assessments and shall assist the board in ensuring the accurate and timely collection and

remittance of assessments as required by the board. The Florida Surplus Lines Service Office shall annually calculate the aggregate written premium on property and casualty business, other than workers' compensation and medical malpractice, procured through surplus lines agents and insureds procuring coverage and filing under s. 626.938 and shall report the information to the board in a form and at a time specified by the board.

5. Any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not exceeding the amount of unused assessment authority from a previous contract year or years, plus an additional 4 percent provided that the assessments in the aggregate do not exceed the limits specified in subparagraph 2.

6. The assessments otherwise payable to the corporation under this paragraph shall be paid to the fund unless and until the Office of Insurance Regulation and the Florida Surplus Lines Service Office have received from the corporation and the fund a notice, which shall be conclusive and upon which they may rely without further inquiry, that the corporation has issued bonds and the fund has no agreements in effect with local governments under paragraph (c). On or after the date of the notice and

until the date the corporation has no bonds outstanding, the fund shall have no right, title, or interest in or to the assessments, except as provided in the fund's agreement with the corporation.

7. Emergency assessments are not premium and are not subject to the premium tax, to the surplus lines tax, to any fees, or to any commissions. An insurer is liable for all assessments that it collects and must treat the failure of an insured to pay an assessment as a failure to pay the premium. An insurer is not liable for uncollectible assessments.

8. When an insurer is required to return an unearned premium, it shall also return any collected assessment attributable to the unearned premium. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances that are payable to the fund or corporation, but the insurer is not entitled to a refund.

9. When a surplus lines insured or an insured who has procured coverage and filed under s. 626.938 is entitled to the return of an unearned premium, the Florida Surplus Lines Service Office shall provide a credit or refund to the agent or such insured for the collected assessment attributable to the unearned premium prior to remitting the emergency assessment collected to the fund or corporation.

10. The exemption of medical malpractice insurance premiums from emergency assessments under this paragraph is repealed May 31, 2011 ~~2013~~, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2011 ~~2013~~.

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====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete lines 221 and 222
and insert:
subsection (2) and paragraph (b) of subsection (6) of section 215.555, Florida Statutes, are amended to read:

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 5
and insert:
Catastrophe Fund, to exclude certain losses; moving up the date for repealing the exemption for medical malpractice insurance premiums from emergency assessments; providing

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/15/2011	.	
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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 656 and 657
insert:

Section 10. Section 626.8652, Florida Statutes, is created to read:

626.8652 Public adjuster for sinkhole insurance.—Effective July 1, 2012, a licensed public adjuster may not adjust a catastrophic ground cover collapse or sinkhole claim as provided under ss. 627.706-627.7074 unless the adjuster is certified by the department as having completed a sinkhole education program established by the department by rule and worked for at least 1 year under the direct supervision of a public adjuster certified

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under this section.

(1) The department may waive this requirement and certify an adjuster who demonstrates to the department that he or she has adjusted at least 500 sinkhole claims, without having been subject to any disciplinary actions by the department, before July 1, 2012.

(2) A certified public adjuster must submit to the department for review a copy of any proposed advertisement to the public in order to ensure that such advertisement does not contain any false, misleading, or deceptive information about the services to be provided by the adjuster. The department shall adopt advertising standards by rule. The department may charge a fee to cover the cost of reviewing such advertisements.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

After line 59

insert:

creating s. 626.8652, F.S.; requiring public adjusters adjusting claims for sinkhole damage to be certified; providing certification requirements; providing an exemption for certain adjusters; requiring the Department of Financial Services to adopt advertising standards by rule and review proposed advertisements by certified adjusters; authorizing the department to charge a fee for such review;

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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/15/2011	.	
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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 687 - 704.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 61 - 67

and insert:

a public adjuster contract; repealing s. 624.0613(4), F.S.,

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/15/2011	.	
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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 713 - 753
and insert:
(2) As to all such classes of insurance:
(a) Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals that ~~to~~ allow the insurer a reasonable rate of return on the ~~such~~ classes of insurance written in this state. A copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes thereto, must ~~shall~~ be filed with the office under one of the following procedures except as provided in subparagraph 3.:

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1. If the filing is made at least 90 days before the proposed effective date and ~~the filing~~ is not implemented during the office's review of the filing and any proceeding and judicial review, ~~then~~ such filing is ~~shall be~~ considered a "file and use" filing. In such case, the office shall finalize its review by issuance of an approval ~~a notice of intent to approve~~ or a notice of intent to disapprove within 90 days after receipt of the filing. The approval ~~notice of intent to approve~~ and the notice of intent to disapprove constitute agency action for purposes of the Administrative Procedure Act. Requests for supporting information, requests for mathematical or mechanical corrections, or notification to the insurer by the office of its preliminary findings does ~~shall~~ not toll the 90-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue an approval ~~a notice of intent to approve~~ or a notice of intent to disapprove within 90 days after receipt of the filing.

2. If the filing is not made in accordance with ~~the provisions of~~ subparagraph 1., such filing must ~~shall~~ be made as soon as practicable, but within ~~no later than~~ 30 days after the effective date, and is ~~shall be~~ considered a "use and file" filing. An insurer making a "use and file" filing is potentially subject to an order by the office to return to policyholders those portions of rates found to be excessive, as provided in paragraph (h).

3. For all property insurance filings ~~made or submitted after January 25, 2007, but before December 31, 2010~~, an insurer seeking a rate that is greater than the rate most recently approved by the office shall make a "file and use" filing. For

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purposes of this subparagraph, motor vehicle collision and comprehensive coverages are not considered to be property coverages.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 77 - 78

and insert:

discriminatory factors; requiring all insurers seeking a certain rate to make a "file and use" filing; prohibiting the Office of Insurance

536388

LEGISLATIVE ACTION

Senate	.	House
Comm: TP	.	
03/15/2011	.	
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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1262 - 1340
and insert:
Section 14. Subsection (5) and paragraph (b) of subsection (8) of section 627.0629, Florida Statutes, are amended to read:
627.0629 Residential property insurance; rate filings.—

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete lines 92 - 111
and insert:
Legislature; amending s. 627.0629, F.S.; conforming

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provisions to changes made

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1266 - 1340

and insert:

(1)(a) It is the intent of the Legislature that insurers ~~must~~ provide the most accurate pricing signals available in order ~~savings~~ to encourage consumers to ~~who~~ install or implement windstorm damage mitigation techniques, alterations, or solutions to their properties to prevent windstorm losses. It is also the intent of the Legislature that implementation of mitigation discounts not result in a loss of income to the insurers granting the discounts, so that the aggregate of such discounts not exceed the aggregate of the expected reduction in

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loss attributable to the mitigation efforts for which discounts are granted. A rate filing for residential property insurance must include actuarially reasonable discounts, credits, debits, or other rate differentials, or appropriate reductions in deductibles, which provide the proper pricing for all properties. The rate filing must take into account the presence or absence of ~~on which~~ fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm which have been installed or implemented. The fixtures or construction techniques must ~~shall~~ include, but need not be limited to, fixtures or construction techniques that ~~which~~ enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength. Credits, debits, discounts, or other rate differentials, or appropriate reductions or increases in deductibles, which recognize the presence or absence of ~~for~~ fixtures and construction techniques that ~~which~~ meet the minimum requirements of the Florida Building Code must be included in the rate filing. If an insurer demonstrates that the aggregate of its mitigation discounts results in a reduction to revenue which exceeds the reduction of the aggregate loss that is expected to result from the mitigation, the insurer may recover the lost revenue through an increase in its base rates. ~~All insurance companies must make a rate filing which includes the credits, discounts, or other rate differentials or reductions in deductibles by February 28, 2003. By July 1, 2007, the office shall reevaluate the discounts, credits, other rate differentials, and appropriate reductions in deductibles for fixtures and construction techniques that meet the minimum~~

~~requirements of the Florida Building Code, based upon actual experience or any other loss relativity studies available to the office.~~ The office shall determine the discounts, credits, debits, other rate differentials, and appropriate reductions or increases in deductibles that reflect the full actuarial value of such revaluation, which may be used by insurers in rate filings.

(b) By February 1, 2011, the Office of Insurance Regulation, in consultation with the Department of Financial Services and the Department of Community Affairs, shall develop and make publicly available a proposed method for insurers to establish discounts, credits, or other rate differentials for hurricane mitigation measures which directly correlate to the numerical rating assigned to a structure pursuant to the uniform home grading scale adopted by the Financial Services Commission pursuant to s. 215.55865, including any proposed changes to the uniform home grading scale. By October 1, 2011, the commission shall adopt rules requiring insurers to make rate filings for residential property insurance which revise insurers' discounts, credits, or other rate differentials for hurricane mitigation measures so that such rate differentials correlate directly to the uniform home grading scale. The rules may include such changes to the uniform home grading scale as the commission determines are necessary, and may specify the minimum required discounts, credits, or other rate differentials. Such rate differentials must be consistent with generally accepted actuarial principles and wind-loss mitigation studies. The rules must ~~shall~~ allow a period of at least 2 years after the effective date of the revised mitigation discounts, credits, or

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other rate differentials for a property owner to obtain an inspection or otherwise qualify for the revised credit, during which time the insurer shall continue to apply the mitigation credit that was applied immediately before ~~prior to~~ the effective date of the revised credit. Discounts, credits, and other rate differentials established for rate filings under this paragraph shall supersede, after adoption, the discounts, credits, and other rate differentials included in rate filings under paragraph (a).

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 101 - 107

and insert:

reduction in expected losses;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment

Delete lines 2421 - 2428

and insert:

b. A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement ~~or renewal~~ coverage to the policyholder.

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2567 - 2596

and insert:

(3) In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs, the insurer shall pay the replacement cost without reservation or holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling or property.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 149 - 160

and insert:

less any applicable deductible;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2705 - 2710
and insert:
(1) Every insurer authorized to transact property insurance, as described in s. 627.4025, in this state must ~~shall~~ provide coverage for a catastrophic ground cover collapse. The insurer may restrict such coverage to the principal building and other covered structures, as defined in the applicable policy, but must ~~and shall~~ make available, for an appropriate

Delete lines 2801 - 2803
and insert:
YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES.

587550

YOU MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN ADDITIONAL PREMIUM.”

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 169 - 170

and insert:

principal building; allowing the deductible to

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete line 2710

and insert:

insurer ~~and~~ shall make available, for an appropriate

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 169 - 170

and insert:

principal building; allowing the deductible to

386970

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment

Delete lines 2752 - 2756

and insert:

(h) ~~(c)~~ "Sinkhole loss" means structural damage to the covered building, including the foundation, caused by sinkhole activity. Contents coverage and additional living expenses ~~shall~~ apply only if there is structural damage to the covered building caused by sinkhole activity. Cosmetic damage consisting of hairline to one-sixteenth inch cracks to nonstructural building components is not covered unless accompanied by structural damage.

386970

Delete lines 2779 - 2787

and insert:

(i) "Structural damage" means settlement damage to one or more primary structural components or structural systems of a covered structure.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 2842 and 2843
insert:

Section 25. Section 627.7066, Florida Statutes, is created to read:

627.7066 Investigation and remediation permits.—

(1) Each county shall, by ordinance, require a property owner to obtain an investigation permit before conducting an investigation of potential sinkhole activity.

(a) An application for such permit must include a legal description of the property to be investigated and the name of the property owner.


498756

(b) Upon completion of the investigation, a summary of the results, which includes the dates of the investigation, the type of testing and analysis conducted, who conducted the investigation, and the findings of the investigation, must be submitted to the county and filed with the permit application.

(c) A copy of the permit and the summary document must be filed in the public records of the county.

(d) All permit costs and the cost of recording shall be paid by the permit applicant.

(2) Each county shall, by ordinance, require any person providing stabilization and foundation repairs resulting from sinkhole activity to obtain a remediation permit.

(a) An application for such permit must include a legal description of the property, the name of the property owner, and identify the proposed repairs, including the quantities of materials to be used and estimated repair costs.

(b) Upon completion of repairs, a summary of the repair activities conducted, including materials used and the cost of such materials plus labor, an accounting of any differences between the estimated and actual materials and costs, and payments by the insurer to the owner pursuant to a sinkhole claim, must be submitted to the county and filed with the permit application.

(c) A copy of the permit and the summary document must be filed in the public records of the county.

(d) All permit costs and the cost of recording shall be paid by the person conducting the repairs.

================ T I T L E A M E N D M E N T ================

498756

And the title is amended as follows:

Delete line 180

and insert:

establishment of a sinkhole database; creating s. 627.7066, F.S.; requiring counties to adopt an ordinance requiring permits before conducting an investigation of potential sinkhole activity and before making any repairs resulting from sinkhole activity; requiring a summary of the investigation and repairs conducted to be filed with the permit; requiring a copy of the permit and summary to be filed in the county records; amending s.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 3076 and 3077
insert:

(3) Upon completion of any building stabilization or foundation repairs for a verified sinkhole loss, the professional engineer responsible for monitoring the repairs shall issue a report to the property owner which specifies what repairs have been performed and certifies within a reasonable degree of professional probability that such repairs have been properly performed. The professional engineer issuing the report shall file a copy of the report and certification, which includes a legal description of the real property and the name

899690

of the property owner, with the county clerk of the court, who shall record the report and certification.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 197

and insert:

to accepting payment; requiring the professional engineer responsible for monitoring sinkhole repairs to issue a report and certification to the property owner and file such report with the court; amending s. 627.7074, F.S.;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Substitute for Amendment (899690) (with title amendment)

Between lines 3076 and 3077
insert:

(3) Upon completion of any building stabilization or foundation repairs for a verified sinkhole loss, the professional engineer responsible for monitoring the repairs shall issue a report to the property owner which specifies what repairs have been performed and certifies within a reasonable degree of professional probability that such repairs have been properly performed. The professional engineer issuing the report shall file a copy of the report and certification, which

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includes a legal description of the real property and the name of the property owner, with the county clerk of the court, who shall record the report and certification. This subsection does not create liability for an insurer based on any representation or certification by a professional engineer related to the stabilization or foundation repairs for the verified sinkhole loss.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 197

and insert:

to accepting payment; requiring the professional engineer responsible for monitoring sinkhole repairs to issue a report and certification to the property owner and file such report with the court; amending s. 627.7074, F.S.;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment

Between lines 3169 and 3170
insert:

5. The proposed neutral evaluator has, for the preceding 5 years, directly or indirectly, performed 80 percent or more of his or her sinkhole loss investigatory work exclusively on behalf of policyholders or exclusively on behalf of an insurer who is a party to a neutral evaluation. Work performed as a neutral evaluator may not be considered in calculating the percentage of work performed.

Delete lines 3283 - 3289
and insert:


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(b) If the insurer invokes neutral evaluation before litigation begins, the actions of the insurer are not a confession of judgment or admission of liability if the insurer acknowledges coverage in writing and tenders all undisputed policy proceeds due within 30 days after the date neutral evaluation is completed. The insurer is not liable for attorney's fees under s. 627.428 or other provisions of the insurance code unless the policyholder obtains a judgment that is more favorable than the recommendation of the neutral evaluator.

(16) If the insurer and the policyholder agree to comply with the neutral

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Between lines 3296 and 3297
insert:

Section 28. Subsection (8) of section 627.711, Florida Statutes, is amended to read:

627.711 Notice of premium discounts for hurricane loss mitigation; uniform mitigation verification inspection form.—

(8) ~~At its expense,~~ The insurer may require that a ~~any~~ uniform mitigation verification form provided by a policyholder, a policyholder's agency, or an authorized mitigation inspector or inspection company be independently verified by an inspector, an inspection company, or an independent third-party quality

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assurance provider which possesses ~~does possess~~ a quality assurance program before ~~prior to~~ accepting the uniform mitigation verification form as valid.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 214

and insert:

requiring the department to adopt rules; amending s. 627.711, F.S.; deleting the requirement that the insurer pay for verification of a uniform mitigation verification form that the insurer requires; amending s.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Wise) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1362 - 1366
and insert:

Section 15. Paragraphs (a), (b), (c), (d), (v), and (y) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a)1. ~~It is~~ The public purpose of this subsection is to ensure the existence of an orderly market for property insurance for Floridians and Florida businesses. The Legislature finds that private insurers are unwilling or unable to provide

affordable property insurance coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and ~~likewise threatens~~ the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in the state is insured and ~~that it is~~ insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid ~~the~~ negative effects ~~otherwise resulting~~ to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends ~~by this subsection~~ that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, Citizens Property Insurance Corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic


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hurricane, it is the intent of the Legislature that Citizens Property Insurance Corporation continue to be an integral part of the state and that the income of the corporation ~~be exempt from federal income taxation~~ and ~~that~~ interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. As of July 1, 2002, the Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known~~, as of July 1, 2002,~~ as the Citizens Property Insurance Corporation. The corporation shall provide ~~insurance for~~ residential and commercial property insurance~~,~~ for applicants who are in good faith entitled, but are unable, to procure insurance through the voluntary market. ~~The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. The corporation shall continue to operate pursuant to the plan of operation approved by the Office of Insurance Regulation until October 1, 2006.~~ For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, and similar policies, and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.


