

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE

Senator Richter, Chair
Senator Smith, Vice Chair

MEETING DATE: Tuesday, January 25, 2011

TIME: 1:45 —3:45 p.m.

PLACE: *Pat Thomas Committee Room, 412 Knott Building*

MEMBERS: Senator Richter, Chair; Senator Smith, Vice Chair; Senators Alexander, Bennett, Bogdanoff, Fasano, Hays, Margolis, Negron, Oelrich, and Sobel

TAB		BILL DESCRIPTION and SENATE COMMITTEE ACTIONS		COMMITTEE ACTION
1	SB 408 Richter	Property and Casualty Insurance; 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. Prohibits the Office of Insurance Regulation from, directly or indirectly, impeding the right of an insurer to acquire policyholders, advertise or appoint agents, or regulate agent commissions. Requires the delivery of a "Notice of Change in Policy Terms" under certain circumstances, etc.		
		BI	01/25/2011	
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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment

Delete lines 227 - 230
and insert:

1. Not a wholly owned subsidiary of an insurer domiciled in
any other state, \$15 million.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment (with title amendment)

Before line 205
insert:

Section 1. Effective June 1, 2011, paragraph (d) of
subsection (2) of section 215.555, Florida Statutes, is amended
to read

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(d) "Losses" means all ~~direct~~ incurred losses under covered
policies, including ~~which shall include losses for~~ additional
living expenses not to exceed 40 percent of the insured value of



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a residential structure or its contents and amounts paid as fees on behalf of or inuring to the benefit of a policyholder shall exclude loss adjustment expenses. The term "Losses" does not include:

1. Losses for fair rental value, loss of rent or rental income, or business interruption losses;

2. Losses under liability coverages;

3. Property losses that are proximately caused by any peril other than a covered event, including, but not limited to, fire, theft, flood or rising water, or windstorm that does not constitute a covered event;

4. Amounts paid as the result of a voluntary expansion of coverage by the insurer, including, but not limited to, a waiver of an applicable deductible;

5. Amounts paid to reimburse a policyholder for condominium association or homeowners' association loss assessments or under similar coverages for contractual liabilities;

6. Amounts paid as bad faith awards, punitive damage awards, or other court-imposed fines, sanctions, or penalties;

7. Amounts in excess of the coverage limits under the covered policy; or

8. Allocated or unallocated loss adjustment expenses.

Section 2. The amendment to s. 215.555, Florida Statutes, made by this act applies first to the Florida Hurricane Catastrophe Fund reimbursement contract that takes effect June 1, 2011.

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

And the title is amended as follows:



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42 Before line 3
43 insert:
44 amending s. 215.555, F.S.; revising the definition of
45 "losses," relating to the Florida Hurricane
46 Catastrophe Fund, to exclude certain losses; providing
47 applicability;



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2978 - 3011
and insert:

(2)~~(a)~~ An ~~Any~~ insurer that has paid a claim for a sinkhole loss shall file a copy of the report and certification, prepared pursuant to subsection (1), including the legal description of the real property and the name of the property owner, the neutral evaluator's report, if any, which indicates that sinkhole activity caused the damage claimed, a copy of the certification indicating that stabilization has been completed, if applicable, and the amount of the payment, with the county



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clerk of court, who shall record the report and certification.
The insurer shall bear the cost of filing and recording one or more reports and certifications ~~the report and certification~~.
There shall be no cause of action or liability against an insurer for compliance with this section.

(a) The recording of the report and certification does not:

1. Constitute a lien, encumbrance, or restriction on the title to the real property or constitute a defect in the title to the real property;

2. Create any cause of action or liability against any grantor of the real property for breach of any warranty of good title or warranty against encumbrances; or

3. Create any cause of action or liability against any title insurer that insures the title to the real property.

(b) As a precondition to accepting payment for a sinkhole loss, the policyholder must file a copy of any sinkhole report regarding the insured property which was prepared on behalf or at the request of the policyholder. The policyholder shall bear the cost of filing and recording the sinkhole report. The recording of the report does not:

1. Constitute a lien, encumbrance, or restriction on the title to the real property or constitute a defect in the title to the real property;

2. Create any cause of action or liability against any grantor of the real property for breach of any warranty of good title or warranty against encumbrances; or

3. Create any cause of action or liability against a title insurer that insures the title to the real property.

(c) ~~(b)~~ The seller of real property upon which a sinkhole



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claim has been made by the seller and paid by the insurer must
~~shall~~ disclose to the buyer of such property, before the
closing, that a claim has been paid and whether or not the full
amount of the proceeds were used to repair the sinkhole damage.

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

And the title is amended as follows:

Delete lines 178 - 182

and insert:

burden of proof; revising the reports that an insurer
must file with the clerk of the court; requiring the
policyholder to file certain reports as a precondition
to accepting payment; amending s. 627.7074, F.S.;



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment

Delete lines 2411 - 2412
and insert:

(b) "Policy" means a written contract or written agreement
for personal lines property and casualty insurance, or the



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment

Delete lines 2714 - 2721
and insert:

professional engineer must also have ~~geotechnical~~ experience and expertise in the identification of sinkhole activity as well as other potential causes of structural damage ~~to the structure~~.

(e) ~~(f)~~ "Professional geologist" means a person, as defined ~~in~~ by s. 492.102, who has a bachelor's degree or higher in geology or related earth science and ~~with expertise in the geology of Florida. A professional geologist must have geological~~ experience and expertise in the identification of



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment

Delete line 2911
and insert:
reimbursement under this subsection only if the policyholder
requested the testing and report provided pursuant to ss.
627.7072 and 627.7073 and the insurer, before



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment

Delete lines 2891 - 2893
and insert:
policyholder does receive a rebate, coverage is void and the
policyholder must refund the amount of the rebate to the
insurer. Any person making the repairs specified in this



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2312 - 2389
and insert:

(b) The insurer shall give the named insured written notice of nonrenewal, cancellation, or termination at least 90 ~~100~~ days before ~~prior to~~ the effective date of the nonrenewal, cancellation, or termination. ~~However, the insurer shall give at least 100 days' written notice, or written notice by June 1, whichever is earlier, for any nonrenewal, cancellation, or termination that would be effective between June 1 and November 30. The notice must include the reason or reasons for the~~



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~~nonrenewal, cancellation, or termination, except that:~~

~~1. The insurer shall give the named insured written notice of nonrenewal, cancellation, or termination at least 180 days prior to the effective date of the nonrenewal, cancellation, or termination for a named insured whose residential structure has been insured by that insurer or an affiliated insurer for at least a 5-year period immediately prior to the date of the written notice.~~

~~1.2. If~~ When cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must ~~shall~~ be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due ~~any of~~ her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term "Nonpayment of premium" also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are ~~shall be~~ void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered



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mail, and if the contract is void, any premium received by the insurer from a third party must ~~shall~~ be refunded to that party in full.

~~2.3. If when~~ such cancellation or termination occurs during the first 90 days ~~during which~~ the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must ~~shall~~ be given unless ~~except where~~ there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

~~3.4.~~ The requirement for providing written notice ~~of nonrenewal~~ by June 1 of any nonrenewal that would be effective between June 1 and November 30 does not apply to the following situations, but the insurer remains subject to the requirement to provide such notice at least 100 days before ~~prior to~~ the effective date of nonrenewal:

a. A policy that is nonrenewed due to a revision in the coverage for sinkhole losses and catastrophic ground cover collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter 2007-1, Laws of Florida.~~

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 is exempt from the notice requirements of paragraph (a) and this paragraph. In such cases, the corporation must give the named insured written notice of nonrenewal at least 45 days before the effective date of the nonrenewal.



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After the policy has been in effect for 90 days, the policy may
~~shall~~ not be canceled by the insurer unless ~~except when~~ there
has been a material misstatement, a nonpayment of premium, a
failure to comply with underwriting requirements established by
the insurer within 90 days after ~~of~~ the date of effectuation of
coverage, or a substantial change in the risk covered by the
policy or if ~~when~~ the cancellation is for all insureds under
such policies for a given class of insureds. This paragraph does
not apply to individually rated risks having a policy term of
less than 90 days.