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3. Effective January 1, 2009, a personal lines residential structure that has a dwelling replacement cost of $2 million or more, or a single condominium unit that has a combined dwelling and content replacement cost of $2 million or more is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2008, may continue to be covered by the corporation until the end of the policy term. However, such dwellings ~~that are insured by the corporation and become ineligible for coverage due to the provisions of this subparagraph~~ may reapply and obtain coverage if the property owner provides the corporation with a sworn affidavit from one or more insurance agents, on a form provided by the corporation, stating that the agents have made their best efforts to obtain coverage and that the property has been rejected for coverage by at least one authorized insurer and at least three surplus lines insurers. If such conditions are met, the dwelling may be insured by the corporation for up to 3 years, after which time the dwelling is ineligible for coverage. The office shall approve the method used by the corporation for valuing the dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before ~~prior to~~ being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also ~~is~~

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intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

~~5. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure shall be deemed to comply with the requirements of this subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.~~

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 112

and insert:

by the act; amending s. 627.351, F.S.; deleting an obsolete provision; deleting a limitation that prohibits Citizens Property Insurance Corporation from insuring certain structures located in the wind-borne debris region; renaming the

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LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1266 - 1310

and insert:

(1) ~~(a)~~ It is the intent of the Legislature that insurers ~~must~~ provide savings to consumers who install or implement windstorm damage mitigation techniques, alterations, or solutions to their properties to prevent windstorm losses. A rate filing for residential property insurance must include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have

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been installed or implemented. The fixtures or construction techniques must ~~shall~~ include, but are not ~~not be~~ limited to, fixtures or construction techniques that ~~which~~ enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength. Credits, discounts, or other rate differentials, or appropriate reductions in deductibles, for fixtures and construction techniques that ~~which~~ meet the minimum requirements of the Florida Building Code must be included in the rate filing. All insurance companies must make a rate filing that ~~which~~ includes the credits, discounts, or other rate differentials or reductions in deductibles by February 28, 2003. By July 1, 2007, the office shall reevaluate the discounts, credits, other rate differentials, and appropriate reductions in deductibles for fixtures and construction techniques that meet the minimum requirements of the Florida Building Code, based upon actual experience or any other loss relativity studies available to the office. The office shall determine the discounts, credits, other rate differentials, and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation, which may be used by insurers in rate filings.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 92 - 101

and insert:

Legislature; amending s. 627.029, F.S.; deleting obsolete

623654

LEGISLATIVE ACTION

Senate . House

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The Committee on Budget (Fasano) recommended the following:

Senate Amendment

Delete line 2705

and insert:

(1) Every insurer authorized to transact

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/CS/SB 408
INTRODUCER:	Budget Subcommitee on General Government Appropriations, Banking and Insurance Committee, and Senator Richter
SUBJECT:	Property Insurance
DATE:	March 14, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson, Emrich	Burgess	BI	**Fav/CS**
2.	Frederick	DeLoach	BGA	**Fav/CS**
3.	Frederick	Meyer, C.	BC	**Pre-meeting**
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill makes numerous changes to laws related to property insurance, primarily residential property insurance. The bill addresses the following primary issues:

- Requires the Florida Hurricane Catastrophe Fund to provide reimbursement for "all incurred losses" including amounts paid as fees on behalf of the policyholder, with exclusions;
- Increases the minimum surplus requirements for residential property insurers to $15 million;
- Allows insurers offering personal lines property insurance to provide written notice of policy changes to their policyholders without having to non-renew an entire insurance policy due to a change in policy terms;
- Reduces the insurer's written notice of nonrenewal, cancellation, or termination of a personal lines or commercial residential property insurance policy to 90 days;
- Modifies current replacement cost coverage and actual cash value provisions relating to dwellings and personal property;
- Requires windstorm and hurricane property insurance claims to be brought within three years and sinkhole loss claims to be brought within two years;

- Modifies provisions related to windstorm damage mitigation discounts for residential property insurance and repeals the provision requiring the OIR to develop a method correlating mitigation discounts to the uniform home grading scale;
- Repeals the requirement that the Consumer Advocate prepare an annual report card for personal residential property insurers;
- Renames the Citizens High Risk Account the Coastal Account and repeals the requirement to reduce the boundaries of the Citizens' High Risk Account (wind-only coverages);
- Allows an insurer seeking to take policies out of Citizens to do so in 45 days;
- Clarifies the ethics requirements for specified board members of the Citizens Property Insurance Corp., and provides that Board members abstain from voting under certain circumstances;
- Allows an insurer to cancel or nonrenew a property insurance policy upon a minimum of 45 days' notice based on a finding that the insurer lacks adequate reinsurance coverage for hurricane risk and other financial factors;
- Revises the regulation of public adjusters by placing limits on public adjuster compensation, prohibiting certain statements in public adjuster advertising, and revising the contents of the public adjuster contract;
- Removes the requirement that a property insurer must offer sinkhole coverage and eliminates application of statutes governing catastrophic ground cover collapse and sinkhole loss coverage from commercial property insurance policies;
- Revises what constitutes a sinkhole loss;
- Limits the authority of the Office of Insurance Regulation (OIR) to disapprove rates for sinkhole insurance.
- Revises procedures for insurers and policyholders relating to standards for sinkhole insurance claim investigations and revises the neutral evaluation process for sinkhole disputes; and
- Provides changes to the procedures pertaining to sinkhole reports by professional engineers or professional geologists and repeals the sinkhole database.

This bill substantially amends the following sections of the Florida Statutes: 215.555, 624.407, 624.408, 624.4095, 624.424, 626.854, 626.8651, 626.8796, 627.0613, 627.062, 627.0629, 627.351, 627.3511, 627.4133, 627.7011, 627.70131, 627.706, 627.7061, 627.707, 627.7073, 627.7074, 627.712

This bill creates sections 626.70132 and 627.73141, Florida Statutes.

This bill repeals section 627.7065, Florida Statutes.

II. Present Situation:

Insurer Surplus Requirements

Florida law specifies certain minimum surplus and capital requirements for property and casualty insurers to transact insurance in the state. Under s. 624.407, F.S., the minimum surplus requirement for new property and casualty insurers in Florida, which includes residential property writers, is the greater of $5 million or ten percent of the insurer's liabilities. The minimum surplus requirement for a residential property insurer, once it is licensed in Florida, is the greater of $4 million or ten percent of the insurer's liabilities.

The current surplus and capital requirements for property and casualty insurers have not been changed since 1993.[1] Surplus is the reserves an insurer has available to pay claims and is a critical component in measuring the financial strength of a company.[2] It is the financial cushion that protects insurers in case of an unexpectedly high number of claims. According to OIR officials, in the past 17 years, circumstances have changed and costs have increased, particularly for residential property insurers, such that increased minimum surplus requirements are necessary. For example, in 2009, the rating agency A.M. Best downgraded nine insurers that sell homeowners insurance in Florida, and Demotech, a company that rates some of the smaller domestic Florida insurers, withdrew its rating from six insurers.[3] Two such insurers were ordered into receivership.[4]

The OIR has found that the current level of surplus is not sufficient to support the business plans of residential property insurers in Florida and has cited several reasons for this position.

- Reinsurance costs continue to rise. The rates charged by reinsurers have increased and the amount of reinsurance being purchased by most insurance companies has also increased. Reinsurance costs vary from insurer to insurer, but currently average at least 30 percent of an insurer's written premium, and in many cases reach 50 percent. The prices reinsurers charge Florida companies change yearly, based on general worldwide losses and capital costs, as well as Florida losses. Reinsurance rates are not regulated by the OIR.
- Changes to the Florida Hurricane Catastrophe Fund (FHCF) have resulted in increases in reinsurance costs to residential property insurers in Florida; therefore insurers will need to purchase more reinsurance from the private market. Since 2007, such insurers have had the option of purchasing coverage from the FHCF above its mandatory layer. This coverage is referred to as TICL coverage. However, the amount of such coverage available for insurers to purchase decreases each year and is currently scheduled to be phased out over the next five years.[5] Reinsurance purchased by insurers from the FHCF is considerably less expensive than private market reinsurance. As TICL coverage is replaced with coverage from the private market, reinsurance costs to insurers will increase. Also, the cost of coverage in the FHCF's mandatory layer is increasing by five percent per year under the "cash build-up" factor. This provision is intended to ensure that the FHCF will have the funds necessary to pay losses when they arise.
- Non-catastrophe losses are increasing. Even in years with no hurricanes in Florida, property writers are experiencing increased losses. This may be attributable to some extent to the current economy. Also, fraudulent or inflated claims are being filed and are expected to increase in times of stressed economic conditions.

In addition to the total surplus amount required by statute, an insurer must also meet specific requirements for its ratios of gross written premium to surplus and net written premiums to

[1] Ch. 1993-410, L.O.F.
[2] An insurer's surplus is the remainder after a company's liabilities are subtracted from its assets.
[3] Windstorm Mitigation Discounts Report, February 1, 2010, Florida Commission on Hurricane Loss Projection Methodology.
[4] Coral Insurance Company and American Keystone Insurance Company are in receivership.
[5] The TICL or Temporary Increase in Coverage Limit Options.

surplus.[6] A company's calculated gross written premium is not allowed to exceed 10 times its surplus as to policyholders; the calculated net written premium may not exceed 4 times its surplus as to policyholders.[7] If a company's premiums exceed either of these ratios, the OIR shall either suspend the insurer's certificate or establish by order the insurer's gross or net written premiums, unless the insurer demonstrates to OIR's satisfaction that exceeding the statutory ratios does not endanger the financial condition of the insurer or the interests of the policyholders.

Florida's Rating Law

Section 627.062, F.S., specifies the rate filing process for property and casualty insurers and provides rating standards for these insurers. The rating law applies to property, casualty and surety insurance and prohibits rates that are excessive, inadequate, or unfairly discriminatory. The rating law specifies what constitutes an excessive, inadequate, or unfairly discriminatory rate as follows.

- A rate is excessive if:
  - It is likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved or if expenses are unreasonably high in relation to the services rendered.
  - The rate structure established by a stock insurance company provides for replenishment of surpluses from premiums, when the replacement is attributable to investment losses.
- A rate is inadequate if:
  - It is clearly insufficient, together with the investment income attributable to them to sustain projected losses and expenses in the class of business to which it applies.
  - If discounts or credits are allowed that exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group or risks.
- A rate is unfairly discriminatory if:
  - The rating plan, including discounts, credits, or surcharges fails to clearly and equitably reflect consideration of the policyholder's participation in a risk management program pursuant to s. 627.0625, F.S.
  - As to a risk or group of risks, the application of premium discounts, credits, or surcharges among the risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.

Legislation enacted in 2009 allows insurers to make a separate expedited rate filing with the OIR for residential property insurance, which is exempt from the rate filing requirements otherwise applicable under s. 627.062, F.S.[8] The provision (s. 627.062(2)(k), F.S.) is limited to allowing adjustments to rates for reinsurance or financing costs related to the purchase of reinsurance or financing products to replace or finance the payment of the amount covered by the Florida Hurricane Catastrophe Fund's temporary increase in coverage limit (TICL) layer. This includes replacement reinsurance for the TICL reductions, as well as the cash build-up factor and the

[6] S. 624.4095, F.S.
[7] S. 624.4095, F.S., specifies that for property insurers, the calculated premium is the product of 0.90 times the actual or projected premium.
[8] Ch. 2009-87, L.O.F. The OIR has 45 days after the date of the filing to review it and determine if the rate is excessive, inadequate, or unfairly discriminatory.

increase in the price for the remaining TICL layers.[9] All costs contained in the filing are capped at ten percent per policyholder. However, financing products such as a liquidity instrument or line of credit cannot result in an overall premium increase exceeding three percent. The law also provides that insurers purchasing this reinsurance do so at a price no higher than would be paid in an arms-length transaction. An insurer may make only one filing under this provision in any 12-month period.

Change of Policy Terms in Insurance Policies

Under the 5th District Court of Appeal's holding in the case of *U.S. Fire Insurance Co. and Hartford Insurance Company of the Southeast v. Southern Security Life Insurance Co*., 710 So.2d 130 (Fla. 5th DCA 1998), when an insurance company changes a term or terms of a policy, the change constitutes a nonrenewal of the entire policy by the insurer and thus the insurer must send notice of the policy's nonrenewal to the policyholder in accordance with s. 627.4133, F.S. According to the court, providing the policyholder with a new policy that contains the changed policy term is not sufficient notice of the policy changes. The process of non-renewing an entire insurance policy due to a change in a policy term, and subsequently offering coverage to the policyholder, has caused confusion to policyholders.

Replacement Cost Insurance Coverage

There are two basic ways that property insurance losses can be adjusted: replacement cost value (RCV) or actual cash value (ACV). Actual cash value is the depreciated value of the property being replaced or repaired. Current law requires that companies issuing homeowners' insurance policies must offer policyholders an option for replacement cost coverage.[10] The law provides that if a loss is insured for replacement cost, the insurer must pay the replacement costs without holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling or property.

Until 2005, under a replacement cost policy an insurer could make an initial payment based on an ACV basis and require the insured to complete the repair before the insurer paid the balance of the full replacement cost. Following the multiple hurricanes of 2004 and 2005, regulators received complaints from policyholders who were given the ACV, but could not afford to fund the balance necessary to make the repairs or replacements. As a result, these policyholders had paid premiums for replacement cost coverage, but were only being paid ACV. In 2005, the Legislature addressed this problem by requiring that for any loss sustained by a policyholder who has purchased replacement cost coverage, the insurer must pay the full replacement cost, whether or not the insured replaces or repairs the damaged property. [11]

[9] The TICL or Temporary Increase in Coverage Limit Options allows residential property insurers to purchase additional reinsurance *above* the FHCF's mandatory coverage. The 2009 legislation also authorized the FHCF to implement a "cash build up" factor which would increase the reimbursement premiums that the Fund charges property insurers for the mandatory layer of coverage provided by the Fund. The cash build up factor is based on a five percent annual increase which will be phased in over a five-year period, at which time the increase will be 25 percent.
[10] S. 627.7011, F.S.
[11] Ch. 2005-111, L.O.F.

Insurance companies assert that the current replacement cost and holdback provisions allow some homeowners to file inflated or even fraudulent claims because they are not required to make needed repairs to their dwellings or replace their personal property if they sustain a loss. Many states require the insurer to pay initially only the actual cash value, and then provide the balance of the replacement cost once the insured has replaced or repaired the property.

Mitigation Credits, Discounts, or Other Rate Differentials

Section 627.0629, F.S., requires rate filings for residential property insurance to include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties. The windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength; roof covering performance; roof-to-wall strength; wall-to-floor foundation strength; opening protections; and window, door, and skylight strength.

Public Adjusters

Public adjusters are defined as persons, other than licensed attorneys, who, for compensation, prepare or file an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of the insured or third party.[12] They are employed exclusively by a policyholder who has sustained an insured loss and their responsibilities include inspecting the loss site, analyzing damages, assembling claim support data, reviewing the insured's coverage, determining current replacement costs, and conferring with the insurer's representatives to adjust the claim.

Public adjusters are licensed by the Department of Financial Services (DFS) and must meet specified age, residency, examination, and surety bond requirements. As of September 2010, Florida had 2,511 licensed public adjusters. In 2008, the Legislature created a public adjuster apprentice license and mandated age, residency, examination, and bond requirements. The public adjuster apprentice must be under the supervision of a licensed public adjuster for a 12-month period in order to qualify for licensure as a property and casualty public adjuster.

Current law provides that a public adjuster may not charge a fee unless a written contract was executed prior to the payment of a claim. Such adjusters are prohibited from charging more than 20 percent of the insurance claims payment on non-hurricane claims and 10 percent of the insurance claims payment on hurricane claims for claims made during the first year after the declaration of the emergency. These fee caps apply only to residential property insurance policies and condominium association policies. There is no fee cap on re-opened or supplemental hurricane claims; however, the fee cannot be based on any payments made by the insurer to the insured prior to the time of the public adjuster contract.

Insureds or claimants have five business days after the date on which the contract is executed to cancel a public adjuster's contract during a state of emergency declared by the Governor. Insureds or claimants have 3 business days to cancel a contract as to claims involving non-

[12] S. 626.854, F.S. See, Part VI (Insurance Adjusters) under ch. 626, F.S.

emergencies. Public adjuster contracts must be in writing and must display an anti-fraud statement.

Current statutes prohibit a public adjuster from directly or indirectly contacting any insured or claimant until 48 hours after an event that triggered a claim. However, that provision was recently struck down by the First District Court of Appeal which ruled that the restriction on soliciting customers within 48 hours of a disaster or other insurance claims event violated commercial speech protected by the state Constitution.[13] The law was challenged in a law suit by Frederick Kortum, a public adjuster in Oviedo. Kortum made the argument that the first 48 hours are of vital importance because policyholders may make decisions that affect how much they could receive from an insurer.

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find coverage in the voluntary admitted market.[14] It is not a private insurance company.[15] Citizens is governed by an eight member board of Governors, two of whom are appointed by each of the following State leaders: Governor, Chief Financial Officer, Senate President, and Speaker of the House of Representatives. It operates pursuant to a plan of operation which is reviewed and approved by the Financial Services Commission and is subject to regulation by the Office of Insurance Regulation.

Citizens is currently the largest property insurer in Florida with almost 1.3 million policies extending approximately $457 billion of property insurance coverage to Floridians which represents approximately 18 percent of the residential exposure in the State covered by the admitted market.[16] Beginning January 1, 2010, Citizens must implement a rate increase each year which does not exceed 10 percent for any single policy issued by the corporation, excluding coverage changes and surcharges, until rates are actuarially sound.

Citizens was created by the Legislature in 2002 by the merger of two existing property insurance associations: The Florida Residential Property and Casualty Joint Underwriting Association (FRPCJUA) and the Florida Windstorm Underwriting Association (FWUA). The FRPCJUA provided full-coverage personal and commercial residential property policies in all counties of Florida while the FWUA provided personal and commercial residential property wind-only coverage in designated territories.

Citizens' book of business is divided into three separate accounts:[17]

- Personal Lines Account (PLA): Personal residential multi-peril policies including homeowners, mobile homes, dwelling fire, tenants, condominium unit owners.

[13] *Kortum v. Sink*, Case No. 1D10-2459, First District Court of Appeal. Opinion rendered on December 29, 2010.
[14] Admitted market means insurance companies licensed to transact insurance in Florida.
[15] s. 627.351(6)(a)1., F.S.
[16] As of January 2011.
[17] s. 627.351(6)(b).2., F.S.

- Commercial Lines Account (CLA): Commercial residential multi-peril policies including condominium associations, apartment buildings and homeowners association policies as well as commercial non-residential multi-peril (required to include wind coverage) policies (e.g., office buildings, retail, etc.) located outside of the coastal HRA eligible areas.
- High-Risk Account (HRA): Wind-only and multi-peril policies for personal residential, commercial residential, and commercial non-residential risks located in eligible coastal high risk areas.

Under current law, an applicant for coverage with Citizens is eligible even if the applicant has an offer of coverage from an insurer in the private market at its approved rates if the premium for that offer of coverage is over 15 percent more than the premium Citizens would charge for comparable coverage.[18]

Under current law,[19] beginning December 1, 2010, if Citizens' 100 year probable maximum loss[20] (PML) in its wind-only zones is not reduced by 25 percent from what it was in February 2001, the wind-only zones must be reduced by an amount that allows Citizens to reduce its PML by 25 percent. Indications are that Citizens has not been able to reduce its 100 year PML by 25 percent by December 1, 2010 in accordance with this statute. One reason is because Citizens has grown, in part, due to the reluctance of private insurers to expand their writings in Florida because of the significant losses sustained in the 2004 and 2005 hurricane seasons. Therefore, because the required PML reduction will not be accomplished by the statutory deadline, private insurers writing the other peril/non-wind coverage face the choice of either dropping that coverage or writing the windstorm coverage for policies.

Sinkhole Insurance Issues

In December 2010, the Senate Banking and Insurance Committee published its interim report on sinkhole insurance (*Issues Relating to Sinkhole Insurance*, Interim Report 2011-104).[21] The report contained findings, many of which are outlined below, along with policy options for lawmakers and stakeholders to consider.[22] Senate Bill 408 contains many of the policy options suggested in the report.

Under current law, insurers offering property insurance must make available to policyholders, for an appropriate additional premium, sinkhole coverage for losses on any structure, including personal property contents.[23] Sinkhole coverage includes repairing the home, stabilizing the

[18] s. 627.351(6)(c)5.a., F.S.
[19] s. 627.351(6)(y), F.S. This law was enacted in 2002.
[20] Probable maximum loss is an estimate of maximum dollar value that can be lost under realistic situations.
[21] The sources for the report included sinkhole policy and claims information collected from 211 insurers for the period 2006 to 2010, pursuant to a data call by the Office of Insurance Regulation. The report also utilized policy and claims data submitted by Citizens Property Insurance Corporation , individual insurers as well as background and research information collected by committee staff. See Senate Interim Report at: http://www.flsenate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-104bi.pdf
[22] The report presented a series of "options" that would hopefully aid decision makers as they consider various public policy choices related to sinkholes. The report outlined two basic directions the legislature could take in addressing sinkhole coverage: (1) establish a sinkhole repair program; or (2) leave sinkhole coverage in the private insurance market and make substantial changes directed at removing the current cost drivers.
[23] S. 627.706, F.S.

underlying land, and foundation repairs. Insurance companies must also provide coverage for catastrophic ground cover collapse.[24]

Sinkhole insurance claims have increased substantially both in number and cost over the past two decades and most dramatically over the last several years,[25] despite the fact that licensed geologists in Florida state there is no geological explanation for the significant increase in sinkhole claims being reported to insurers. [26] The drastic increase in sinkhole claims is harming the financial stability of Citizens Property Insurance Corporation (Citizens) and private market insurers and making residential property insurance increasingly unaffordable or unavailable for consumers. The Citizens' sinkhole claims frequency ratio more than doubled between 2006 and 2009. In 2009, Citizens incurred over $84 million in sinkhole losses plus adjustment expenses, yet obtained only $19.6 million in earned premium to cover those costs. Private insurers have also seen their sinkhole claims and costs rise by double and triple digit percentages over the past several years. According to data submitted by 211 property insurers to the Office of Insurance Regulation (OIR), their total reported claims increased from 2,360 in 2006 to 6,694 in 2010, totaling 24,671 claims throughout that period. Total sinkhole claim costs for these insurers amounted to approximately $1.4 billion for the same period.

Representatives from OIR, as well as insurers, believe that a major driving force for the significant increase in sinkhole claims is the fact that many policyholders are incentivized to file such claims because they can keep the cash proceeds from the claim instead of effectuating repairs to their home or remediating the land. The failure of sinkhole claimants to make repairs or stabilize land has concerned property appraisers in several counties, particularly in Hernando and Pasco counties. For example, the Hernando Property Appraiser has estimated that since 2005, the county has lost $173 million in total market value as a result of value adjustments to sinkholes homes. Both appraisers believe that this dilemma has had a damaging effect on the market values of affected homes which could lead to financial instability of local governments.

Current Sinkhole Insurance Law Provisions

Nationally, property insurance policies typically exclude coverage for "earth movement." In contrast, Florida requires every authorized insurer to make coverage for "sinkhole loss" available, for an additional premium, and also to provide coverage for catastrophic ground cover collapse. "Sinkhole loss," is defined by statute as "structural damage to the building, including the foundation, caused by sinkhole activity." In summary, under current law, for a policyholder to have a sinkhole loss, there must be actual structural damage to her or his home, including the foundation, which is "caused by" sinkhole activity. However, while "sinkhole activity" is defined in statute, "structural damage" is not, which has led to the term not being used in a uniform manner and has spawned debate in litigation over the meaning of the term.

The law provides that once the insurance company is notified of the pending claim, it must inspect the insured's premises to determine if there has been physical damage to the structure

[24] Catastrophic ground cover collapse refers to extreme damage in which a property is essentially destroyed and uninhabitable.
[25] The increase in claims frequency and severity is based on data collected from 211 insurers by the Office of Insurance Regulation (OIR) in the Fall of 2010, (*Report on Review of the 2010 Sinkhole Data Call* (OIR Report),
[26] Jon Arthur, Director, Office of the Florida Geological Survey.

which may be the result of sinkhole activity. If the insurer concludes the damage may be the result of such activity, the carrier will then request a professional engineer or a professional geologist to perform the testing to determine the cause of the loss, within a reasonable professional probability, and to issue a report. The tests performed typically include floor evaluations, ground penetration radar (GPR) and standard penetration test (SPT) borings. Insurers use a variety of testing procedures and according to the OIR Report, the average number of testing procedures has increased for both paid and denied claims. The OIR Report found that the average cost among insurers to provide sinkhole tests was $9,466, while the average cost for Citizens ranged from $8,061 to $10,116.

After the testing is performed, the homeowner is notified of the test results, provided a copy of the report, and given notice of the right to participate in the neutral evaluation program. The test report contains the findings and recommendations of the engineer or geologist as to the cause of loss, a description of the tests performed, and a recommendation as to methods for stabilization and repair. These findings and recommendations are "presumed correct."[27] An insurer may deny a claim if it determines that there is no sinkhole loss; however, if the claim is denied without tests being performed, the policyholder may demand testing and the carrier must comply. If a sinkhole loss is verified, the insurer must pay to stabilize the land and building and repair the foundation in accordance with the report's recommendations, and "in consultation with" the policyholder.[28]

The two most commonly recommended stabilization techniques are grouting and underpinning. Under the grouting procedure, a grout mixture (composed of cement, sand, fly ash, and water) is injected into the ground to stabilize the subsurface soils to minimize further subsidence damage by densifying the soils beneath the building as well as sealing the top of the limestone surface to minimize future raveling. Underpinning consists of steel pipes drilled or pushed into the ground to stabilize the building's foundation. Both of these procedures are expensive. According to geologists and engineers, to stabilize an average $150,000 home, grouting would cost an estimated $75,000, while underpinning would be approximately $35,000; for an average $300,000 home, grouting is estimated to cost $90,000, and underpinning would be $45,000.

The insurer may limit its payment to the insured to the actual cash value of the structure, excluding the underpinning or grouting or other repair technique performed below the foundation, until the policyholder enters into a contract to perform the building stabilization and foundation repairs. The insurer must pay for the repairs after the contract is executed, but may not require the policyholder to advance payment, and may make payments directly to the contractor if written approval is obtained from the policyholder. However, if the repairs have begun and the engineer selected by the insurer determines that such repairs cannot be completed within policy limits, the insurer must either complete the repairs or give policy limits to the policyholder without a reduction for the repair expenses incurred.

Insurers who have paid a claim for sinkhole loss must file a copy of the engineer/geologist report and a certification, including the legal description of the property with the county clerk, who

[27] S. 627.7073, F.S. The issue pertaining to the presumption of correctness of an engineer or geologist report is on appeal to the Florida Supreme Court, *Warfel v. Universal Ins. Co. of North America*, App. 2 Dist., 2010 WL 1874367 (2010).
[28] S. 627.707, F.S. The meaning of the term "in consultation with the policyholder" has caused confusion as to its meaning which has resulted in litigation.

must record the report and certification. The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer must disclose to the buyer that a claim has been paid and whether or not the full amount of proceeds were used to repair the sinkhole damage.

Frequency and Severity of Sinkhole Claims, and Affordability and Availability of Sinkhole Insurance Coverage

In the OIR Report of insurer sinkhole claims data (2006 and 2010), the agency received information on 8,959 open claims and 15,712 closed claims, totaling 24,671. Specifically, the data shows:

- Total sinkhole claims increased from 2,360 in 2006 to 7,245 in 2009.
- Total sinkhole losses for closed and open claims combined increased from $209 million in 2006 to $406 million in 2009.
- Total losses for open and closed claims exceeded $1.4 billion over the 4-year period.

The statutory requirement for sinkhole testing consists of an inspection and the geologist/engineering report. In 2006, the sum of the two testing components totaled $20.4 million in expenses. By 2009, however, that total nearly tripled to almost $58 million, attributable to the increase in the number of claims. The data indicate companies must routinely incur extensive and costly testing procedures to adjust a sinkhole claim.

The data indicates a wide variation in the frequency of claims, depending on the geographic region. For example, for the period 2006-2009 over 88 percent of the claims occurred in eleven counties: Hernando, Pasco, Hillsborough, Pinellas, Marion, Polk, Orange, Alachua, Citrus, Miami-Dade, and Broward. Over 66 percent (11,872) of the claims are concentrated in just three counties—Hernando, Pasco and Hillsborough, with Citizens accounting for 36 percent of the total claims (4,261). Miami-Dade and Broward are showing a recent increase in sinkhole claims as those counties represented 2.9 percent of total claims from 2006-2009, but have increased to 4.2 percent for the year to date in 2010. This is statistically significant due to the fact that this area is generally not subject to sinkhole activity.

Citizens Property Insurance Corporation Provision of Sinkhole Coverage

- The largest writer of sinkhole coverage in Florida is Citizens, particularly in the three counties of greatest activity (Hernando, Pasco and Hillsborough). Citizens' claims data for the years 2005 through 2009 shows the large deficiency in the premium Citizens' collects to cover sinkhole claims, particularly in the most active areas. For example, in 2009, for Citizens:
- The statewide pure premium[29] for sinkhole coverage was $295, quadruple the $73 premium that Citizens was allowed to charge for sinkhole coverage.

[29] Pure premium is the amount that all policyholders with sinkhole coverage would need to pay to cover the sinkhole losses (with no profit or indirect costs added).

- The total premium collected statewide for the sinkhole endorsement ($22.2 million) was exceeded by sinkhole losses[30] from Hernando ($40.5 million) and Pasco ($24.9 Million) counties.
- Sinkhole losses from Hernando ($40.5 million) were almost seven times the $5.9 million premium that was collected to cover those losses. Sinkhole losses in Pasco ($24.9 million) were three times the total sinkhole premium of $8.3 million.

Citizens' Sinkhole Claims Frequency & Severity

The dramatic increase in sinkhole claims is the primary cost driver for Citizens' significant sinkhole losses. Statewide, the number of sinkhole claims more than doubled between 2005 and 2009, rising from 660 in 2005 to 1404 in 2009. The increase in sinkhole claims has occurred in spite of the fact that significant numbers of policyholders have dropped sinkhole coverage since it became an optional endorsement in 2007. The percent of Citizens' statewide policies with sinkhole coverage fell from 100 percent in 2006 (when it was mandatory) to 61 percent in 2009. In 2009, only 37 percent of policyholders in Hernando County and 22 percent of policyholders in Pasco County purchased Citizens' policies with sinkhole coverage. As a result of the substantial reduction in the number of people choosing to pay for sinkhole coverage, there are fewer policyholders (and less collected premium) over which to spread the increasing losses. Notwithstanding the substantial reduction in the number of policyholders choosing sinkhole coverage, there has still been an increase in the number of sinkhole claims being filed.

Average claims severity is the average amount of cost that Citizens incurred (indemnity plus loss adjustment expenses) for all claims for which a payment was made. The coverage A limit is the amount for which the main structure (house) is insured. In 2005, the statewide average severity of $123,412 actually exceeded the average coverage A limit of $115,540. In 2006 through 2009, the average severity was lower than the coverage A limit, but remained extremely high relative to other covered perils. In 2009, the average severity dropped significantly, but the data is based on a lower percentage of closed claims than the data for earlier years. Even with the drop in average severity in 2009, total overall losses for sinkholes increased due to the large increases in claim frequency.

Effect of Sinkholes on the Affordability and Availability of Citizens Coverage

There is a great variation in the cost of Citizens' sinkhole coverage, depending on the geographic region of the state. In 2009, the statewide average sinkhole premium was $73, the average premium was $944 in Pasco County, $775 in Hernando County, and $98 in Hillsborough County. The average sinkhole premium for the remainder of the state (excluding Pasco, Hernando and Hillsborough) was only $22. This deficiency in premiums is worsening because Florida law prohibits Citizens from increasing the rate of any policyholder by more than approximately 10 percent, even as losses continue to rise at a much faster pace. Thus, Citizens' already deficient sinkhole premiums will fall even further behind its sinkhole losses and Citizens' surplus will continue to erode.

[30] "Losses" refers to indemnity costs for both open and closed claims, plus loss adjustment expenses (LAE). A loss adjustment expense (LAE) is the direct cost associated with investigating, administering, defending, or paying an insurance claim.

Most private insurers and Citizens have implemented, or are implementing, some form of property (including home) inspection program in which the property must meet specified criteria to qualify for sinkhole coverage. As more companies adopt pre-coverage inspection requirements, sinkhole coverage will continue to become less available. It has been reported to committee staff that many private insurers have ceased writing new business in the areas of greatest sinkhole claims activity. In Hernando and Pasco counties, Citizens' share of the homeowners' insurance market has increased substantially in each of the last two years.

Areas of Concern Regarding Sinkhole Claims Process

The following topics have been identified by committee staff as areas of concern regarding the sinkhole claims process based on interviews and data collected from stakeholders.

Failure of Sinkhole Claimants to Repair Property or Stabilize Land

Representatives with the OIR, Citizens, as well as insurers, believe that the significant increase in sinkhole claims is driven by the ability of policyholders to often keep the cash proceeds from the claim instead of effectuating repairs to their home or remediating the land. The failure of sinkhole claimants to make repairs or stabilize land has concerned many property appraisers, most notably in Hernando and Pasco counties. Both property appraisers have indicated that this problem has had a damaging effect on the market values of affected homes which could lead to financial instability of local governments. Hernando County Property Appraiser, Alvin Mazourek, has estimated that since 2005, the county has lost $173 million in total market value as a result of value adjustments to sinkhole homes while Pasco County Property Appraiser, Mike Wells, has cited a reduction in property values in his county of over $50 million.

Requiring Policyholders to Remediate or Repair

The state has a public policy interest in ensuring that policyholders use insurance proceeds to remediate sinkhole activity. The failure of one policyholder to remediate sinkhole conditions underlying his or her property can subsequently affect their neighbor whose property may also experience sinkhole loss. Additionally, property values of nearby homes may be negatively affected. The statutory provisions requiring the policyholder to enter into a contract before receiving insurance proceeds are designed to ensure that insurance proceeds from a sinkhole loss are used to remediate sinkhole conditions. However, these statutory provisions have little relevance when the policyholder contests the claim. When the insurer and the policyholder settle a claim, the settlement agreement is highly unlikely to contain any condition that settlement proceeds be used to remediate the property. Any statutory attempt to require settlement proceeds to be used to remediate sinkhole conditions may well be interpreted to be an unconstitutional impairment of contract that impermissibly limits the right of the parties to the insurance contract to discharge their respective rights and liabilities via a settlement contract agreement. The only way to ensure that sinkhole proceeds are used to remediate sinkhole conditions is to create an environment where insurance proceeds are paid under the policy of insurance and fewer claims are contested by policyholders.

Sinkhole Statutory Provisions

Various provisions of the statutes governing insurance for sinkhole loss are the subject of ongoing litigation between policyholders and insurers. The provisions noted below appear to be fostering litigation between the parties, are creating uncertainty as to the meaning of the statutory language, or have inefficiencies that can be remedied through amendment.

Presumption of Correctness - Section 627.7073(1)(c), F.S., states that a sinkhole report is "presumed correct" if it conforms to statutory standards. Currently on appeal before the Florida Supreme Court is *Warfel v. Universal Ins. Co. of N.A.*, in which the Court will determine whether the presumption of correctness shifts the burden of proof to the insured or merely requires the insured to produce evidence regarding the facts at issue, at which point the presumption disappears. The statutory requirements for the handling and investigation of sinkhole claims give deference to the findings and recommendations of the engineering and geological professionals retained by an insurer to investigate a sinkhole claim. The provisions are designed to improve the availability and affordability of sinkhole coverage by reducing litigation. When a sinkhole loss is verified in the sinkhole report, s. 627.707(5)(a), F.S., requires the insurer "to pay to stabilize the land and building and repair the foundation" of the policyholder "in accordance with the recommendations of the professional engineer as provided under s. 627.7073…." The Second DCA's decision in *Warfe*l eliminates the presumption in favor of the insurer when the report is challenged in a court of law. Regardless of the result of the Florida Supreme Court decision in *Warfel*, the Legislature should consider clarifying the applicability of the presumption of correctness in s. 627.7073, F.S.

In Consultation With the Policyholder – Section 627.707(5), states that when a sinkhole loss is verified, the insurer must pay for repairs recommended by the engineers and geologists retained by the insurer "in consultation with the policyholder." The statute is arguably ambiguous as to what the statute is requiring when it directs the insurer to conduct repairs "in consultation with the policyholder." Insurers assert that the phrase means providing notice to the policyholder regarding payment of claim proceeds to conduct repairs. Some insureds and their representatives assert that the phrase requires the insurance company to essentially reach an agreement with the policyholder regarding the method of repair to be used to remediate the confirmed sinkhole. The issue has become the subject of litigation in sinkhole claims. Clarification of the "in consultation with the policyholder" language may serve to remove the differing interpretations by the parties to the insurance contract.

Structural Damage – Section 627.706, F.S., defines a sinkhole loss as "structural damage to the building, including the foundation, caused by sinkhole activity." Pursuant to the statutory definition of "sinkhole loss," insurers are required to provide coverage for "structural damage to the building, including the foundation, caused by sinkhole activity." The statute does not define the term "structural damage." The result is uncertainty as to how the Florida Statutes define sinkhole loss and precisely what coverage Florida Statutes mandate insurers make available. The term "structural damage" is currently being defined in one of two ways. Some parties state that the term means simply "damage to a structure." The second definition asserts that structural damage is damage that affects the load bearing capacity of the structure.[31]

[31] The 2007 Florida Building Code (FBC): Existing Building (1st Printing) defines "structural" to mean "any part, material or

Statute of Limitations – Under current law, there is no Florida statute of limitations for making a property insurance claim. The statute of limitations for bringing a breach of contract claim is five years. In sinkhole claims, the insured has five years from the date of the insurer's alleged breach to bring a breach of contract suit. Setting an actual date of loss for a sinkhole claim is difficult and often depends on the truthfulness of the insured in stating when possible sinkhole-related damage first appeared. Unfortunately, this allows some insureds to engage in questionable practices in an effort to maximize recovery. One such practice is backdating the date of loss to pre-June 1, 2005, to avoid the statutory requirement to perform repairs. Insureds seeking maximum policy limits may choose a date of loss under the policy term with the greatest limits. Policyholders with Citizens may attempt to circumvent Citizens' bad faith immunity by alleging a sinkhole date of loss under the prior insurer's policy.

Disputed Sinkhole Claims/Neutral Evaluation Program – In 2006, the Legislature established an alternative process for resolving sinkhole disputes called "neutral evaluation." The Department of Financial Services (DFS) certifies engineers and geologists to serve as "neutral evaluators" of sinkhole claims disputes. If the parties do not reach a settlement, the neutral evaluator renders an opinion whether a sinkhole loss has been verified and, if so, the estimated cost of repairs. Neutral evaluation is mandatory if requested by either party, but nonbinding, and the costs are paid by the insurer. The neutral evaluator's written recommendation is admissible in any subsequent action or proceeding relating to the claim. Individuals involved in the neutral evaluation process have expressed the following concerns.

- Neutral evaluators may not be truly neutral, and may be biased because there are no conflict of interest standards.
- Neutral evaluators are sometimes asked to render opinions outside of their area of expertise.
- The scope of duties of a neutral evaluator are not clear and the issues to be determined by the neutral evaluator are not clearly specified in statute.
- Neutral evaluation makes it difficult to utilize the appraisal clause of the insurance policy.
- Time frames imposed by statute need to be revised pursuant to recommendations by DFS staff so that the evaluation procedure is conducive to settling claims.
- The funding for DFS to operate the neutral evaluation program does not cover its administrative costs.