4. Notwithstanding any other provision of law, an insurer

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

And the title is amended as follows:

Delete line 114

and insert:

amending s. 627.4133, F.S.; revising the requirements
for providing an insured with notice of nonrenewal,
cancellation, or termination of personal lines or
commercial residential property insurance; authorizing
an insurer to



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 657 and 658
insert:

Section 10. Subsection (4) of section 627.0613, Florida Statutes, is repealed.

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

And the title is amended as follows:

Delete line 64

and insert:

applicability; repealing s. 624.0613(4), F.S.,



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13 relating to the requirement that the consumer advocate
14 for the Chief Financial Officer prepare an annual
15 report card for each personal residential property
16 insurer; amending s. 627.062, F.S.; requiring



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete line 2768
and insert:
insurer may ~~shall~~ provide each policyholder with the opportunity
to

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

And the title is amended as follows:

Delete line 160
and insert:
the term "structural damage"; providing an insurer



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with discretion to provide a policyholder with an
opportunity to purchase an endorsement to sinkhole
coverage; placing a 2-year statute



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2518 - 2538
and insert:

(a) For a dwelling, the insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. To receive payment from an insurer for replacement costs, the policyholder must enter into a contract for the performance of building and structural repairs, unless the requirement for a contract is waived by the insurer. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred. The



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insurer or any contractor or subcontractor may not require the
policyholder to advance payment for such repairs or expenses,
with the exception of incidental expenses to mitigate further
damage. If a total loss of a dwelling occurs, the insurer shall
pay the replacement cost coverage without reservation or
holdback of any depreciation in value, pursuant to s. 627.702.

(b) For personal property, the insurer may limit the
initial payment to the actual cash value of the personal
property to be replaced. An insurer may require an insured to
provide receipts for the purchase of the property financed by
the initial payment and use such receipts to make the next
payment requested by the insured for the replacement of insured
property, and continue this process until the insured remits all
receipts up to the policy limits for replacement costs. The
insurer must provide clear notice of this process in the
insurance contract. The insurer may not require the policyholder
to advance payment for the replaced property ~~the insurer shall
pay~~

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

And the title is amended as follows:

Delete lines 133 - 147

and insert:

627.7011, F.S.; requiring the insurer to pay the
actual cash value of an insured loss for a dwelling,
less any applicable deductible; requiring a
policyholder to enter into a contract for the
performance of building and structural repairs unless
waived by the insurer; restricting insurers and



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42 contractors from requiring advance payments for
43 repairs and expenses; authorizing an insurer to limit
44 the initial payment for personal property to the
45 actual cash value of the property to be replaced and
46 to require the insured to provide receipts for
47 purchases; requiring the insurer to provide notice of
48 this process in the insurance contract; prohibiting an
49 insurer from requiring the insured to advance payment;
50 amending s.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment

Delete line 2852
and insert:
accordance with the recommendations set forth in the insurer's
report issued pursuant to s. 627.7073.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Smith) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2609 - 2645
and insert:

Section 18. The Legislature finds and declares:

(1) There is a compelling state interest in maintaining a viable and orderly private-sector market for property insurance in this state. The lack of a viable and orderly property market reduces the availability of property insurance coverage to state residents, increases the cost of property insurance, and increases the state's reliance on a residual property insurance



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market and its potential for imposing assessments on
policyholders throughout the state.

(2) Sections 19 through 24 of this act, revise and adopt
new technical or scientific definitions in order to implement
and advance the Legislature's intended reduction of sinkhole
claims and disputes. The legal presumption intended by the
Legislature is also revised to reduce disputes and litigation
associated with the technical reviews associated with sinkhole
claims. Certain other revisions to ss. 627.706-627.7074, Florida
Statutes, are enacted to advance legislative intent to rely on
scientific or technical determinations relating to sinkholes and
sinkhole claims, reduce the number and cost of disputes relating
to sinkhole claims, and ensure that repairs are made
commensurate with the scientific and technical determinations
and insurance claims payments.

(3) Sections 19 through 24 of this act affect only claims
under policies issued on or after July 1, 2011.

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

And the title is amended as follows:

Delete lines 151 - 153

and insert:

legislative intent with respect to statutory changes
in the act relating to sinkhole insurance coverage;
providing applicability; amending s. 627.706,



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment

Between lines 3104 and 3105
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 insurers. Work performed as a neutral evaluator may not be considered in calculating the percentage of work performed.