Public Adjuster Participation and Solicitation in Sinkhole Claims - Under current law, a public adjuster is defined as any person, other than a licensed attorney, who, for compensation, prepares or files an insurance claim form for an insured or third party claimant in negotiating or settling an insurance claim on behalf of the insured or third party. During the 2005 – 2009 period in which the number of sinkhole claims has risen sharply, the percentage of sinkhole claimants who are represented by public adjusters has increased significantly. Citizens reports that in 2005, only three percent of all sinkhole claims had public adjuster involvement, but by 2009, 25 percent of

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assembly of a building or structure which affects the safety of such building or structure and/or which supports any dead or designed live load and the removal of which part, material or assembly could cause, or be expected to cause, all or any portion to collapse or fail." The FBC for existing buildings also defines a condition called "substantial structural damage" which essentially constitutes damage that reduces the load-bearing capacity of the structure beyond a certain level. The FBC definitions of "structural" and "severe structural damage" indicate that the when the term "structural" is used in an engineering context, the term refers to the load bearing capacity of a building.

its statewide sinkhole claimants were represented by public adjusters. Many insurers believe that the increase in public adjuster involvement with sinkhole claims is a result of the aggressive advertising and solicitation campaigns used by public adjusting firms in the regions where the greatest number of sinkhole claims are filed.

Florida Hurricane Catastrophe Fund

The FHCF is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The FHCF is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention (deductible).

The FHCF provides insurers an additional source of reinsurance that is significantly less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers. The FHCF must charge insurers the "actuarially indicated" premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

The FHCF provides reimbursement to insurers for "losses" caused by a hurricane. Section 215.555(2)(d), F.S., defines "losses" as a "direct incurred losses" under covered policies. A direct incurred loss is a loss in which the insured peril is the proximate cause of damage. Sunshine State Insurance Company is challenging the SBA's interpretation of the statute that attorney's fees paid by an insurer to insureds pursuant to a negotiated or court-ordered settlement are not direct incurred losses and thus are not reimbursable under the FHCF contract. The Division of Administrative Hearings has scheduled a hearing on the dispute for April 4-5, 2011.

III. Effect of Proposed Changes:

Section 1 amends s. 215.555(2)(d), F.S., defining what constitutes "losses" under the Florida Hurricane Catastrophe Fund. The bill expands the definition of "losses" to include "all incurred losses" under covered policies, rather than "direct incurred losses." The bill also specifies that losses include amounts paid as fees on behalf of the policyholder. This change specifies that the FHCF must provide reimbursement for attorney's fees and public adjuster fees. The bill also specifies items that are not considered losses and thus are not reimbursable, which is designed to prevent FHCF reimbursement for losses that historically have not been covered by the fund because they were not "direct incurred losses." The statute currently excludes losses for fair rental value, rental income, or business interruption losses. The bill specifies that the following are also not reimbursable losses.

- Liability coverage losses.
- Property losses that are not primarily caused by a hurricane.
- Amounts paid because the insurer voluntarily expanded coverage, such as the waiver of a deductible.

- Reimbursement to the policyholder for an assessment levied by a condominium association or homeowners' association.
- Bad faith awards, punitive damage awards, and court-imposed fines, sanctions, or penalties.
- Amounts paid in excess of the insurance policy coverage limit.
- Allocated and unallocated loss adjustment expenses.

Section 2 specifies that the amendment to s. 215.555, F.S., will apply to the FHCF reimbursement contract that is effective June 1, 2011. The 2011 FHCF reimbursement contracts will be executed on March 1, 2011, effective June 1, 2011. Application of the new definition of "losses" likely will be applied to the 2011 contract through an amendment executed by the SBA and the insurer.

Section 3 amends 624.407, F.S., relating to surplus fund requirements for new insurers, to require that, to receive a certificate of authority to transact insurance in Florida, a new domestic residential property insurer that is not a wholly-owned subsidiary of an insurer domiciled in another state have a $15 million surplus. The current surplus requirements for new residential property insurers is $5 million, unless it is a wholly-owned subsidiary of an insurer domiciled in another state, in which case the minimum requirement is $50 million.

Section 4 amends 624.408, F.S., relating to the surplus fund requirements for current insurers, to requires that a residential property insurer holding a certificate of authority before July 1, 2011, have a surplus of: $5 million until June 30, 2016; $10 million from July 1, 2016, until June 30, 2021; and $15 million thereafter. If the residential property insurer does not hold a certificate of authority before July 1, 2011, it must have a surplus of $15 million. The current surplus requirement for a residential property insurer to maintain its certificate is $4 million.

Section 5 creates s. 624.4095(7), F.S., regarding liabilities related to federal multi-peril crop insurance. Some insurers that provide multi-peril crop insurance cede the entire risk to the Federal Crop Insurance Corporation or to a private reinsurer. Insurers that provide crop insurance coverage in this way encounter two special problems that this bill is intended to address.

Current law limits the ratio of gross written premiums for property insurers to nine times the surplus as to policyholders, and requires surplus to be at least ten percent of total liabilities. When a primary insurer cedes all of the crop risk to a reinsurer, it is not underwriting any of the loss, so it is not necessary to limit its gross written premiums directly to a ratio of its surplus. The bill provides that gross written premiums that are ceded to the Federal Crop Insurance Corporation or to an authorized reinsurer will not be included in the calculation of an insurer's gross writing ratio.

The second problem for these insurers is that it is unrealistic to limit the total liabilities to 10 times the surplus. This is because the primary insurer cedes the entire risk, so it carries a very large balance of reinsurance premiums payable (a liability). This payable balance is almost entirely offset by recoverables (an asset) from the reinsurers, but that does not reduce the "gross" liability that cannot exceed 10 times the surplus. The bill provides that the liabilities for the ceded reinsurance premiums payable for coverage ceded to the Federal Crop Insurance Corporation or an authorized private reinsurer will be netted against the asset for the amounts

recoverable from those reinsurers. It will then be this "netted" amount that would be compared to the insurer's surplus.

Section 6 amends s. 624.424, F.S., regarding use of accountants to prepare annual audits and audited financial reports. The bill enacts prohibitions recommended by the National Association of Insurance Commissioners that prohibit an insurer from using the same accountant or partner of an accounting firm to prepare its annual audit and audited financial report for more than five consecutive years, and to require a five year waiting period before the accountant or partner can be retained by the insurer for that purpose. Current law permits use of the same accountant or partner for 7 straight years followed by a two-year waiting period.

Section 7 amends s. 626.854, F.S., effective June 1, 2011, to limit public adjuster compensation to 20 percent of the reopened or supplemental claim payment for residential property insurance or condominium association policy claims. The public adjuster's compensation must solely be based on the claim payments or settlement obtained through the public adjuster's work after contracting with the insured or claimant.

The bill also clarifies the application of the limit on public adjuster compensation for claims paid within one year of a state of emergency. A public adjuster's compensation is limited to 10 percent of insurance claims payments made within one year of an event declared by the Governor to be a state of emergency. The limit is raised to 20 percent for claims payments for such events that are made more than one year after the declaration of emergency.

Section 8 amends s. 626.854, F.S., effective January 1, 2012.

Unfair and Deceptive Statements in Public Adjuster Advertisements

The bill specifies statements by a public adjuster in an advertisement or solicitation that constitute an unfair or deceptive insurance trade practice pursuant to s. 626.9541, F.S.:

- Inviting the policyholder to file a claim when there is no covered damage to insured property.
- Offering the policyholder monetary or valuable inducement to file a claim.
- Inviting a policyholder to file a claim by stating there is "no risk" to the policyholder.
- Making a statement or representation or using a logo that implies or mistakenly could be construed to imply that the solicitation is made or sanctioned by a governmental entity.

Requires Disclaimer on Public Adjuster Advertisements

The bill requires the following disclaimer on public adjuster advertisements in newspapers, magazines, flyers, and bulk mailers: "This is a solicitation for business. If you have had a claim for an insured property loss or damage and you are satisfied with the payment by your insurer, you may disregard the advertisement."

Insurer Claims Investigations

The bill requires that the insurance company adjuster, independent adjuster, investigator, or attorney provide at least 48 hours notice to the insured or insured's representative before

scheduling a meeting with the claimant or on-site investigation of the insured property. The insured or claimant may waive the notice requirement. A public adjuster is required to give prompt notice of a property insurance claim to the insurer. The public adjuster must ensure that notice of the claim is given, that the insurer receives a copy of the public adjuster's contract, that the property is available for the insurer's inspection, and that the insurer may interview the insured directly about the loss. The public adjuster may be present during the insurer's inspection of the property, but the public adjuster's unavailability may not delay the insurer's timely inspection.

Prohibition on Contractors Adjusting Claims

A licensed contractor or subcontractor is prohibited from adjusting a claim on the insured's behalf unless licensed as a public adjuster.

Section 9 amends s. 626.8651(6), F.S., to require a public adjuster apprentice to meet continuing education requirements (minimum 8 hours, including 2 hours of ethics) in order to obtain licensure as a public adjuster. The provision is effective January 1, 2012.

Section 10 amends s. 626.8796, F.S., regarding public adjuster contracts, effective January 1, 2012, to require that the public adjuster contract include the adjuster's name, business address, license number, and public adjusting firm's name. The contract must also include the insured's name and street address. A brief description of the loss and the type of claim involved (emergency, non-emergency, supplemental) and the percentage of the public adjuster's compensation must also be included. The contract must be signed and dated by the public adjuster and all named insureds. If all named insureds cannot sign the contract, the public adjuster must submit a signed affidavit that the signatories have authority to enter the contract and settle all claims issues on behalf of all named insureds. The public adjuster must provide a copy of the executed contract to the insurer within 30 days of its execution.

Current law also requires the public adjuster contract to provide notice that any person who injures, defrauds, or deceives an insurer or insured commits a third degree felony.

Section 11 creates s. 626.70132, F.S., regarding notice of a hurricane or windstorm claim, to require that notice of a new, reopened, or supplemental hurricane or windstorm property insurance claim be provided within three years of the hurricane first making landfall or the windstorm causing the covered damage. A supplemental or reopened claim is defined in this section as an additional claim for recovery made from the same hurricane or windstorm that the insurer previously adjusted. The section does not affect any applicable statute of limitations provided in s. 95.11, F.S.

Section 12 repeals s. 627.0613(4), F.S., to eliminate the requirement that the Insurance Consumer Advocate annually prepare a report card for each authorized personal residential property insurer.

Section 13 amends s. 627.062, F.S., regarding the rate standards applicable to property, casualty and surety insurance. The bill makes multiple substantive and clarifying changes regarding the

submission of rates by insurers and their approval or denial by the Office of Insurance Regulation. This section:

- Requires the office to issue an approval or notice of intent to disapprove of a "file and use" rate filing within 90 days of the filing's submission. Currently the Office is required to issue a "notice of intent to approve" instead of an approval.
- Prohibits the OIR from impeding an insurer's right to acquire policyholders, advertise, or appoint agents, including agent commissions.
- No longer prohibits the following acts in order for an insurer to make a separate filing related to reinsurance or financing products that replace Florida Hurricane Catastrophe Fund Temporary Increase in Coverage Limits (TICL) coverage.
    - Including expenses or profit for the insurer.
    - Including other changes in its rate in the filing.
    - Having implemented a rate increase in the past 6 months.
    - Filing for a rate increase within 6 months of approval.
- Deletes language related to the development of a standard rating territory plan for use by all insurers for residential property insurance.
- Deletes obsolete language related to implementation of the presumed factor for medical malpractice insurance pursuant to the 2003 medical malpractice reforms.
- Deletes obsolete language prohibiting property insurance filings from being made on a "use and file" basis. The language only applies to filings made before December 31, 2010.
- Limits the OIR's authority to disapprove rate filings for sinkhole insurance. Under the bill, the OIR may only deny the rate filing if the rate is inadequate, or charges the policyholder or applicant a higher premium based on race, religion, sex, national origin, or marital status.

Section 14 amends s. 627.0629, F.S., regarding windstorm damage mitigation discounts for residential property insurance.

Mitigation Discounts

Current law requires rate filings for residential property insurance to take the presence of mitigation techniques into account and provide actuarially reasonable credits, discounts, and reduced deductibles for mitigation techniques. The bill specifies that the rate filing must also consider the absence of mitigation techniques and include actuarially reasonable debits or increases in deductibles that recognize the absence of mitigation techniques.

The bill specifies that the aggregate amount of mitigation discounts granted by an insurer should not exceed the aggregate expected reduction in losses resulting from the mitigation techniques. An insurer that demonstrates that its aggregate mitigation discounts exceed the expected reduction in aggregate loss created by the mitigation may recover the lost revenue through an increase in its base rates. The bill deletes the requirement that the OIR develop a method of calculating mitigation discounts that directly correlates to the uniform home grading scale.

Implementation of Approved Rates Over Multiple Years

Current law allows an insurer to implement an approved rate filing over multiple years in order to provide an appropriate transition period for policyholders. Insurers are permitted to include the

actual cost of private market reinsurance that replaces Florida Hurricane Catastrophe Fund TICL coverage within the rate. The bill allows the portion of the rate that corresponds to the cost of reinsurance to replace TICL coverage to include an expense or profit load.

Section 15 amends s. 627.351(6), F.S., regarding Citizens Property Insurance Corporation.

Renames the High Risk Account

The bill renames the Citizens "High Risk Account" the "Coastal Account." The account is being renamed to improve Citizens' bargaining position when dealing with outside investors, as the current name "High Risk Account" has a negative connotation.

Citizens Policyholder Surcharge

The bill specifies that the Citizens policyholder surcharge is payable upon cancellation, termination, renewal, or issuance of a new policy within 12 months after imposition of the surcharge or the period of time necessary to collect the surcharge. Citizens cannot levy a regular assessment until it has levied the full amount of the Citizens policyholder surcharge. Current law is less specific regarding when the surcharge is due, only stating that it is to be collected when the insurance policy is issued or renewed.

Repeals Requirement to Reduce High Risk Area

Citizens is authorized to offer policies that that provide coverage only for the peril of wind for risks located within the high risk/coastal account. The high risk area of the high risk/coastal account consists of areas that were eligible for coverage in the Florida Windstorm Underwriting Association, essentially coastal areas at high risk for a hurricane. The bill repeals the requirement to reduce the high-risk area after December 1, 2010, if necessary to reduce the probable maximum loss attributable to wind-only coverages to 25 percent below the "benchmark" for the high-risk area, which is defined in statute as the 100-year probable maximum loss for the Florida Windstorm Underwriting Association based on its November 30, 2000, exposures. The bill also repeals a requirement to reduce the high-risk area after February 1, 2015, by 50 percent below the benchmark.

Repeal of the requirement to reduce the high risk area prevents the reduction of Citizens exposure to losses due to hurricane loss under wind-only policies in coastal areas. However, reduction of the high risk area might also reduce the number of private market carriers providing coverage in coastal areas. Currently private market insurers are able to provide coverage to risks in the coastal area that exclude wind. If such insurers are required to cover wind, they may choose not to write the policy with the eventual result perhaps being that the entire risk is insured by Citizens.

Citizens Board of Governors

Members of the board with insurance experience are deemed to be within the exception in s. 112.313(7)(b), F.S., that allows a public officer to practice a particular profession or occupation when required or permitted by law or ordinance.

The bill provides procedures for board members who have a conflict of interest regarding a particular matter. A Citizens board member may not vote on any measure that would inure to the gain or loss of the board member; the board member's corporate principal or the parent or subsidiary of the corporate principal; or the relative or business associate of the board member. A board member with a conflict must state his or her interest in the matter prior to the vote being taken. The board member must also provide written disclosure of the conflict within 15 days after the vote, and the disclosure must be included in the minutes of the board meeting and available as a public record.

Section 16 amends s. 627.3511(5)(a), F.S., to provide conforming changes regarding the name change of the Citizens coastal account.

Section 17 amends s. 627.4133, F.S., regarding the written notice requirements for nonrenewal of a policy.

Notice of Nonrenewal for Personal or Commercial Residential Property Insurance Policies

The bill creates a uniform 90-day written notice requirement for the nonrenewal, cancellation, or termination of a personal lines or commercial residential property insurance policy. Under current law, an insurer must provide 100 days written notice. However, if the insurer has covered the insured's property for the last five years or more then 180 days written notice is required. If the insured has been with the insurer for less than five years but the nonrenewal, cancellation, or termination is effective between June 1 and November 30, then the insurer must give the greater of 100 days written notice or notice by June 1.

Notice of Nonrenewal for Citizens "Take-out" Policies

The bill requires Citizens to provide 45 days notice of nonrenewal to the policyholder for a policy that has been assumed by an authorized insurer. For such policies, Citizens is exempt from the notice requirements of paragraph (2)(a) and (2)(b) apply to policies for personal lines and commercial residential property insurance. Paragraph (2)(a) requires the insurer to provide 45 days written notice of the renewal premium. Paragraph (2)(b) contains a number of notice requirements pertaining to the nonrenewal, cancellation, or termination of the policy.

45-Day Notice of Cancellation or Non-Renewal of Property Insurance Policies

An insurer may cancel or nonrenew a property insurance policy after 45 days notice if the OIR finds that the early cancellation of policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal. Acceptable grounds for early cancellation or nonrenewal may include the insurer's financial condition, the lack of adequate reinsurance for hurricane risks, or other relevant factors. The office may condition its findings on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81, F.S., or the appointment of a receiver under ch. 631, F.S.

Section 18 creates s. 627.73141, F.S., which allows insurers to change policy terms for a renewal policy of personal lines property insurance without cancelling the policy and providing a notice of cancellation.

Notice of Change in Policy Terms

The bill authorizes insurers to renew a personal lines property and casualty insurance policy under different terms by providing to the policyholder a written "Notice of Change in Policy Terms" instead of a written "Notice of Non-Renewal." The Notice must be titled "Notice of Change in Policy Terms," give the insured written notice of the change, and be enclosed with the written notice of renewal premium. The insured is deemed to have accepted the change in policy terms upon the insurer's receipt of the premium payment for the renewal policy. If the insurer fails to provide the Notice of Change in Policy Terms the original policy terms remain in effect. The bill also provides Legislative intent language stating that the section is designed to allow insurers to change policy terms without nonrenewing policyholders, alleviate policyholder confusion caused by the required policy nonrenewal when an insurer intends to renew the policy under different terms, and encourage policyholders to discuss their coverages with insurance agents. Currently, when an insurer wants to change the terms of the insurance contract by which it provides coverage to the insured at renewal, it must provide the insured with a written Notice of Non-Renewal in compliance with the time frames for notice requirements provided for in statute.

Section 19 amends s. 627.7011, F.S., regarding insurer payment of losses insured on a replacement cost basis.

Payment of Losses to Dwellings Insured on Replacement Cost Basis

The insurer must initially apply the deductible and pay the actual cash value of the insured loss. The policyholder must then contract for the performance of building and structural repairs, which triggers the insurer's obligation to pay any remaining amounts incurred to perform the repairs as the work is performed. The insurer may waive the requirement that the policyholder contract for repairs. The insurer, contractor, or subcontractor may not require the policyholder to advance payment for repairs except for incidental expenses to mitigate further damage. The insurer must pay replacement cost coverage without reservation or holdback of any depreciation if a total loss occurs in accordance with s. 627.702, F.S., the valued policy law.

Payment of Personal Property Losses on Replacement Cost Basis

The insurer may limit its initial payment to the actual cash value of the personal property. The insurer must pay the reservation or holdback upon the insured's providing a receipt for the replaced property. The insurer must provide clear notice of the payment process in the insurance contract. The insurer is prohibited from requiring the policyholder to advance payment to replace property.

Section 20 amends s. 627.70131(5)(a), F.S., regarding payment of property insurance claims, to require that an initial, reopened, or supplemental property insurance claim be paid or denied by the insurer the later of:

- 90 days after receiving notice of the claim unless there are factors beyond the insurer's control that reasonably prevent payment; or
- 15 days after there are no longer factors beyond the control of the insurer that reasonably prevented payment.

Current law contains the timeframes for payment of a claim described above, but simply says they apply to a property insurance claim. This has resulted in disputes regarding the time frame the insurer has to make a payment for a reopened or supplemental property insurance claim.

Section 21 provides a statement of Legislative findings regarding sinkhole loss insurance coverage. The findings include the following declarations.

- There is a compelling state interest in maintaining a viable and orderly property insurance market.
- The 2005 legislative revisions to the sinkhole statutes (ss. 627.706-627.7074, F.S.) are designed to increase reliance on objective, scientific testing requirements and reduce the number of sinkhole claims and disputes arising under the prior law.
- The Legislature finds that losses associated with sinkhole claims adversely affect the public health, safety, and welfare of this state and its citizens. The Legislature determined that since the 2005 statutory revisions, both private-sector insurers and Citizens have experienced high claims frequency and severity for sinkhole insurance claims. Additionally, many properties remain unrepaired even after loss payments, which reduce the local property tax base and adversely affect the real estate market.
- Sections 19 through 24 of the act clarify technical or scientific definitions adopted in the 2005 legislation in order to reduce sinkhole claims and disputes.
- The legal presumption intended by the Legislature is clarified to reduce disputes and litigation associated with technical reviews associated with sinkhole claims.
- Other statutory revisions advance legislative intent to rely on scientific or technical determinations relating to sinkholes and sinkhole claims, reduce the number and cost of sinkhole claim disputes, and ensure that repairs are made pursuant to scientific and technical determinations and insurance claims payments.

Section 22 amends s. 627.706, F.S., which currently requires property insurers to offer sinkhole coverage to each policyholder for an additional premium and requires that coverage for catastrophic ground cover collapse be included in every property insurance policy. The bill makes the following changes:

Removes the Requirement that Insurers Offer Sinkhole Coverage

Insurers no longer must make sinkhole coverage available. Instead, insurers are authorized to make the coverage available but are not required to do so. Insurers are also allowed to restrict sinkhole coverage to the principal building.

Sinkhole and Catastrophic Ground Cover Collapse Insurance Only Applies to Residential Property Insurance

Property insurers covering commercial risks will no longer be bound by the requirement to include coverage for catastrophic ground cover collapse coverage and the provisions of the section regarding sinkhole coverage. Only insurers transacting *residential* property insurance as described in s. 627.4025, F.S., will be required to include catastrophic ground cover collapse and will be governed by the provisions of the bill authorizing sinkhole coverage. Section 627.4025, F.S., defines residential coverage as follows.

- Personal lines coverage which consists of homeowner's, mobile homeowner's, dwelling, tenant's, condominium unit owner's, cooperative unit owner's, and similar policies.
- Commercial lines residential coverage which consists of condominium association, cooperative association, apartment building, and similar policies, including policies covering the common elements of a homeowner's association.

Applies the Sinkhole Deductible to the Sinkhole Investigation

The sinkhole deductible will apply to any expenses incurred by the insurer in investigating a sinkhole claim. Separate deductibles for sinkhole coverage are currently authorized to be equal to one, two, five, or ten percent of the policy dwelling limits.

Redefines Sinkhole Loss Coverage

The bill changes the definition of "sinkhole loss," primarily by creating a statutory definition of "structural damage." Sinkhole loss is currently defined as "structural damage to the building, including the foundation, caused by sinkhole activity." However, "structural damage" is not defined by statute. The bill defines structural damage as the occurrence of all of the following.

- A covered building suffers foundation movement outside an acceptable variance under the applicable building code; and
- Damage to a covered building, including the foundation, that prevents the primary structural members and/or primary structural systems from supporting the loads and forces they are designed to support; and
- The loss meets any additional conditions contained in the insurance policy.

Accordingly, in order for the policyholder to obtain policy benefits for sinkhole loss, the insured structure must sustain structural damage as defined by the bill that is caused by sinkhole activity and any additional conditions contained in the insurance policy. Contents coverage and additional living expense coverage is only available if there is *structural* damage to the covered building caused by sinkhole activity. The bill also specifies that "sinkhole loss" means structural damage to the *covered* building.

The definition of sinkhole loss is also modified by the bill's amendment of the definition of sinkhole activity. The bill specifies that *contemporary* movement or raveling of soils is necessary for sinkhole activity to occur. Merriam-Webster's defines "contemporary" in two different ways, and either definition arguably could apply. The term can either refer to something that exists or

occurs within the current modern time period or can mean simultaneous or within the same time period. The first definition would require the movement or raveling of soils to have occurred recently. The second definition would require it to have occurred within the same time period as another event, which could mean that the weakening of the earth supporting the property would result from soil movement that occurred at roughly the same time, but would not necessarily require both events to have occurred recently.

Two Year Sinkhole Claim Deadline

The bill requires a policyholder to provide notice to the insurer of a new, supplemental, or reopened claim for sinkhole loss within 2 years after the policyholder knew or should have known about the sinkhole loss.

Changes the Requirements for Professional Engineers and Professional Geologists

In order to qualify as a professional engineer under the sinkhole statutes, a professional engineer must have successfully completed five or more courses in geotechnical engineering, structural engineering, soil mechanics, foundations, or geology. The bill deletes the requirement that the engineering degree include a specialty in geotechnical engineering. The bill also deletes the requirement that the geology degree include expertise in Florida geology.

Alters Provisions Related to Catastrophic Ground Cover Collapse

The bill amends the definition of catastrophic ground cover collapse to specify that the coverage only applies if there is structural damage to the *covered* building. The bill also deletes a reference to "structural damage" that the current statute implies can consist of "merely the settling or cracking of a foundation, structure, or building…."

Currently, when a policyholder chooses coverage only for catastrophic ground cover collapse, the insurer must give notice that sinkhole losses are not covered, but that sinkhole coverage can be purchased for an additional premium. Under the bill, insurers no longer must offer sinkhole coverage to policyholders. Accordingly, the notice to policyholders will no longer state that the insured may purchase sinkhole loss coverage for an addition premium.

Nonrenewal of Policies That Include Sinkhole Coverage

The bill allows an insurer to nonrenew a policy that provides sinkhole coverage and instead offer coverage that includes catastrophic ground cover collapse and excludes sinkhole coverage. The insurer is not required to provide the policyholder with the opportunity to purchase a sinkhole endorsement. The insurer may require an inspection of the property prior to issuing a sinkhole coverage endorsement. Currently the nonrenewal process detailed in this paragraph is limited to Pasco County and Hernando County and requires the insurer to make an offer of sinkhole coverage for an additional appropriate premium, subject to the underwriting or insurability guidelines of the insurer.

Section 23 makes a technical change to s. 627.7061, F.S., substituting policyholder for insured.

Section 24 repeals s. 627.7065, F.S., eliminating the database of information relating to sinkholes developed by the Department of Financial Services and the Department of Environmental Protection.

Section 25 amends s. 627.707, F.S., containing the standards for the investigation of sinkhole claims by insurers, the payment of such claims, and the nonrenewal of policies covering sinkhole loss under specified circumstances. The bill substantially modifies the process for an insurer's investigation of a sinkhole claim.

Investigation of Sinkhole Claims

The bill creates a substantially new process for an insurer's investigation of a sinkhole claim. The process requires the insurer to determine whether: (1) the building has incurred structural damage that (2) has been caused by sinkhole activity. Coverage for sinkhole loss will not be available if structural damage is not present or sinkhole activity is not the cause of structural damage. The new process is as follows:

1) *Initial Inspection & Structural Damage Determination*: Upon receipt of a claim for sinkhole loss, the insurer must inspect the policyholder's premises to determine if there has been structural damage which may be the result of sinkhole activity. This inspection will often require the insurer to retain a professional engineer to evaluate whether the insured building has incurred structural damage as defined by statute.
2) *Sinkhole Testing Initiated by the Insurer*: The insurer is required to engage a professional engineer or professional geologist to conduct sinkhole testing pursuant to s. 627.7072, F.S., if the insurer confirms that structural damage exists and is either unable to identify a valid cause of the structural damage or discovers that the structural damage is consistent with sinkhole loss. If coverage is excluded under the policy even if sinkhole loss is confirmed, then the insurer is not required to conduct sinkhole testing. The bill deletes the requirement that the insurer conduct sinkhole testing upon the demand of the policyholder.
3) *Notice to the Policyholder*: The bill maintains the requirement that the insurer must provide written notice to the policyholder detailing what the insurer has determined to be the cause of damage (if the determination has been made) and a statement of the circumstances under which the insurer must conduct sinkhole testing. Notice of the right of the policyholder to demand sinkhole testing is deleted.

4) *Authorization to Deny Sinkhole Claim*: Insurers may continue to deny the claim upon a determination that there is no sinkhole loss.
5) *Policyholder Demand for Sinkhole Testing*: The bill specifies that the policyholder may demand sinkhole testing in writing within 60 days after receiving a claim denial if the insurer denies the claim for lack of sinkhole loss without performing sinkhole testing and if coverage would be available if a sinkhole loss is confirmed (i.e. the claim denial was not issued due to policy conditions or exclusions of coverage and instead was based the failure of the loss to meet the definition of sinkhole loss). However, if sinkhole testing certifies pursuant to s. 627.7073, F.S., that there is no sinkhole loss (structural damage caused by sinkhole activity), then the policyholder must pay the insurer up to 50 percent of the sinkhole testing costs up to the greater of the sinkhole deductible or $2,500.

6) *Payment of a Claim for Sinkhole Loss*: The insurer continues to be required to pay to stabilize the land and building and repair the foundation upon the verification of a sinkhole loss. The bill specifies that payment shall be made to conduct such repairs in accordance with the recommendations of the professional engineer retained by the insurer under s. 627.707(2), F.S. The bill also clarifies that the insurer is required to give notice to the policyholder regarding payment of the claim. Current law states that the claim payment must be made "in consultation with the policyholder," which has created disagreement between insurers and some policyholders whether the statute requires only notice to the policyholder or whether the insurer and policyholder must reach an agreement regarding the methods of sinkhole repairs to be used and their estimated costs.

Payment of Sinkhole Loss Claims

Under current law an insurer may limit payment to the actual cash value of the sinkhole loss not including below-ground repair techniques until the policyholder enters into a contract for the performance of building stabilization repairs. The bill requires the contract for below-ground repairs to be made in accordance with the recommendations set forth in the insurer's sinkhole report issued pursuant to 627.7073, F.S.. and entered into within 90 days after the policyholder receives notice that the insurer has confirmed coverage for sinkhole loss. The time period is tolled if either party invokes neutral evaluation. Stabilization and all other repairs to the structure and contents must be completed within 12 months after the policyholder enters into the contract for repairs unless the insurer and policyholder mutually agree otherwise, the claim is in neutral evaluation, the claim is in litigation, or the claim is under appraisal.

Under current law, the insurer may make payment directly to persons selected by the policyholder to perform land and building stabilization and foundation repairs if the policyholder and any lien holder grant written approval. The bill deletes the requirement of policyholder approval in order for the insurer to make direct payment to the persons performing repairs.

Prohibition of Rebates for Sinkhole Repairs

The bill prohibits a policyholder from accepting a rebate from a person performing sinkhole repairs. If the policyholder does receive a rebate, coverage under the insurance policy is rendered void and the policyholder must refund the amount of the rebate to the insurer. Furthermore, a policyholder that accepts a rebate or a person who offers a rebate commits insurance fraud punishable as a third degree felony as provided in s. 775.082, F.S. (up to five years imprisonment), s. 775.083, F.S. (up to a $5,000 fine), and s. 775.084, F.S. (for a habitual felony offender up to 10 years imprisonment with no eligibility for release for five years).

Requirement to Pay Costs of Sinkhole Testing

If the policyholder requests that the insurer conduct sinkhole testing and the sinkhole testing report certifies there is no sinkhole loss, the policyholder must reimburse 50 percent of the insurer's sinkhole testing costs up to the greater of the deductible or $2,500. The policyholder is not responsible for testing costs if sinkhole testing is initiated by the insurer (due to a determination that structural damage is present).

Nonrenewal of Policies

Current law allows the insurer to nonrenew a policy on the basis of a sinkhole loss claim if the insurer makes payments that exceed the current policy limit for property damage coverage. The bill instead provides that the policy may be nonrenewed if the payments equal or exceed the policy limit in effect on the date of loss to the covered building as set forth on the declarations page. However, the policy cannot be nonrenewed if the insured has repaired the structure in accordance with the engineering recommendations provided in the sinkhole report obtained by the insurer.

Section 26 amends s. 627.7073, F.S., containing the statutory requirements regarding sinkhole testing reports.

Sinkhole Testing Reports

The bill alters the findings that must be contained within a certified sinkhole testing report, primarily to require the report to determine if structural damage is present that has been caused by sinkhole activity.

If the sinkhole report verifies the existence of a sinkhole loss, the bill requires the report to certify that structural damage to the covered building has been identified within a reasonable professional probability. The report must verify causation by certifying that the cause of structural damage is sinkhole activity. The report must also certify that the analyses were sufficient to identify sinkhole activity as the cause of structural damage. The bill maintains the requirement that the report provide recommendations for stabilizing the land and building and repairing the foundation.

In the event that a sinkhole loss is not verified, the report must state that there is no structural damage or that the cause of structural damage is not sinkhole activity within a reasonable professional probability. The report must also state the cause of structural damage when certifying that a sinkhole loss has not occurred.

Presumption of Correctness

Current law states that the findings, opinions, and recommendations contained in a statutorily compliant sinkhole testing report are presumed correct. The bill also states that the presumption of correctness shifts the burden of proof in court to the Plaintiff. The bill will reverse the holding of *Warfel v. Universal Ins. Co. of N.A.*, which found that the presumption of correctness does not shift the burden of proof. The bill specifies that the presumption of correctness only applies to a report prepared by the insurer's professional engineer with regard to land and building recommendations. The presumption of correctness is based upon public policy concerns regarding the affordability of sinkhole coverage, to provide consistency in claims handling, and to reduce the number of disputed sinkhole claims.

Filing of Sinkhole-Related Reports with Clerk of Court

The bill expands current law, which requires the insurer to file a sinkhole report with the county Clerk of Court when paying a claim for sinkhole loss. Insurers must also file a neutral evaluator's report that verifies a sinkhole loss, a copy of the certification that stabilization has been completed (if any), and the amount of the payment. The bill also requires the policyholder to file with the county Clerk of Court a copy of any sinkhole report regarding the insured property prepared at the request of the policyholder. Filing the policyholder's sinkhole report is a precondition to accepting payment for a sinkhole loss.

Notice to Property Buyers of Sinkhole Claims

The bill strengthens the requirement that sellers notify the buyers of real property of any sinkhole claims payments regarding the property and whether all proceeds were used to repair sinkhole damage. The bill requires the disclosure to be made before closing and to include the amount of the payment received. The seller must also provide to the buyer prior to closing the statutory sinkhole report, all other reports regarding the property, the neutral evaluation report, and the certification indicating that stabilization of the property is completed.

Section 27 amends, s. 627.7074, F.S., which provides the procedure for the neutral evaluation of sinkhole claims administered through the Department of Financial Services (DFS). The bill specifies that neutral evaluation is available to either party if a sinkhole report has been issued pursuant to s. 627.7073, F.S. Currently, the statute does not state when neutral evaluation can be requested, which has resulted in requests for neutral evaluation before sinkhole testing has been conducted. In addition, the bill requires neutral evaluation to determine the following.

- Causation.
- All Methods of stabilization and repair both above and below ground.
- The costs for stabilization and all repairs.
- Information necessary to determine whether sinkhole loss has been verified, causation, and estimated repair costs.

The neutral evaluator's report must describe all matters that are the subject of the neutral evaluation, including the following.

- Whether sinkhole loss has been verified or eliminated within a reasonable degree of professional probability.
- Whether sinkhole activity caused structural damage to the building.
- If sinkhole loss is present, the estimated cost of stabilizing the land and covered structures and other appropriate remediation and necessary building repairs due to sinkhole loss.

Availability of Appraisal

Neutral evaluation does not invalidate an appraisal clause in an insurance policy, which either party may select to resolve a dispute regarding the amount of loss.

Neutral Evaluator Access to Information

The neutral evaluator must have reasonable access to the interior and exterior of insured structures that are the subject of a claim. The policyholder must provide the neutral evaluator with any reports initiated by the policyholder or the policyholder's agent that confirm sinkhole loss or dispute another sinkhole report.

Criteria for Disqualification of a Neutral Evaluator

The parties may disqualify up to two neutral evaluators proposed by the DFS without cause. The parties may also submit requests to disqualify evaluators for cause. The proposed neutral evaluator may only be disqualified for cause because of a specified familial relationship, a conflict of interest based on prior representation of either party or adverse to the parties' interests in a substantially related matter, or a prior employment relationship with either party. Under current law, each party may disqualify up to three proposed neutral evaluators for any reason, but there are no disqualifications for cause.

Time-Frames for Conducting Neutral Evaluation

The bill generally expands the time frames for conducting neutral evaluation. The parties are directed to agree to the appointment of a qualified neutral evaluator, but if they cannot do so within 14 days, the Department of Financial Services is directed to select the neutral evaluator. The neutral evaluator that is selected must notify the parties of the schedule for the neutral evaluation conference within 14 days of receiving the assignment. The neutral evaluator is directed to make reasonable efforts to hold the conference within 90 days after the DFS has received the neutral evaluation request, but failure to do so does not invalidate either party's right to neutral evaluation. The neutral evaluation report must be sent to all parties and the DFS within 14 days after completing the neutral evaluation conference. The mandatory stay of court proceedings pending completion of neutral evaluation is automatically lifted five days after the filing of the neutral evaluator's report with the court.

Permits Additional Experts and Testing to Assist the Neutral Evaluator

The neutral evaluator that lacks the training and credentials to provide an opinion regarding a disputed issue may enlist another professional neutral evaluator, a professional engineer or professional geologist, or a licensed building contractor who has the training and credentials to provide that opinion.

The neutral evaluator may also request the entity that performed the sinkhole investigation pursuant to s. 627.7072, F.S., perform additional and reasonable testing that is deemed necessary by the neutral evaluator.