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13 Delete lines 3218 - 3224

14 and insert:

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

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



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment

Delete lines 2410 - 2433
and insert:

changes is not a change in policy terms unless such change
reduces or otherwise restricts available coverage.

(b) "Policy" means a written contract of personal lines
property insurance or a written agreement for insurance, or the
certificate of such insurance, by whatever name called, and
includes all clauses, riders, endorsements, and papers that are
a part of such policy. The term does not include a binder as
defined in s. 627.420 unless the duration of the binder period



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13 exceeds 60 days.

14 (c) "Renewal" means the issuance and delivery by an insurer
15 of a policy superseding at the end of the policy period a policy
16 previously issued and delivered by the same insurer or the
17 issuance and delivery of a certificate or notice extending the
18 term of a policy beyond its policy period or term. Any policy
19 that has a policy period or term of less than 6 months or that
20 does not have a fixed expiration date shall, for purposes of
21 this section, be considered as written for successive policy
22 periods or terms of 6 months.

23 (2) A renewal policy may contain a change in policy terms.
24 If a renewal policy does contains such change, the insurer must
25 give the named insured written notice of the change by certified
26 or registered mail, which must be enclosed along with the
27 written notice of renewal premium required by ss. 627.4133 and
28 627.728. Such notice shall be entitled "Notice of Change in
29 Policy Terms."

30 (3) Proof of certified or registered



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LEGISLATIVE ACTION

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House

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment (with title amendment)

After line 3011
insert:

A seller that fails to make the disclosures required under this paragraph commits a felony of the third degree, punishable as provided in s 775.082, s. 775.083, or s. 775.084.

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

And the title is amended as follows:

Delete lines 180 - 182
and insert:



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13 payment; requiring a seller of real property to make
14 certain disclosures and provide a buyer with a copy of
15 any inspection reports and certifications; providing
16 criminal penalties for failing to make such
17 disclosures; amending s. 627.7074, F.S.;



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment

Delete lines 2697 - 2701
and insert:

(h)~~(e)~~ "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.



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Delete lines 2724 - 2732
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

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House

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 3011 and 3012
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.

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

And the title is amended as follows:

 Delete line 182

and insert:

 and certifications; 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

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House

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 609 and 610
insert:

Section 8. 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 claims
under an insurance policy covering catastrophic ground cover
collapse 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



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and worked for at least 1 year under the direct supervision of a public adjuster certified 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 56
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

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House

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 2787 and 2788
insert:

Section 22. 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



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13 the property owner.

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

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

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

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

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

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

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

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



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

And the title is amended as follows:

Delete line 164

and insert:

the 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

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House

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment

Delete lines 2370 - 2377
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.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2790 - 2929
and insert:

627.707 ~~Standards for~~ Investigation of sinkhole claims ~~by~~
~~insurers; insurer payment;~~ nonrenewals.—Upon receipt of a claim
for a sinkhole loss to a covered building or other structure, an
insurer must meet the following standards in investigating a
claim:

(1) The insurer must inspect ~~make an inspection of~~ the
policyholder's insured's premises to determine if there is
structural ~~has been physical~~ damage that ~~to the structure which~~



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may be the result of sinkhole activity.

(2) If the insurer confirms that structural damage exists but is unable to exclude sinkhole activity as a contributing cause of the structural damage ~~Following the insurer's initial inspection,~~ the insurer shall engage a professional engineer or a professional geologist to conduct testing as provided in s. 627.7072 to determine the cause of the loss within a reasonable professional probability and issue a report as provided in s. 627.7073, only if sinkhole loss is covered under the policy. Except as provided in subsection (6), the fees and costs of the professional engineer or professional geologist shall be paid by the insurer.

~~(a) The insurer is unable to identify a valid cause of the damage or discovers damage to the structure which is consistent with sinkhole loss; or~~

~~(b) The policyholder demands testing in accordance with this section or s. 627.7072.~~

(3) Following the initial inspection of the policyholder's insured premises, the insurer shall provide two copies of the signed and sealed engineer's or geologist's report, if any, and written notice to the policyholder disclosing the following information:

(a) What the insurer has determined to be the cause of damage, if the insurer has made such a determination.