Admissibility of Neutral Evaluator's Testimony and Report

The neutral evaluator's full report and testimony must be admitted in any action, litigation or proceeding giving rise to the claim or related to the claim. However, oral or written statements or nonverbal conduct other than those required to be admitted are confidential and may not be disclosed to a person other than a party to neutral evaluation or a party's counsel.

Other Provisions

The bill includes the following provisions.

- The actions of the insurer are not a confession of judgment or admission of liability if an insurer timely complies with the neutral evaluator's recommendations but the policyholder declines to resolve the matter in accordance with those recommendations.
- Payments shall be made pursuant to the insurance policy and s. 627.707(5), F.S., if the insurer agrees to comply with the neutral evaluator's report.
- Neutral evaluators are agents of the DFS and have immunity from suit.
- The DFS must adopt procedural rules for neutral evaluation.

Section 28 amends s. 627.712(1), F.S., to provide conforming changes regarding the name change of the Citizens coastal account.

Section 29 provides that act is generally effective July 1, 2011, except as otherwise expressly provided. This provision is effective June 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Consumers should benefit because the bill strengthens insurer solvency by increasing the minimum surplus requirements for "new" or "current" residential property insurers which increases the likelihood that insurers can pay policyholder claims and that fewer insurers will enter rehabilitation or liquidation proceedings. The bill also safeguards insurer solvency by permitting insurers to cancel or nonrenew insurance policies within 45 days if the OIR finds the early cancellations are necessary to protect the best interests of the policyholders and the public.

Insurance agents should benefit under this legislation because the OIR is precluded from directly or indirectly impeding or compromising an insurer's right to acquire policyholders, advertise, or appoint agents, including the amount of agent commissions during a rate filing procedure.

Revising the adjustment and holdback procedures for homeowners' insurance policies which offer replacement cost coverage should help ensure that policyholders make necessary repairs to their dwellings. The revisions should also discourage inflated estimates for personal property claims that are insured on a replacement basis.

The revisions to the statutes governing sinkhole coverage should reduce the number of sinkhole claims and disputes, ultimately reducing the losses associated with such claims. The reforms should reduce premium costs for policyholders purchasing residential property insurance and increase the availability of coverage within the private market. However, claim costs associated with sinkhole loss may increase in the short term with the passage of this bill, as a number of policyholders may file sinkhole damage claims alleging damage that occurred before the effective date of the reforms contained in this bill.

Insurers no longer must offer sinkhole coverage for an additional premium. Also, commercial property insurance will no longer contain catastrophic ground cover collapse or sinkhole coverage. This likely will reduce the availability of sinkhole coverage from the private market or Citizens Property Insurance Corporation. Representatives from the Florida Surplus Lines Service Office indicated to committee staff that sinkhole coverage is not generally available from the surplus lines market at the present time.

The bill requires the Florida Hurricane Catastrophe Fund to provide reimbursement for fees (such as attorney's fees) paid on behalf of the policyholder and requires reimbursement for all incurred losses, with exceptions. To the extent this results in additional monies paid by the FHCF, it could increase the likelihood that the fund will have to issue revenue bonds. If the fund does not provide reimbursement for fees, it may incentivize insurance carriers to pay claims prior to the Plaintiff retaining an attorney.

C. Government Sector Impact:

Citizens Property Insurance Corporation is sustaining large losses related to sinkhole losses that are far greater than the sinkhole premium that Citizens is permitted to accept. The reforms to the sinkhole coverage insurance market in the bill are designed to reduce the costs associated with sinkhole claims.

Eliminating the database of information relating to sinkholes developed by the Department of Financial Services and the Department of Environmental Protection will remove all costs associated with its maintenance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Budget Subcommittee on General Government Appropriations on March 11, 2011

The committee substitute makes the following substantial changes:

- Requires that all windstorm and hurricane property insurance claims be made within three years of the actual occurrence.
- Reinstates current language related to the collection of assessments that was inadvertently deleted (technical).
- Deletes the provision which specifies that the certification of a rate filing is not rendered false if the insurer provides additional or supplementary information requested by the Office of Insurance Regulation and reinstates current law.
- Deregulates sinkhole insurance rates with the goal of restoring a competitive market for sinkhole insurance in Florida.

CS by Banking and Insurance on February 22, 2011

The Committee Substitute makes the following substantial changes:

- Requires the Florida Hurricane Catastrophe Fund to provide reimbursement for all incurred losses, including fees, with exceptions.
- Deletes the requirement that the Insurance Consumer Advocate issue yearly report cards for personal residential property insurers.
- Deletes the requirement to reduce the Citizens high-risk area that is eligible to purchase wind-only coverage from Citizens.
- Reduces to 90 days the written notice of nonrenewal, cancellation, or termination for personal or residential property insurance policies.
- Creates requirements for the payment of a loss to a dwelling or personal property insured on a replacement cost basis. The insurer must pay the actual cash value of the loss. Payment for the replacement cost is available once the insured has contracted to perform dwelling repairs or has provided a receipt to the insurer for the purchase of personal property financed by the payment of insurance proceeds.

- Specifies that if an insurer cancels a policy providing sinkhole coverage and instead offers a policy that provides catastrophic ground cover collapse, the insurer is not required to offer a sinkhole coverage endorsement.
- Requires a policyholder to refund to the insurer the amount of a refund accepted from any person performing sinkhole repairs and voids coverage.
- Specifies that a policyholder is liable for part of the cost of sinkhole testing conducted by the insurer if the policyholder requested the testing and a sinkhole loss is not verified.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 94
INTRODUCER:	Health Regulation Committee and Senator Gaetz
SUBJECT:	Blood Establishments
DATE:	March 15, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Fav/CS**
2.	Wolfgang	Yeatman	CA	**Favorable**
3.	Bradford	Hansen	BHA	**Favorable**
4.	Bradford	Meyer, C.	BC	**Pre-meeting**
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The committee substitute (CS) for SB 94:

- Redefines "blood establishment" to clarify that a person, entity, or organization that uses a mobile unit and performs any of the activities under the definition of "blood establishment" is also a blood establishment.
- Defines a "volunteer donor" for purposes of blood donations;
- Prohibits local governments from restricting access to public facilities or infrastructure for volunteer blood drives based on the tax status of a blood establishment conducting the blood drive;
- Prohibits a blood establishment from considering the tax status of certain customers when determining the price at which to sell blood or a blood component that was obtained from volunteer donors;
- Requires a blood establishment that collects blood or blood components from volunteer donors, except a hospital that uses the blood or blood components that the hospital collects only within its business entity, to disclose information on its Internet website concerning: a description of the activities of the blood establishment related to collecting, processing, and distributing volunteer blood donations; the number of units that are produced, obtained from other sources, and distributed; policies related to corporate conduct and executive

compensation; and financial-related data. Hospitals are exempt from disclosing financial-related data. Failing to disclose this information as required in the CS subjects the blood establishment to a civil penalty;
- Clarifies that a blood establishment is a health care entity that may engage in the wholesale distribution of certain prescription drugs;
- Exempts a blood establishment that manufactures blood and blood components from the requirement to be permitted as a prescription drug manufacturer and register products;
- Authorizes certain blood establishments to obtain a restricted prescription drug distributor permit to engage in the wholesale distribution of certain prescription drugs to health care entities; and
- Authorizes the Department of Health (DOH) to adopt rules related to the distribution of prescription drugs by blood establishments.

There is a positive fiscal impact to any community blood center that intends to engage in the wholesale distribution of certain prescription drugs in order to provide health care services typically provided by blood establishments.

There is a minimal fiscal impact to the state from legislative changes proposed in this bill. The proposed permitting costs would be $600 biannualy compared to the annual cost of $950 under current legislation.

This CS substantially amends the following sections of the Florida Statutes: 381.06014, 499.003, 499.005, and 499.01.

II. Present Situation:

Regulatory Background

A blood establishment is defined in s. 381.06014, F.S., to mean any person, entity, or organization, operating within Florida, which examines an individual for the purpose of blood donation or which collects, processes, stores, tests, or distributes blood or blood components collected from the human body for the purpose of transfusion, for any other medical purpose, or for the production of any biological product.

The state of Florida does not issue a specific license as a blood establishment. Florida law[1] requires a blood establishment operating in Florida to operate in a manner consistent with the provisions of federal law in Title 21 Code of Federal Regulations (C.F.R.) parts 211 and 600-640, relating to the manufacture and regulation of blood and blood components. If the blood establishment does not operate accordingly and is operating in a manner that constitutes a danger to the health or well-being of blood donors or recipients, the Agency for Health Care Administration (Agency) or any state attorney may bring an action for an injunction to restrain such operations or enjoin the future operation of the establishment.

[1] Section 381.06014, F.S.

Federal law classifies blood establishments as follows:[2] community (non-hospital) blood bank (community blood center), hospital blood bank, plasmapheresis center, product testing laboratory, hospital transfusion service, component preparation facility, collection facility, distribution center, broker/warehouse, and other. Community blood centers are primarily engaged in collecting blood and blood components from voluntary donors to make a safe and adequate supply of these products available to hospitals and other health care providers in the community for transfusion. Blood establishments that focus on the collection of plasma that is not intended for transfusion, but is intended to be sold for the manufacture of blood derivatives[3] routinely pay donors.

Community blood centers in Florida are licensed as clinical laboratories by the Agency, unless otherwise exempt.[4] As a part of the clinical laboratory license, the facility is inspected at least every 2 years.[5] The Agency may accept surveys or inspections conducted by a private accrediting organization in lieu of conducting its own inspection.[6] The clinical laboratory personnel are required to maintain professional licensure by the DOH. Community blood centers must also have appropriate licenses issued by the DOH and must comply with laws related to biomedical waste[7] and radiation services.[8]

Blood and Blood Components

Blood may be transfused to patients as whole blood or as one of its primary components: red blood cells (RBCs), plasma, platelets, and cryoprecipitated antihemophilic factor (AHF).[9] RBCs are prepared from whole blood by removing the plasma, and are given to surgery and trauma patients, along with patients with blood disorders like anemia and sickle cell disease. RBCs have a shelf life of 42 days, or they may be treated and frozen for storage of up to 10 years.

- Leukoreduced RBCs are filtered to contain a lesser amount of white blood cells than would normally be present in whole blood or RBC units. Leukoreduction is recommended to improve the safety of blood transfusions by reducing the possibility of post-transfusion infection or reaction that may result from pathogens concentrated in white blood cells.
- Plasma is the liquid portion of the blood that carries clotting factors and nutrients. It may be obtained through apheresis[10] or separated from whole blood, which is referred to as recovered plasma. It is given to trauma patients, organ transplant recipients, newborns and

[2] A description of these classifications may be found at: http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/EstablishmentRegistration/BloodEstablishmentRegistration/ucm055484.htm (Last visited on January 6, 2011).
[3] Blood derivatives are classified as prescription drugs. *See* s. 499.003(43), F.S. and s. 503(b) of the Federal Food, Drug, and Cosmetic Act.
[4] *See* ch. 59A-7.019, F.A.C., and part I of ch. 483, F.S., related to Health Testing Services.
[5] Section 483.061(1), F.S.
[6] Section 483.061(4), F.S.
[7] *See* ch. 64E-16, F.A.C., Biomedical Waste, and s. 381.0098, F.S.
[8] *See* ch. 64E-5, F.A.C., Control of Radiation Hazards. If a blood center irradiates blood products using radioactive materials, the location in which this occurs must be licensed. If a blood center irradiates blood products using a machine, then the community blood center must register the machine.
[9] Blood component definitions from: AABB, *Whole Blood and Blood Components*, available at: http://www.aabb.org/resources/bct/bloodfacts/Pages/fabloodwhole.aspx (Last visited on January 6, 2011).
[10] *Ibid.* Apheresis is a process in which blood is drawn from the donor into an apheresis instrument that separates the blood into its components, retains the desired component, and returns the remainder of the blood to the donor.

patients with clotting disorders. Fresh frozen plasma (FFP) is plasma frozen within hours after donation in order to preserve clotting factors and may be stored up to 7 years. It is thawed before it is transfused.

- Cryoprecipitated AHF is the portion of plasma that is rich in certain clotting factors. It is removed from plasma by freezing and then slowly thawing the plasma. Cryoprecipitated AHF is used to prevent or control bleeding in individuals with hemophilia and von Willebrand disease.
- Platelets control blood clotting in the body, and are used to stop bleeding associated with cancer and surgery. Units of platelets are prepared by using a centrifuge to separate the platelet-rich plasma from the donated unit of whole blood. Platelets also may be obtained from a donor by the process of apheresis, which results in about six times as many platelets as a unit of platelets obtained from the whole blood. Platelets are stored at room temperature for up to 5 days.

Community Blood Centers

Currently, there are six not-for-profit corporations[11] and one for-profit corporation[12] that operate community blood centers in Florida.[13] Several hospital-owned blood centers operate in this state as well, primarily collecting blood or blood components to be used in each hospital's own facilities. At least one community blood center that does not have a fixed location in Florida collects blood and blood components from volunteer donors by using a mobile blood-collection vehicle and distributes blood and blood components to health care providers in Florida.

Recently, the for-profit community blood center received notification of a policy that impairs its ability to engage in blood collection activities and compete with the not-for-profit community blood centers. According to correspondence dated October 13, 2009, between officials within the Miami Parking Authority, that policy statement provides, "Meter rentals for blood mobile agencies will only be granted to non-profit companies conducting a blood drive ..."[14]

Pricing

The cost of blood and blood components is primarily based on the cost of labor and required testing, which ensures the safety of the blood collected. In addition to screening, collecting, processing (separation), and testing, blood centers must ensure that they implement procedures for labeling, including expiration dating; tracking and tracing the donation; deferral; public health reporting and donor follow-up as applicable; blood component quarantining in

[11] The not-for-profit corporations include: Community Blood Centers of South Florida, Florida Blood Services, Florida's Blood Centers, LifeSouth Community Blood Centers, Suncoast Communities Blood Bank, and The Blood Alliance.
[12] The for-profit corporation is the United States Blood Bank (USBB).
[13] However, on November 18, 2010, the Community Blood Centers of Florida, Florida's Blood Centers, and Florida Blood Services announced they had received approval from each of their Boards to pursue a merger. A copy of the press release and a video of the announcement are available at http://www.floridasbloodcenters.org/news/news.stml?portalProcess_dd_0_1_1=showPublicPosting&calendar_entry_id=744 (Last visited on January 6, 2011).
[14] A copy of the correspondence is on file with the Florida Senate Health Regulation Committee. A representative from the Miami Parking Authority indicated in a telephone conversation with professional committee staff that they had received complaints concerning staff from blood centers standing in the middle of the street harassing people to donate and blood drives that were not conducted in cooperation with a business in the vicinity.

temperature-controlled environments until testing indicates the unit may be released for use; continued storage in temperature-controlled environments for released units; transportation and handling; and environmentally appropriate disposal of supplies and unusable units.[15] Generally, the median fees charged by community blood centers in Florida are at or near the lowest median fees nationally.[16] As a part of The Florida Senate Committee on Health Regulation Interim Report 2010-119, Review of the Regulation of Blood Banks, professional staff surveyed a small sample of for-profit and not-for-profit hospitals. Based on responses to the committee's survey question requesting the average cost of a unit of specified blood components paid by the hospital over the last 12 months, it appeared that for-profit hospitals and not-for-profit hospitals were not paying an equivalent price for blood and blood components.[17]

Licensure to handle prescription drugs

Human blood and blood products are characterized as both "biologics,"[18] for purposes of regulation under the federal Public Health Service Act, as amended, and also as "drugs," subject to regulation under applicable provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act).[19] Some of the community blood centers are licensed by the DOH as a prescription drug wholesaler since they purchase and distribute prescription drugs, such as blood, blood components, blood derivatives, and other prescription drugs used in the collection, processing, and therapeutic activities conducted by the community blood centers.[20]

The Florida Drug and Cosmetic Act (the Act),[21] as well as federal law,[22] prohibits the sale, purchase, or trade (wholesale distribution) of a prescription drug that was purchased by a health care entity or donated or supplied at a reduced price to a charitable organization. A community blood center is a health care entity[23] and the not-for-profit community blood centers are

[15] AABB, *Blood FAQ: What fees are associated with blood?*, available at http://www.aabb.org/resources/bct/Pages/bloodfaq.aspx#a11 (Last visited on January 6, 2011). *See also* 21 C.F.R. Part 606, available at http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?CFRPart=606&showFR=1&subpartNode=21:7.0.1.1.3.6 (Last visited on January 6, 2011).

[16] *See* the Florida Senate Committee on Health Regulation Interim Report 2010-119, Review of the Regulation of Blood Banks, found at: http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-119hr.pdf (Last visited on January 6, 2011).

[17] *Ibid*.

[18] The term "biologics" or "biological product" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product, applicable to the prevention, treatment, or cure of a disease or condition of human beings.
See http://www.law.cornell.edu/uscode/42/usc_sec_42_00000262----000-.html (Last visited on January 6, 2011).

[19] The FDA, *Inspections, Compliance, Enforcement, and Criminal Investigations: CPG 230.120 – Human Blood and Blood Products as Drugs*, available at: http://www.fda.gov/ICECI/ComplianceManuals/ComplianceProgramManual/ucm073863.htm (Last visited on January 6, 2011). Blood and blood components intended for further manufacture into products that meet the device definition are biological devices.

[20] Part I, ch. 499, F.S., related to Drugs, Devices, and Cosmetics.

[21] Section 499.005(21), F.S.

[22] 21 U.S.C. 353(c)(3)(A)(ii)(I) (Section 503(c)(3)(A)(ii)(I) of the FD&C Act).

[23] A "health care entity" is defined as a closed pharmacy or any person, organization, or business entity that provides diagnostic, medical, surgical, or dental treatment or care, or chronic or rehabilitative care, but does not include any wholesale distributor or retail pharmacy licensed under state law to deal in prescription drugs. *See* s. 499.003(23), F.S. The federal definition, found at 21 C.F.R. § 203.3(q), is similar.

charitable organizations.[24] However, some of the community blood centers in this state are licensed as prescription drug wholesalers in order to purchase and distribute certain prescription drugs that are needed by community blood centers and hospitals to deliver health care services that are traditionally performed by, or in cooperation with, community blood centers. For example, some community blood centers offer hospitals the full range of blood-related products, such as albumin (to replace fluid), Rh Immune Globulin (to prevent incompatible maternal-fetal blood admixture), and erythropoietin (to stimulate the production of RBCs), as well as trained personnel and expertise in handling those products. The DOH has denied requests by blood establishments to renew the prescription drug wholesaler permits and has provided denial notices to those blood establishments that have sought a renewal.[25] The Act and licensure of community blood centers under the Act are at odds with providing critical health care services by community blood centers.[26]

In November 2008, the FDA's rule to address this dilemma in federal law became effective.[27] That rule provides for exceptions to authorize a registered blood establishment that qualifies as a health care entity to sell, purchase, or trade certain prescription drugs that would otherwise be prohibited. The DOH suggested that the authorizations in the federal rule should be included in the Act, but could be more narrowly crafted to limit the sale, purchase, or trade of these prescription drugs *to a health care entity* to avoid unintended consequences or the opportunity for community blood centers to compete in the marketplace as a prescription drug wholesaler.

The DOH recently noted that blood establishments have not been permitted under the Act as a prescription drug manufacturer and have not registered the prescription drugs that they manufacture (the blood and blood components) with the DOH, notwithstanding the fact that blood establishments are considered manufacturers of prescription drugs under federal law. The distribution of the prescription drugs that blood establishments manufacture have been exempted from the definition of wholesale distribution under s. 499.003(54)(d), F.S., for years. This situation applies to the community blood centers as well as other types of blood establishments, such as the establishments that collect plasma from paid donors.

Restricted Prescription Drug Distributor Permit

The Florida Drug and Cosmetic Act (Act) is found in part I of ch. 499, F.S. The DOH is responsible for administering and enforcing efforts to prevent fraud, adulteration, misbranding, or false advertising in the preparation, manufacture, repackaging, or distribution of drugs, devices, and cosmetics.[28] The DOH issues 20 different types of permits to persons (defined to also include business entities) who qualify to engage in activity regulated under the Act. The regulatory structure provides for prescription drugs to be under the responsibility of a permit at

[24] *See* Internal Revenue Service, *Exemption Requirements - Section 501(c)(3) Organizations*, updated November 15, 2010, available at http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html (Last visited on January 6, 2011).
[25] Information obtained by Florida Senate Health Regulation Committee staff via a telephone conference with representatives from the DOH on January 5, 2011.
[26] The DOH indicated in an email to Florida Senate Health Regulation Committee staff, dated November 12, 2009, that at the present time, they are not aware of any serious abuses or action by the licensed community blood centers that may pose a public health threat.
[27] The final rule in Vol. 73, No. 197 of the Federal Register on page 59496, published on October 9, 2008, is available at: http://edocket.access.gpo.gov/2008/pdf/E8-24050.pdf (Last visited on January 6, 2011).
[28] Section 499.002, F.S.

all times, until a prescription drug is dispensed to a patient, in which case the prescription from the practitioner represents the authority for the patient to possess the prescription drug.[29]

One of the permits issued by the DOH under the Act is the Restricted Prescription Drug Distributor (RPDD) Permit.[30] The biennial fee for the RPDD permit is $600 and the permit is valid for 2 years, unless suspended or revoked.[31]

A RPDD permit is required for any person that engages in the distribution of a prescription drug, which distribution is not considered "wholesale distribution."[32] The DOH issues different types of RPDD permits to eligible persons, including certain health care entities, for limited distributions of prescription drugs that are authorized under the Act.

Senate Interim Project Report 2010-119

During the 2009-2010 interim, professional staff of the Senate Committee on Health Regulation reviewed the regulation of blood banks (a.k.a. community blood centers). The recommendations concerning Legislative action in the resulting report were to: prohibit public agencies from restricting the access to, or use of, public facilities or infrastructure for the collection of blood and blood components based on the tax status of the community blood center; prohibit a community blood center from using the tax status of a hospital or other health care facility as the sole factor when determining the price at which it offers to sell or sells blood or blood components to the hospital or other health care facility; and address the statutory obstacle in Florida law concerning a community blood center distributing prescription drugs in a manner that is consistent with federally authorized distributions, with certain additional safeguards.

In the 2010 general legislative session, SB 1818 sought to implement the committee staff's recommendations as well as additional provisions to increase transparency in the activities of community blood centers and address other glitches in Florida law related to the permitting of blood establishments. SB 1818 was voted favorably by each of its assigned committees. The bill was substituted by CS/CS/HB 509 and voted favorably on the Senate Floor. However, it died in returning messages to the House.

III. Effect of Proposed Changes:

Section 1 amends s. 381.06014, F.S., to redefine "blood establishment" to clarify that a person, entity, or organization that uses a mobile unit and performs any of the activities under the definition of "blood establishment" is also a blood establishment. The term "volunteer donor" is created and is defined as a person who does not receive remuneration, other than an incentive, for a blood donation intended for transfusion and the product container of the donation from the person qualifies for labeling with the statement "volunteer donor" under federal regulations.

[29] Section 499.03(1), F.S.
[30] Section 499.01(2)(g), F.S.
[31] Chapter 64F-12.018, F.A.C., Fees.
[32] Under s. 499.003(54)(a), F.S., the sale, purchase, or trade of blood and blood components intended for transfusion are specifically excluded from the definition of wholesale distribution.

The CS prohibits a local government from restricting access to, or use of, a public facility or public infrastructure for collecting blood or blood components from voluntary donors based on whether the blood establishment is a for-profit or not-for-profit corporation. Additionally, the CS prohibits a blood establishment from using as the sole factor whether a hospital or other health care entity is a for-profit or not-for-profit corporation when the blood establishment sets the service fee (price) at which it will sell blood and blood components collected from voluntary donors to the hospital or other health care entity.

The CS requires a blood establishment that collects blood or blood components from volunteer donors to disclose information on its Internet website concerning its activities. A hospital that collects blood or blood components from volunteer donors for use in its own licensed facilities is not required to disclose this information. The disclosures may be cumulative for all blood establishments (branches) within the business entity. The information required to be disclosed includes:

- A description of the activities of the blood establishment related to collecting, processing, and distributing volunteer blood donations.
- The number of units that the blood establishment:
  - Produced (such as units that passed quality control and are available for use),
  - Obtained from other sources,
  - Distributed to health care providers that are located outside the state. However, if the blood center collects donations in a county outside Florida and distributes to health care providers in that county, then the distributions made to that county must be excluded. This distribution information must be the aggregate of health care providers that are located within the United States and its territories or outside the United States and its territories, and
  - Distributed to entities that are not health care providers. This information must be the aggregate of purchasers that are located within the United States and its territories or outside the United States and its territories.

  This information must be on the establishment's website by March 1 of each year reflecting data from the preceding calendar year;
- The blood establishment's policies pertaining to conflicts of interest, related-party transactions, and determining executive compensation. If any changes are made to any of these policies, the revised document must be on the blood establishment's website by the following March 1; and
- Either the most recent 3 years of a not-for-profit blood establishment's Form 990 that have been reported to the Internal Revenue Services, which must be posted within 60 calendar days after filing, or an audited or reviewed balance sheet, income statement, and statement of changes in cash flow, along with the expression of opinion on these statements from an independent certified public accountant, which must be posted within 120 days following the end of the fiscal year for a for-profit blood establishment and which must remain on the website for 36 months. However, hospitals that collect blood or blood components from volunteer donors are exempt from these financial disclosure requirements.

A blood establishment that fails to make the required disclosures on its website is liable for a civil penalty up to $10,000 per year, which is to be enforced by the Department of Legal Affairs (department). If multiple blood establishments, under the common control of one business entity, fail to meet the disclosure requirements, the civil penalty may only be assessed against one of the

business entity's blood establishments. The department may terminate an action if the blood establishment agrees to pay a stipulated civil penalty or if the blood establishment shows good cause. The department is authorized to waive the civil penalty if the blood establishment shows good cause for the failure to disclose. All monies collected from such civil penalties must be deposited into the General Revenue Fund unallocated.

Section 2 amends s. 499.003, F.S., to revise the definition of a health care entity to authorize a blood establishment that collects blood or blood components from volunteer donors to be a health care entity and engage in the wholesale distribution of prescription drugs in accordance with the requirements contained in section 4 of the CS related to the restricted prescription drug distributor permit for a blood establishment.

Section 3 amends s. 499.005, F.S., to remove the prohibition against the wholesale distribution of prescription drugs by a blood establishment that collects blood or blood components from volunteer donors if the blood establishment is operating in compliance with the requirements contained in section 4 of the CS related to the restricted prescription drug distributor permit for a blood establishment.

This section mirrors federal law. The federal regulation (21 C.F.R. § 203.20) uses the same language prohibiting sales by health care entities and charitable organizations as does Section 3 of the bill (s. 499.005(21)). The federal regulation then provides exclusions in 21 C.F.R. § 203.22, which includes an exclusion stating that the prohibition does not apply to registered blood establishments that qualify as a health care entity.

Section 4 amends s. 499.01, F.S., to exempt a blood establishment that only manufactures blood and blood components from the requirements to be permitted as a prescription drug manufacturer and register the products it manufactures.

The CS also requires certain blood establishments to obtain a permit as a restricted prescription drug distributor in order to lawfully sell and distribute prescription drugs to another health care entity. The CS provides for certain restrictions on this authorization, including:

- The permit may be issued only to a blood establishment that is located in Florida;
- The permit may be issued to a blood establishment that collects blood and blood components from volunteer donors only or pursuant to an authorized practitioner's order for medical treatment or therapy;
- The distributions may be made only to a health care entity that is licensed as a closed pharmacy or provides health care services at the location where the health care entity receives the prescription drugs;
- The prescription drugs that may be distributed pursuant to the restricted prescription drug distributor permit are limited to:
    - A prescription drug that is indicated for a bleeding disorder, clotting disorder, or anemia;
    - A blood-collection container that is approved under s. 505 of the federal FD&C Act related to new drugs;
    - A drug that is a blood derivative, or a recombinant or synthetic form of a blood derivative;
    - A prescription drug that is essential to services performed or provided by blood establishments and is authorized for distribution by blood establishments under federal law if it is identified in rules adopted by the DOH; or

  - To the extent it is permitted by federal law, a drug necessary to collect blood or blood components from volunteer blood donors; for blood establishment personnel to perform therapeutic procedures; and to diagnose, treat, manage and prevent any reaction of either a volunteer blood donor or a patient undergoing therapeutic procedures; and
- The blood establishment may only provide health care services that:
  - Are related to its activities as an FDA-registered blood establishment;
  - Consist of collecting, processing, storing, or administering human hematopoietic stem cells or progenitor cells; or
  - Consist of performing diagnostic testing of specimens if these specimens are tested together with specimens undergoing routine donor testing.

In addition, the CS provides that a blood establishment that is permitted as a restricted prescription drug distributor must comply with all the storage, handling, and recordkeeping requirements with which a prescription drug wholesale distributor must comply. This includes providing pedigree papers[33] upon the wholesale distribution of these prescription drugs.

The DOH is authorized to adopt rules related to the distribution of prescription drugs by blood establishments.

Section 5 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Instead of paying $800 annually for a prescription drug wholesale distributor permit and a $150 fee for certification of a designated representative, a community blood center that intends to engage in the wholesale distribution of certain prescription drugs in order to provide health care services typically provided by blood establishments will pay a $600 fee biennially for a restricted prescription drug distributor permit.[34]

[33] A pedigree paper contains information required by s. 499.01212, F.S., regarding the sale and distribution of a prescription drug.
[34] *See* ch. 64F-12.018, F.A.C., Fees.

B. Private Sector Impact:

Blood establishments that collect donations of blood and blood components from volunteer donors will need to ensure that pricing considerations for the sale of blood and blood components are not based solely on whether the customer is a for-profit corporation or not-for-profit corporation.

A blood establishment that collects donations of blood and blood components from volunteer donors, except certain hospitals, will be required to post certain information concerning its activities on its Internet website.

A blood establishment that chooses to engage in the wholesale distribution of certain prescription drugs may lawfully do so if it is permitted as a restricted prescription drug distributor and complies with the requirements of that permit.

C. Government Sector Impact:

Governmental agencies may not limit the use of public infrastructure for the purpose of collecting voluntary donations of blood or blood components solely upon whether the corporation collecting the blood is for-profit or not-for-profit.

The DOH will incure some costs related to adopting needed rules for the permitting of a blood establishment as a restricted prescription drug distributor and other activities of blood establishments that are regulated under the Act. There will also be a reduction in revenues from the reduced permitting fees but since there are so few community blood centers in the state the impact will be minimal. There are approximately six not-for-profit blood establishment organizations that are operating as community blood centers in Florida and one for-profit blood establishment organization.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Health Regulation Committee on January 11, 2011:
The CS differs from the bill in that it:

- Clarifies the applicability of this law to entities that use mobile blood units within the state;

- Clarifies that the disclosure exemption for hospitals applies only when collections are used at that hospital's licensed facilities or by a health care provider that is a part of the hospital's business entity;
- Exempts any hospital that collects blood or blood components from volunteer donors from having to disclose certain financial documents on its website;
- Extends the timeframe from 30 to 60 days for making the Form 990 available on a blood establishment's website;
- Changes the penalty from an administrative fine to a civil penalty for failing to make the required disclosures under the CS to ensure that all blood establishments are subject to a sanction for non-compliance;
- Authorizes, to the extent permitted by federal law, the wholesale distribution of drugs necessary for blood collection, performing therapeutic procedures, or responding to or preventing reactions of a volunteer blood donor or certain patients;
- Removes a redundant rulemaking provision; and
- Makes technical changes.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/CS/SB 170
INTRODUCER:	Budget Subcommittee on Criminal and Civil Justice Appropriations
SUBJECT:	Electronic Filing and Receipt of Court Documents
DATE:	March 17, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Maclure	JU	**Fav/CS**
2.	Hendon	Sadberry	BJA	**Fav/CS**
3.	Hendon	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill requires each state attorney and public defender to electronically file court documents with the clerk of the court and electronically receive court documents from the clerk of the court. The bill also defines the term "court documents." The bill further expresses the expectation of the Legislature that the state attorneys and public defenders consult with specified entities in implementing the electronic filing and receipt process. The Florida Prosecuting Attorneys Association and the Florida Public Defender Association are required to report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, on the progress made in implementing electronic filing. The bill may have a fiscal impact on county governments and has an effective date of July 1, 2011.

This bill creates sections 27.341 and 27.5112, Florida Statutes.

II. Present Situation:

Electronic Filing of Court Documents

In 2009, the Legislature passed and the Governor signed into law Senate Bill 1718 (2009 Regular Session).[1] This bill required each clerk of the court to implement a statewide, uniform electronic filing process for court documents using standards to be specified by the Supreme Court.[2] The Legislature's expressed intent for requiring the implementation of electronic filing was "to reduce judicial costs in the office of the clerk and the judiciary, increase timeliness in the processing of cases, and provide the judiciary with case-related information to allow for improved judicial case management."[3]

The federal court system already uses an electronic filing system called PACER (Public Access to Court Electronic Records).[4] Additionally, there are 13 state courts and the District of Columbia using statewide electronic filing systems.[5] Those courts are: Alabama, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, New Jersey, New York, North Carolina, North Dakota, Ohio, Texas, and Washington.[6]

Supreme Court Standards

In response to SB 1718, the Florida Supreme Court promulgated statewide standards for electronic filing on July 1, 2009.[7] The Court specified that electronic filing would be implemented through "a single statewide Internet portal for electronic access to and transmission of court records to and from all Florida courts."[8] All electronic filing systems were required to be compatible with the Florida Courts E-Portal developed by the Florida Courts Technology Commission.[9] The Court specified that electronic court records submitted to the portal must be "capable of being printed as paper, or transferred to archival media, without loss of content or material alteration of appearance"; such records "shall constitute the official record and are equivalent to court records filed in paper."[10]

Status of Implementation

Proviso language from the fiscal year 2010-11 General Appropriations Act required the state courts system to "accelerate the implementation of the electronic filing requirements … by implementing five of the ten trial court divisions by January 1, 2011."[11]

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[1] Chapter 2009-61, Laws of Fla.
[2] *Id* at s. 16.
[3] *Id.*
[4] PACER, *PACER Home*, http://www.pacer.gov/ (last visited Feb. 4, 2011).
[5] American Bar Association, *Electronic Filing Resource Page*, http://www.abanet.org/tech/ltrc/research/efiling/home.html (last visited Feb. 1, 2011).
[6] *Id.*
[7] *In Re: Statewide Standards for Electronic Access to the Courts*, AOSC09-30 (Fla. July 1, 2009).
[8] *Id.* at 3.
[9] *Id.*
[10] Florida Supreme Court, *Standards for Electronic Access to the Courts*, 6 (June 2009).
[11] Chapter 2010-152, s. 7, Laws of Fla., proviso accompany specific appropriation 3238.

The electronic filing system is called the Florida Courts E-Filing Portal and can be found at www.myflcourtaccess.com. The portal is currently functional, with nine counties signed on for the initial program.[12] Clerks in these counties are currently working with volunteer attorneys to use the portal on a pilot basis before the portal opens to all attorneys.[13] A second set of counties was recently approved to be added over time.[14] By motion of the Florida E-Filing Authority, an entity made up of eight circuit court clerks and the Clerk of the Supreme Court that provides governance for the e-filing portal,[15] the portal is currently programmed for the following five civil divisions: circuit civil, county civil, family, probate, and juvenile dependency.[16] Although the portal is not yet programmed for electronic filing for criminal divisions, to date 28 counties have been granted approval by the Florida Courts Technology Commission[17] to implement electronic filing in criminal divisions, and an additional six counties have applied and are pending approval.[18] Some of these counties have requested approval for electronic filing in criminal divisions for systems they are currently using on the local level, while others may have requested approval in anticipation of the statewide portal's expansion into all divisions.

Other Electronic Filing Efforts

Distinct from the statewide portal, there have been other electronic filing efforts in Florida for several years. For example, the Manatee County Clerk of Court received approval from the Supreme Court in 2005 to utilize electronic filing in all cases.[19] Electronic filing is mandatory in Manatee County for foreclosure actions and is encouraged for other actions.[20] On the appellate level, the First District Court of Appeal (First DCA) began implementing an electronic filing program in 2009 at the direction of the Legislature.[21] When the program first began, attorneys had the option of filing documents electronically or in paper. However, effective September 1, 2010, all attorneys were required and non-attorneys were encouraged to file all pleadings

[12] The nine counties currently signed on to use the e-filing program are: Lake, Columbia, Duval, Gulf, Holmes, Lee, Miami-Dade, Putnam, and Walton. Gary Blankenship, *E-filing open for business: The new service is being phased in slowly*, THE FLORIDA BAR NEWS, Jan. 15, 2011, *available at* http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/0a29309ae461bfdc85257810006684b5!OpenDocument (last visited Jan. 31, 2011).

[13] *E-filing is underway*, THE FLORIDA BAR NEWS, Feb. 1, 2011, *available at* http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/a3867c4f16e4e48c8525782200047644a!OpenDocument (last visited Feb. 1, 2011).

[14] New counties are: Broward, Orange, Marion, Collier, Franklin, Jackson, and Leon. *Id.*

[15] Florida E-Filing Authority, *E-Filing Authority Home*, http://www.flclerks.com/eFiling_authority.html (last visited Feb. 1, 2011).

[16] Minutes for the Florida E-Filing Authority meeting (Dec. 8, 2010) (on file with the Senate Committee on Judiciary).

[17] The Florida Courts Technology Commission has been tasked with evaluating electronic filing applications "to determine whether they comply with the technology policies established by the supreme court." *In Re: Amendments to the Florida Rules of Judicial Administration—Rule 2.236*, 41 So. 3d 128,133 (Fla. 2010).