(b) A statement of the circumstances under which the insurer is required to engage a professional engineer or a professional geologist to verify or eliminate sinkhole loss and to engage a professional engineer to make recommendations regarding land and building stabilization and foundation repair.



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(c) A statement regarding the right of the policyholder to request testing by a professional engineer or a professional geologist and the circumstances under which the policyholder may demand ~~certain~~ testing.

(4) If the insurer determines that there is no sinkhole loss, the insurer may deny the claim. If coverage for sinkhole loss is available and ~~If the insurer denies the claim,~~ without performing testing under s. 627.7072, the policyholder may demand testing by the insurer ~~under s. 627.7072~~. The policyholder's demand for testing must be communicated to the insurer in writing within 90 days after the policyholder's receipt of the insurer's denial of the claim. The policyholder may, at the policyholder's expense, retain a qualified professional engineer or professional geologist to conduct such testing in order to dispute the findings of the professional engineer or professional geologist retained by the insurer as to the presence or absence of a sinkhole loss, or to render such findings if the insurer denied the claim without performing testing.

(5) ~~(a) Subject to paragraph (b),~~ If a sinkhole loss is verified, the insurer shall pay to stabilize the land and building and repair the foundation in accordance with the recommendations of the professional engineer retained pursuant to subsection (2), as provided under s. 627.7073, and in ~~consultation~~ with notice to the policyholder, subject to the coverage and terms of the policy. The insurer shall pay for other repairs to the structure and contents in accordance with the terms of the policy. The policyholder may, at the policyholder's expense, retain a qualified professional engineer



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71 to dispute the findings of the professional engineer retained by
72 the insurer as to the appropriate and structurally necessary
73 method of land and building stabilization and foundation repair.

74 (a) ~~(b)~~ The insurer may limit its total claims payment to
75 the actual cash value of the sinkhole loss, which does not
76 include ~~including~~ underpinning or grouting or any other repair
77 technique performed below the existing foundation of the
78 building, until the policyholder enters into a contract for the
79 performance of building stabilization or foundation repairs in
80 accordance with the recommendations set forth in s. 627.7073.

81 (b) In order to prevent additional damage to the building
82 or structure, the policyholder shall enter into a contract for
83 the performance of building stabilization or foundation repairs
84 within 90 days after the insurance company confirms coverage for
85 sinkhole loss and notifies the policyholder of such confirmation
86 and the time limitations of this paragraph. The time period is
87 tolled if either party invokes the neutral evaluation process or
88 if the policyholder takes reasonable steps toward retaining a
89 qualified professional engineer to dispute the findings of the
90 professional engineer retained by the insurer. Under such
91 circumstances, the policyholder has 90 days to enter into the
92 contract for repairs after the date the insurer agrees in
93 writing to authorize the repairs recommended by the professional
94 engineer retained by the policyholder or after the date any
95 resulting dispute is resolved by litigation or appraisal.

96 (c) After the policyholder enters into the contract for the
97 performance of building stabilization or foundation repairs, the
98 insurer shall pay the amounts necessary to begin and perform
99 such repairs as the work is performed and the expenses are



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incurred. The insurer may not require the policyholder to advance payment for such repairs. If repair covered by a personal lines residential property insurance policy has begun and the professional engineer selected or approved by the insurer determines that the repair cannot be completed within the policy limits, the insurer must ~~either~~ complete the professional engineer's recommended repair or tender the policy limits to the policyholder without a reduction for the repair expenses incurred.

(d) The stabilization and all other repairs to the structure and contents must be completed within 12 months after entering into the contract for repairs described in paragraph (b) unless:

1. There is a mutual agreement between the insurer and the policyholder;

2. The claim is involved with the neutral evaluation process;

3. The claim is in litigation; or

4. The claim is under appraisal.

(e) ~~(e)~~ Upon the insurer's obtaining the written approval of all named policyholders and ~~the policyholder and any other~~ lienholder, the insurer may make payment directly to the persons selected by the policyholder to perform the land and building stabilization and foundation repairs. The decision by the insurer to make payment to such persons does not hold the insurer liable for the work performed. The policyholder may not accept a rebate from any person performing the repairs specified in this section. If a policyholder does receive a rebate, coverage is void ab initio and the policyholder must refund any



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129 payments made under such coverage. Any person making the repairs
130 specified in this section who offers a rebate, or any
131 policyholder who accepts a rebate for such repairs, commits
132 insurance fraud, punishable as a third-degree felony as provided
133 in s. 775.082, s. 775.083, or s. 775.084.

134 ~~(6) Except as provided in subsection (7), the fees and~~
135 ~~costs of the professional engineer or the professional geologist~~
136 ~~shall be paid by the insurer.~~

137 (6)(7) If the insurer obtains, pursuant to s. 627.7073,
138 written certification that there is no sinkhole loss and the
139 policyholder does not subsequently obtain a contrary written
140 certification from a neutral evaluator or other qualified
141 professional engineer or professional geologist or that the
142 cause of the damage was not sinkhole activity, and if the
143 policyholder has submitted the sinkhole claim without good faith
144 grounds for submitting such claim, the policyholder shall
145 reimburse the insurer for 50 percent of the actual costs of the
146 analyses and services provided under ss. 627.7072 and 627.7073;
147 however, a policyholder is not required to reimburse an insurer
148 more than the deductible or \$2,500, whichever is greater, with
149 respect to any claim. A policyholder is required to pay
150 reimbursement under this subsection only if the insurer, before
151 prior to ordering the analysis under s. 627.7072, informs the
152 policyholder in writing of the policyholder's potential
153 liability for reimbursement and gives the policyholder the
154 opportunity to withdraw the claim.

155 (7)(8) An insurer may not shall nonrenew any policy of
156 property insurance on the basis of filing of claims for partial
157 loss caused by sinkhole damage or clay shrinkage if as long as



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the total of such payments does not equal or exceed the ~~current~~
policy limits of coverage for the policy in effect on the date
of loss, for property damage to the covered building, as set
forth on the declarations page, or if ~~and provided the~~
~~policyholder insured has~~ repaired the structure in accordance
with the engineering recommendations made pursuant to subsection
(2) upon which any payment or policy proceeds were based. If the
insurer pays such limits, it may nonrenew the policy.

~~(8)(9)~~ The insurer and policyholder may engage a
professional structural engineer to make recommendations as to
the repair of the structure.

Delete line 2967
and insert:

(c) If the policyholder disagrees with the findings,
opinions, or recommendations of the professional engineer or
professional geologist retained by the insurer, the policyholder
may, at the policyholder's expense, retain a qualified
professional engineer or professional geologist to conduct
testing under s. 627.7072 and render independent findings,
opinions, and recommendations as to the cause of the distress to
the property and the appropriate method of land and building
stabilization and foundation repair.

(d) Unless the policyholder engages another qualified
professional engineer or professional geologist as described in
paragraph (c), the respective findings, opinions, and
recommendations

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



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And the title is amended as follows:

Delete lines 166 - 176

and insert:

investigation of sinkholes by insurers; providing a
time limitation for demanding sinkhole testing by a
policyholder and entering into a contract for repairs;
authorizing a policyholder to retain a professional
engineer or geologist at the policyholder's expense to
conduct testing or dispute findings; requiring all
repairs to be completed within a certain time;
providing exceptions; providing a criminal penalty for
offering a rebate or for accepting a rebate from
persons performing repairs; amending s. 627.7073,
F.S.; revising provisions relating to inspection
reports; authorizing a policyholder to retain a
professional engineer or geologist at the
policyholder's expense to render independent findings;
providing that the



743056

LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2650 - 2655
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 2746 - 2748



743056

and insert:

YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. 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 156 - 157

and insert:

building; allowing the deductible to include costs



276990

LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment

Delete line 521
and insert:
estimate available to the claimant or insured, the insurer, and
the department



663082

LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment to Amendment (454164)

Delete lines 12 - 14
and insert:
sinkhole education program established by the department by
rule.



416878

LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment to Amendment (454164)

Delete lines 8 - 10
and insert:
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



531380

LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment to Amendment (131262)

Delete line 8
and insert:
behalf of policyholders or exclusively on behalf of an insurer
who is a party to a neutral evaluation.