[18] Counties granted approval for at least one criminal division: Alachua, Broward, Calhoun, Clay, Dixie, Duval, Flagler, Gadsden, Glades, Gulf, Holmes, Jackson, Lake, Lee, Leon, Manatee, Monroe, Okaloosa, Orange, Palm Beach, Polk, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, and Volusia; counties pending approval for at least one criminal division: Bay, Brevard, Citrus, Pinellas, Sumter, and Taylor. Florida State Courts, *Electronic Initiatives as of January 21, 2011*, http://www.flcourts.org/gen_public/technology/bin/efilingchart.pdf (last visited Feb. 2, 2011).

[19] Manatee County Clerk of the Circuit Court, *E-File and E-Case Initiation*, http://www.manateeclerk.com/Services/EFiling.aspx (last visited Feb. 2, 2011).

[20] *Id.*

[21] Chapter 2009-61, s. 17, Laws of Fla.

electronically.[22] The Public Defender for the Second Judicial Circuit handles appeals in the jurisdiction of the First DCA;[23] attorneys in the appellate division currently file electronically in accordance with the court's requirements.

III. Effect of Proposed Changes:

This bill requires offices of the state attorney and the public defender to electronically file court documents with the clerk of the court and receive court documents from the clerk of the court. The term "court documents" as defined in the bill includes, but is not limited to, pleadings, motions, briefs, and their respective attachments, orders, judgments, opinions, decrees, and transcripts. The Florida Prosecuting Attorneys Association is required by the bill to file a report with the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, describing the progress that each office has made to implement an electronic filing system. For any office of the state attorney that has not fully implemented an electronic filing system by that date, the report must also include a description of the additional activities that are needed to complete the system and the additional timeframe anticipated. The bill provides identical requirements for the Florida Public Defender Association on behalf of each office of the public defender. The bill expresses the Legislature's intent that offices of the state attorney and public defender consult with each other within the same circuit as well as with clerks of the court serving each office, the Florida Court Technology Commission, and any authority that governs the operation of a statewide portal for the electronic filing and receipt of court documents.

The bill specifies that the offices of the state attorney and public defender are to electronically file and receive court documents through the statewide Florida Courts E-Portal or if the case type for that county has not yet been approved for the statewide portal, they can electronically file using other means. The extent of necessary changes will likely vary among the offices depending on the existing information technology already in place. Consulting with each other and the additional entities specified by the bill will allow offices of the state attorney and public defender to benefit from any existing knowledge those entities are able to provide to facilitate the transition to electronic filing.

This bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and meets one of a number of enumerated exceptions. If none of the constitutional exceptions apply, and if the bill becomes law, cities and counties are not bound by the law unless the Legislature has

[22] *In Re: Electronic Filing of Pleadings in the First District Court of Appeal,* AO10-3 (Fla. 1st DCA 2010).
[23] Florida State Courts, *Florida's District Courts*, http://www.flcourts.org/courts/dca/dca.shtml (last visited Feb. 2, 2011).

determined that the bill fulfills an important state interest and approves the bill by a two-thirds vote of the membership of each house.[24]

Counties are required by Article V, Section 14 of the Florida Constitution to fund the cost of communications services for public defenders' offices and state attorneys' offices. The Legislature by general law has prescribed that communications services include "[a]ll computer networks, systems and equipment."[25] Senate Bill 170 requires that offices of the state attorney and offices of the public defender implement processes to electronically file court documents. Counties would be required to provide any funds associated with implementation of the electronic filing process. However, an expenditure in compliance with this bill does not appear to constitute a mandate because it relates to an existing constitutional duty on the part of the counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

State Government
This bill requires each state attorney and public defender to file documents with the clerk electronically. The bill expresses the legislative expectation that once electronic filing is implemented, it will reduce costs associated with paper filing, increase timeliness in the processing of cases, and provide the judiciary and the clerk of court with case-related information to allow for improved judicial case management.

Local Government
Under the Florida Constitution and Florida Statutes, counties must provide for the communication and information technology needs of the state attorneys and public defenders. The bill could have a fiscal impact on county governments should significant changes be necessary in the information technology systems of the state attorneys and public defenders.

[24] FLA. CONST. art. VII, s. 18(a).
[25] Section 29.008(2)(f), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Budget Subcommittee on Criminal and Civil Justice Appropriations on March 17, 2011:
The committee substitute:

- Clarifies that state attorneys and public defenders can use local e-portals to electronically file documents with the clerk of court if the specific case type is not yet approved for the statewide Florida Courts E-Portal.
- Provides for an effective date of July 1, 2011.

CS by Judiciary on February 8, 2011:
The committee substitute:

- Replaces legislative intent language for the implementation of electronic filing for offices of the state attorney and public defender with language requiring such implementation;
- Specifies that the required electronic filing process should also have the capability to receive documents from the clerk;
- Replaces the phrase "design and implement a system" with "develop the technological capability and implement a process";
- Defines the term "court documents"; and
- Includes the legislative expectation that offices of the state attorney and public defender consult with specified entities.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL:	CS/SB 618
INTRODUCER:	Criminal Justice Committee and Senator Evers
SUBJECT:	Juvenile Justice
DATE:	March 17, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Fav/CS**
2.	Sadberry	Sadberry	BJA	**Favorable**
3.	Sadberry	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill repeals numerous sections and provisions containing obsolete language in ch. 985, F.S., to more accurately reflect current practices within the Department of Juvenile Justice (DJJ). The specific provisions which the bill deletes are as follows.

The bill repeals the definition of "serious or habitual juvenile offender program" (SHOP) in s. 985.03(48), F.S., the legislative intent language relating to SHOP in s. 985.02(5), F.S., and the statute implementing this program in s. 985.47, F.S. It repeals two statutes implementing the intensive residential treatment program for offenders under 13 years of age (JR.SHOP) in ss. 985.483 and 985.486, F.S. The definition of "training school" is also repealed in s. 985.02(56), F.S.

References in s. 985.494, F.S., to SHOP, JR. SHOP, the early delinquency intervention program (EDIP), and the sheriff's training and respect (STAR) programs (formerly known as juvenile boot camps) are also deleted under the bill. Instead of listing these specific prerequisite programs, the bill provides that a child adjudicated delinquent for a felony (or a child who has a withheld felony adjudication) must complete two different high risk residential commitment programs as a prerequisite to being placed in a maximum risk residential program.

The bill deletes references to the STAR program in s. 985.445, F.S., which authorizes a residential commitment to a STAR program if a child is adjudicated delinquent for committing grand theft auto.

In addition to repealing these obsolete programs, the bill also repeals an unnecessary statute, s. 985.636, F.S., relating to inspectors within the Inspector General's Office being sworn law enforcement officers, if the Secretary of the DJJ deems it necessary to enforce criminal law and conduct criminal investigations relating to state operated facilities.

Finally, the last two sections of the bill repeal obsolete references to the Juvenile Justice Standards and Training Commission (Commission) which provided staff development and training until it expired in 2001 and the DJJ took over those duties. The bill codifies current practice by specifying that the DJJ is responsible for staff development and training.

This bill amends sections 985.494 and 985.66, Florida Statutes. The bill repeals sections 985.02(5), 985.03(48), 985.03(56), 985.445, 985.47, 985.48(8), 985.483, 985.486, 985.636, Florida Statutes. It also makes conforming changes to sections 985.0301, 985.47, and 985.565, Florida Statutes.

II. Present Situation:

There are several statutes relating to the serious or habitual juvenile offender program (SHOP) and the intensive residential treatment program for offenders under 13 years of age (JR. SHOP). Section 985.03(48), F.S., provides a definition of SHOP by citing to the program created in s. 985.47, F.S. The cited section specifies the requirements of a SHOP program. Moreover, legislative intent language relating to SHOP exists in s. 985.02(5), F.S. Similarly, two statutes exist that implement JR.SHOPs in ss. 985.483 and 985.486, F.S.

Section 985.494, F.S., provides that a child adjudicated delinquent for a felony (or a child who has an adjudication of delinquency withheld for a felony) must be committed to a SHOP or a JR. SHOP, if such child has participated in an early delinquency intervention program (EDIP) and has completed a sheriff's training and respect (STAR) program (formerly known as juvenile boot camp).

Additionally, such child must be committed to a maximum risk residential program, if he or she has participated in an EDIP, has completed a STAR program and a SHOP or JR. SHOP. The length of stay in a maximum risk commitment program is for an indeterminate period of time; however, it may not exceed the maximum imprisonment that an adult would serve for that offense.[1]

This section of law also allows the court to consider an equivalent program of similar intensity as being comparable to one of these specified programs when committing a child to an appropriate program under this statute.[2]

[1] Section 985.494(1)(b), F.S.
[2] Section 985.494(2), F.S.

The definition of "training school" is contained in s. 985.03(56), F.S., to include the Arthur G. Dozier School and the Eckerd Youth Development Center. According to the DJJ, the training schools no longer exist as a category in the DJJ residential programs. Residential programs are now categorized by restrictiveness levels.[3]

Section 985.445, F.S., provides the court with discretion to place a child adjudicated delinquent for committing a first or second grand theft auto into a STAR program. Upon a third adjudication, however, the court is required to place that child into a STAR program. The statute also requires the court to order such child to complete a specified number of community service hours (at least 50 for a first adjudication, 100 for the second adjudication, and 250 for the third adjudication).

According to the DJJ, there have been no operational STAR programs since 2008. The department also states that the SHOP and JR. SHOPs have been underutilized for the past several years. Because maximum and high risk programs currently serve the most serious offenders, the DJJ states it no longer needs the SHOP and JR. SHOP designations.[4] In 1996, according to the DJJ, the SHOPs were reclassified from maximum risk to high risk programs but the statutory admission criteria remained unchanged. In reviewing the records of children admitted to the SHOPs in FY 07-08, the DJJ found that 12.3 percent of the 24 children admitted did not meet the statutory criteria. Similarly, 10 percent of the 20 children admitted to the JR. SHOPs did not meet that criteria.[5]

Section 985.636, F.S., relating to the Inspector General's Office, authorizes the Secretary of the DJJ to designate inspectors holding a law enforcement certification as law enforcement officers within the Inspector General's Office. This designation is only for the purpose of enforcing any criminal law and conducting any investigation involving a state-operated program that falls under the department's jurisdiction. However, according to the DJJ, this law is unnecessary because the department has never had sworn law enforcement officers.

Section 985.66, F.S., prescribes standards for the juvenile justice training academies, establishes the Juvenile Justice Training Trust Fund, and creates the Juvenile Justice Standards and Training Commission (Commission) under the DJJ. The legislative purpose of the statute is to provide a systematic approach to staff development and training for judges, state attorneys, public defenders, law enforcement officers, school district personnel, and juvenile justice program staff.[6] Section 985.48(8), F.S., also requires the Commission to establish a training program to manage and provide services to juvenile sexual offenders in juvenile sexual offender programs. However, the Commission expired on June 30, 2001 because it was not reenacted by the Legislature.[7] After that, the DJJ took over the training duties of the Commission.[8]

[3] Department of Juvenile Justice 2011 Agency Proposal (on file with the Senate Criminal Justice Committee in Tallahassee, Florida.)
[4] 2011 Department of Juvenile Justice Legislative Priority Paper, updated on March 4, 2011(on file with the Senate Criminal Justice Committee in Tallahassee, Florida.)
[5] Department of Juvenile Justice 2011 Agency Proposal (on file with the Senate Criminal Justice Committee in Tallahassee, Florida).
[6] Section 985.66(1), F.S.
[7] Section 985.66(9), F.S.

III. Effect of Proposed Changes:

The bill repeals numerous sections and provisions containing obsolete language in ch. 985, F.S., to more accurately reflect current practices within the Department of Juvenile Justice (DJJ). The specific provisions which the bill deletes are as follows.

The bill repeals the following provisions relating to serious or habitual juvenile offender programs (SHOP): the definition of SHOP in s. 985.03(48), F.S., the SHOP legislative intent language in s. 985.02(5), F.S., and the statute implementing SHOP in s. 985.47, F.S. It repeals two statutes implementing the intensive residential treatment program for offenders under 13 years of age (JR.SHOP) in ss. 985.483 and 985.486, F.S.

The bill deletes references in s. 985.494, F.S., to the SHOPs, JR. SHOPs, EDIPs, and the STAR programs (formerly known as juvenile boot camp). Instead of listing these specific prerequisite programs, the bill provides that a child adjudicated delinquent for committing a felony (or a child who has a withheld felony adjudication) must complete two different high risk residential commitment programs as a prerequisite to being placed in a maximum risk residential program.

The bill also deletes references to the STAR program in s. 985.445, F.S., which authorizes a residential commitment to a STAR program if a child is adjudicated delinquent for committing grand theft auto. The bill accomplishes this by repealing s. 985.445, F.S. Finally, the bill makes conforming changes to several statutes referencing this repealed section of law.

The definition of "training school" is repealed in s. 985.02(56), F.S.

The bill also repeals an unnecessary statute, s. 985.636, F.S., which allows certain inspectors within the DJJ's Inspector General's Office to be deemed certified law enforcement officers by the Secretary of the DJJ. (According to the DJJ, the department has never had sworn law enforcement officers.)[9]

Finally, the bill amends s. 985.66, F.S., by deleting obsolete references to the Juvenile Justice Standards and Training Commission (which sunset on June 30, 2001) and authorizing the DJJ to continue providing staff development and training to department program staff. It also amends s. 985.48, F.S., to conform to these changes by deleting references to the provision requiring the Commission to establish a training program to manage juvenile sexual offenders.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[8] Department of Juvenile Justice 2011Agency Proposal (on file with the Senate Criminal Justice Committee in Tallahassee, Florida.)
[9] *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the DJJ, there is no fiscal impact to the department.[10]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 9, 2011:
Incorporates the original bill's "repealer" provisions as well as repeals additional outdated provisions related to the following:

- Serious or habitual juvenile offender programs (SHOPs) and intensive residential treatment programs for offenders under 13 year of age (JR. SHOPs);
- Sheriff's Training and Respect programs;
- Definition of "training schools";
- Inspectors within the Inspector General's Office being sworn law enforcement officers when deemed necessary by the Secretary of DJJ; and
- Juvenile Justice Standards and Training Commission.

[10] *Id.*

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee				
BILL:	CS/SB 782			
INTRODUCER:	Transportation Committee and Senator Latvala			
SUBJECT:	Fallen Officers Memorial/Road Designations			
DATE:	March 17, 2011	REVISED:		

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sookhoo	Spalla	TR	**Fav/CS**
2.	Carey	Meyer, R.	BTA	**Favorable**
3.	Carey	Meyer, C.	BC	**Pre-meeting**
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	[x]	Statement of Substantial Changes
B. AMENDMENTS.....	[ ]	Technical amendments were recommended
	[ ]	Amendments were recommended
	[ ]	Significant amendments were recommended

I. Summary:

Section 334.071, F.S., specifies the purpose and effect of the designation of roads, bridges, and other transportation facilities for honorary or memorial purposes by the Florida Legislature. These designations are for honorary purposes only, and do not require changing of street signs, mailing addresses, or 911 listings. The bill designates the following road as follows:

- State Road 687 in Pinellas County from I-275 to I-175 as "Sgt. Thomas J. Baitinger, Officer Jeffrey A. Yaslowitz, and Officer David S. Crawford Memorial Highway."

- State Road 583/North 50th Street in Hillsborough County from Melbourne Blvd/East 21st Avenue to State Road 574/Martin Luther King Jr., Blvd as "Officer Jeffrey A. Kocab and Officer David L. Curtis Memorial Highway."

This bill creates an undesignated section of law.

II. Present Situation:

Section 334.071, F.S., provides: (1) Legislative designations of transportation facilities are for honorary or memorial purposes, or to distinguish a particular facility, and may not be construed

to require any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes; (2) When the Legislature establishes road or bridge designations, the Florida Department of Transportation (FDOT) is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation, and to erect any other markers it deems appropriate for the transportation facility; and (3) The FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the designated road or bridge segment is located in more than one city or county, resolutions supporting the designations must be passed by each affected local government prior to the erection of markers.

III. Effect of Proposed Changes:

The effects of the bill are as follows:

Section 1: The bill designates State Road 687 in Pinellas County from I-275 to I-175 as "Sgt. Thomas J. Baitinger, Officer Jeffrey A. Yaslowitz, and Officer David S. Crawford Memorial Highway". Also this bill directs FDOT to erect suitable markers.

Sgt. Thomas J. Baitlinger served as a law enforcement officer at the St. Petersburg Police Department for over 15. He voluntarily served as a mentor for students at Gibbs High School, and Sgt. Baitlinger also volunteered for other various committees including the police pension board.

Officer Jeffrey A. Yaslowitz served as a law enforcement officer at the St. Petersburg Police Department for over 11 years. Officer Yaslowitz proved to be an invaluable asset to the department by exemplifying characteristics of public service. He is remembered by his colleagues for his bravery and drive for excellence during his years of service.

Sgt. Thomas J. Baitinger and Officer Jeffrey A. Yaslowitz died in the line of duty on January 24, 2011, while responding to a call for back up. Sgt. Baitinger is survived by his wife, Paige, and Officer Yaslowitz is survived by his wife, Lorraine, and three children.

Officer David S. Crawford served as a law enforcement officer at the St. Petersburg Police Department for 25 years. He gained notoriety for his domestic violence victim advocacy, and he often spoke at schools to educate young people about issues surrounding domestic violence. On February 21, 2011, Officer David S. Crawford was shot multiple times while responding to a report of a suspicious person. Officer David S. Crawford is survived by his wife, Donna, and daughter.

Section 2: The bill designates State Road 583/North 50th Street in Hillsborough County from Melbourne Blvd/East 21st Avenue to State Road 574/Martin Luther King Jr., Blvd is designated as "Officer Jeffrey A. Kocab and Officer David L. Curtis Memorial Highway".

Officer Jeffrey A. Kocab joined the Plant City Police Department in 2005, and later joined the Tampa Police Department in 2009. During his years as a police officer, Officer Kocab was decorated with multiple awards as employee of the month and Officer of Year in 2007 and 2009.

Officer David L. Curtis served in the Tampa Police Department for over 3 years. In 2007, Officer Curtis was named Officer of the Month for his dedication involving a child neglect case.

Officer Jeffrey A. Kocab and Officer David L. Curtis were killed while attempting to make an arrest at a traffic stop. Officer Kocab is survived his wife, Sara. Officer Curtis is survived by his wife, Kelly, and four sons.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDOT will incur costs of approximately $1,600 (from the State Transportation Trust Fund) for erecting markers for the designations. This is based on the assumption that four markers will be erected at a cost of $400 per marker. The FDOT will also have to pay the recurring cost of maintaining these signs over time, and for future replacement of the signs as necessary.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation Committee on February 22, 2011:
The committee substitute incorporates the Officer Jeffrey A. Kocab and Officer David L. Curtis Memorial Highway, and adds Officer David S. Crawford to the Sgt. Thomas J. Baitinger, Officer Jeffrey A. Yaslowitz, and Officer David S. Crawford Memorial Highway.

B. Amendments:

None.