812700

LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1216 - 1290
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



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discounts not exceed the aggregate of the expected reduction in 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~~



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~~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, debts, 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



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effective date of the revised mitigation discounts, credits, or 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 90 - 96

and insert:

reduction in expected losses;

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 Banking and Insurance Committee

BILL: SB 408

INTRODUCER: Senator Richter

SUBJECT: Property Insurance

DATE: January 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson, Emrich	Burgess	BI	Pre-meeting
2.			BC	
3.			RC	
4.				
5.				
6.				

I. Summary:

Senate Bill 408 makes numerous changes to laws related to property insurance, primarily residential property insurance. The bill addresses the following primary issues:

- 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;
- Modifies current replacement cost coverage and actual cash value provisions relating to dwellings and personal property;
- Requires windstorm and hurricane 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;
- Renames the Citizens High Risk Account the Coastal Account and extends to December 1, 2013, the requirement to reduce the boundaries of the Citizens' High Risk Account (wind-only coverages) if the probable maximum loss is not reduced at least 25 percent from the benchmark;
- 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;
- Revises procedures for insurers and policyholders relating to standards for sinkhole insurance claim investigations and revises the neutral evaluation process for sinkhole disputes;
- Provides changes to the procedures pertaining to sinkhole reports by professional engineers or professional geologists and repeals the sinkhole database; and

This bill substantially amends the following sections of the Florida Statutes: 624.407, 624.408, 624.4095, 624.424, 626.854, 626.8651, 626.8796, 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 the following sections of the Florida Statutes: 626.70132, 627.73141

This bill repeals the following sections of the Florida Statutes: 627.7065

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 Office of Insurance Regulation (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

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.

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 5 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 5 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 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.

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.

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.

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. 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 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.

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.

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 5 percent annual increase which will be phased in over a 5-year period, at which time the increase will be 25 percent.

¹⁰ S. 627.7011, F.S.

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

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.

¹¹ Ch. 2005-111, L.O.F.

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

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 5 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-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.

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.

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

1. Personal Lines Account (PLA)
Personal residential multi-peril policies including homeowners, mobile homes, dwelling fire, tenants, condominium unit owners.
2. 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..
3. 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 loss²⁰ (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.

¹⁷ s. 627.351(6)(b).2., F.S.

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.

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 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

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.

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.

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 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

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.

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 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 premium²⁹ for sinkhole coverage was \$295, quadruple the \$73 premium that Citizens was allowed to charge for sinkhole coverage.
- The total premium collected statewide for the sinkhole endorsement (\$22.2 million) was exceeded by sinkhole losses³⁰ 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,

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).

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.

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.

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 with 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 *Warfel* 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

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 5 years. In sinkhole claims, the insured has 5 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:

³¹ The 2007 Florida Building Code (FBC): Existing Building (1st Printing) defines “structural” to mean “any part, material or 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.

- 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 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.

III. Effect of Proposed Changes:

Section 1. Amends 624.407, F.S., containing the surplus fund requirements for new insurers.

Surplus Requirements for New Insurers – A domestic insurer that transacts residential property insurance and is not a wholly owned subsidiary of an insurer domiciled in another state on or before July 1, 2011, must have a surplus of \$5 million until June 30, 2016; a \$10 million surplus from July 1, 2016 until June 30, 2021; and a \$15 surplus beginning on July 1, 2021. 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 2. Amends 624.408, F.S., containing the surplus fund requirements for current insurers.

Surplus Requirements for Existing Insurers – A residential property insurer holding a certificate of authority before July 1, 2011, is required to have a surplus of \$5 million until June 30, 2016; a \$10 million surplus from July 1, 2016, until June 30, 2021; and a \$15 million surplus 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 3. Creates s. 624.4095(7), F.S., regarding liabilities related to federal multi-peril crop insurance.

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 9 times the surplus as to policyholders, and requires surplus to be at least 10 percent of total liabilities. When a primary insurer cedes all of the crop risk to a reinsurer, however, 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 4. Amends s. 624.424, F.S., regarding use of accountants to prepare annual audits and audited financial reports.

NAIC Auditing Accreditation Requirements – 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 5 consecutive years, and to require a 5 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 2 year waiting period.

Section 5. Amends s. 626.854, F.S., effective June 1, 2011.

Limits Public Adjuster Compensation – Limits 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 6. 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 – 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 insurance company adjuster, independent adjuster, investigator, or attorney must 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 7. Amends s. 626.8541(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.

Section 8. Amends s. 626.8796, F.S., regarding public adjuster contracts.

Public Adjuster Contract Required Contents – The public adjuster contract must 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 9. Creates s. 626.70132, F.S., regarding notice of a hurricane or windstorm claim.

Three Year Time Limit on Hurricane/Windstorm Claims – Notice of a new, reopened, or supplemental hurricane or windstorm claim must 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 10. Amends s. 627.062, F.S., regarding the rate standards applicable to property, casualty and surety insurance.

Rate Standards for 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 cat 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.
- Specifies that the certification of a rate filing is not rendered false if the insurer provides additional or supplementary information requested by the OIR.

Section 11. 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 consider the absence of mitigation techniques and also 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 cat 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 12. 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 – 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.

Postpones 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 extends until December 1, 2013, the effective date of the statutory requirement mandating the reduction of the high-risk area if necessary to reduce the probable maximum loss attributable to wind-only coverages to 25 percent below the PML calculation of February 2001. Currently, the requirement to reduce the high risk area begins December 1, 2010.

Postponement of the reduction of the high risk area prevents the reduction of Citizens exposure to losses due to hurricane loss in coastal areas and increases the likelihood that Citizens will incur windstorm losses that may require the levy of assessments based on losses to the high risk/coastal account. 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 13. Amends s. 627.3511(5)(a), F.S., to provide conforming changes regarding the name change of the Citizens coastal account.

Section 14. Amends s. 627.4133, F.S., regarding the written notice requirements for nonrenewal of a policy.

Notice of Nonrenewal for Citizens "Take-out" Policies – 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. Generally, an insurer must provide 100 days written notice. However, if the insurer has covered the insured's property for the last 5 years or more then 180 days written notice is required. If the insured has been with the insurer for less than 5 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.

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 15. 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 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 16. 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 pay the actual cash value of the insured loss minus the deductible. The insured 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, contractor, or subcontractor may not require the policyholder to advance payment for repairs except for incidental expenses to mitigate further damage.

The insured has one year after the date the insurer pays the actual cash value of the loss to make a claim for replacement cost. 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 greater of actual cash value or 50 percent of the replacement cost value. 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.

Section 17. Amends s. 627.70131(5)(a), F.S., regarding payment of property insurance claims.

Payment of Initial, Reopened, and Supplemental Property Insurance Claims – The bill requires an initial, reopened, or supplemental property insurance claim to 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 18. 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 19. 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:

- 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 1, 2, 5, or 10 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 5 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 a professional geologist's 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. However, the insurer must provide the policyholder with the opportunity to purchase a sinkhole endorsement, subject to the underwriting or insurability guidelines of the insurer. 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.

Section 20. Makes a technical change to s. 627.7061, F.S., substituting policyholder for insured.

Section 21. 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 22. 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.

Modifies the Requirements for the Investigation of Sinkhole Claims – The bill creates a substantially new process for an insurer's investigation of a sinkhole claim. 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, 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.

Revises the Process for 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 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, all coverage under the insurance policy is rendered void from the inception of the policy and the policyholder must refund all payments made under sinkhole coverage. 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 5 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 5 years).

Requires the Policyholder to Pay Costs of Sinkhole Testing – If an insurer conducts 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 insured is liable to reimburse the insurer under this provision both when the insurer initiates sinkhole testing because structural damage is present and when the policyholder demands sinkhole testing after a claim denial.

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 23. 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 when paying a claim for sinkhole loss. The bill requires the policyholder to file a copy of any report indicating that sinkhole activity is the cause of damage.

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 24. 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).

Specifies When Neutral Evaluation is Available – 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.

Specifies the Issues to be Determined at Neutral Evaluation – The bill requires neutral evaluation to determine:

- Causation;
- All Methods of stabilization and repair both above and below ground.
- The costs for stabilization and all repairs; and
- 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:

- 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.

Retains the 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.

Provides 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.

Revises the 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 5 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 Included in this Section:

- 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 25. Amends s. 627.712(1), F.S., to provide conforming changes regarding the name change of the Citizens coastal account.

Section 26. The act is generally effective July 1, 2011, except as otherwise expressly provided. The effective date is effective June 1, 2011.

Other Potential Implications:

None.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

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.

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.)

None.

B. Amendments:

None.