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 General Government Appropriations Committee

BILL:	CS/CS/SBs 2860 and 1196
INTRODUCER:	General Government Appropriations Committee, Banking and Insurance Committee, and Senators Atwater, Geller, and others
SUBJECT:	Insurance
DATE:	April 8, 2008
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Deffenbaugh	Deffenbaugh	BI	**Fav/Combined CS**
2.	Kynoch	DeLoach	GA	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill makes major changes to the insurance laws by increasing penalties for violation of the Insurance Code; changing standards and procedures for property insurance rate filings; applying antitrust laws to the business of insurance; prohibiting unfair claims handling practices; limiting rate increases and changing coverage and assessments for Citizens Property Insurance Corporation (Citizens); revising windstorm mitigation premium credits; increasing notice of nonrenewal of residential policies; and revising conditions for state-funded surplus notes to insurers. Many of the provisions (not related to Citizens) were recommendations for further consideration submitted to the Senate President by the co-chairs of the Select Committee on Property Insurance Accountability.

Increased Penalties

The bill substantially increases the maximum fines that may be imposed upon an insurer for violation of the Insurance Code or that may be imposed on any person for a violation of any unfair insurance trade practice. The bill provides criminal felony penalties for materially false rate filings with intent to deceive.

Rating Law for Property and Casualty Insurance

The bill:

- Repeals the "use and file" option for property insurance rate increases, thereby prohibiting an insurer from increasing rates prior to approval by the Office of Insurance Regulation (OIR).
- Repeals the option for an insurer to appeal a rate filing to an arbitration panel after the OIR issues a notice of intent to disapprove the filing.
- Requires that hurricane losses be estimated using a model found to be accurate or reliable by the Florida Commission on Hurricane Loss Projection Methodology.
- Prohibits the OIR from disapproving a rate as excessive solely because the insurer obtained reinsurance to cover its estimated 250-year probable maximum loss or any lower level.
- Adds requirements to the certification under oath that must accompany an insurer's rate filing that the actuary must have reviewed the OIR's rate indications for the insurer's previous filing, and that any intended nonrenewals are reflected in the rates.
- Creates an expedited administrative hearing process for insurance rate filings.
- Requires an administrative law judge to grant at least a 30 day continuance if an insurer or the OIR offers evidence in a hearing that was not available to the other party prior to the OIR's issuance of a notice of intent to disapprove the rate filing.

Florida Antitrust Act

The bill subjects the business of insurance to the Florida Antitrust Act, with enforcement limited to actions by the Attorney General or a state attorney.

Unfair Trade Practices; Claims Handling

The bill adds prohibited unfair insurance trade practices related to claims handling, including failure to pay undisputed amounts within 90 days after determining the amount, and others. The bill authorizes the OIR to require an insurer to file its claims handling practices and procedures as a public record if a pattern or practice of willful claims handling violations is found.

Citizens Property Insurance Corporation

The bill:

- Extends until July 1, 2009, the current prohibition on increasing rates in Citizens that has been in effect since January 1, 2007.
- Limits average, statewide rate increases in Citizens to 5 percent for the first 12-month period after a rate filing effective on or after July 1, 2009, (10 percent per year for wind-only polices). For each of the next two 12-month periods, rate increases are limited to 10 percent for both types of policies.
- Prohibits Citizens from issuing new wind-only policies, effective July 1, 2008. Wind-only policies in effect on that date may continue to be renewed.
- Reduces the maximum assessments on Citizens policyholders for funding deficits to a 10 percent surcharge for each of Citizens' 3 accounts (which could be 30 percent on each

policyholder), collected on renewal or issuance of a new policy, and eliminates the additional, immediate ten percent assessment (which could be 30 percent) on nonhomestead policyholders of Citizens.
- Reduces the maximum regular assessment on property and casualty insurers from 10 percent to 8 percent of premium (while maintaining the 10 percent cap for multi-year emergency assessments to fund bonds).
- Deletes the provision that makes $1 million homes ineligible for coverage.
- Effective January 1, 2011, requires homes located in the wind-borne-debris region with an insured value of $500,000 or more to have opening protections (shutters, etc.).
- Deletes requirement for insurers to purchase bonds that remain unsold for 60 days.
- Requires Citizens to notify policyholders of takeout offers refused by the agent.

Windstorm Mitigation

The bill:

- Requires windstorm mitigation premium credits to be revised to correlate to the uniform home rating scale.
- Requires the disclosure of the windstorm mitigation rating as part of the contract for sale of a home, effective January 1, 2011.

Insurance Capital Build-Up Incentive Program

The bill appropriates $250 million from Citizens for the Insurance Capital Build-Up Incentive Program and revises the requirements for insurers to obtain funds from the program in exchange for surplus notes (loans), including minimum take-outs from Citizens, and authorizes the State Board of Administration to renegotiate terms with insurers that have already received funds.

Nonrenewals

The bill increases the required notice of nonrenewal of a personal or commercial residential insurance policy from 100 days to 180 days.

Trade Secrets

The bill specifies requirements for submission of a document to the OIR or the Department of Financial Services (DFS) in order for a person to claim that the document is a trade secret.

This bill substantially amends the following sections of the Florida Statutes: 215.5595, 542.20, 624.3161, 624.4211, 626.9521, 626.9541, 627.0613, 627.062, 627.0628, 627.0629, 627.351, 627.4133, and 817.2341.

The bill creates the following sections of the Florida Statutes: 624.4213 and 689.262.

II. Present Situation:

2004 and 2005 Hurricane Seasons

The 2004 and 2005 hurricane seasons were particularly destructive to Florida, with four hurricanes hitting Florida each year. In total, as of August 2006, insurers reported nearly $36 billion in estimated gross losses in Florida for these eight hurricanes, with claims payments of over $33 billion. The losses and claims payments are summarized in the table below.

Hurricane	Estimated Gross Probable Loss	Claim Payments Made
Charley (2004)	$10.15 billion	$9.05 billion
Frances (2004)	7.95 billion	7.70 billion
Ivan (2004)	3.31 billion	3.20 billion
Jeanne (2004)	3.63 billion	3.51 billion
Dennis (2005)	.30 billion	0.27 billion
Katrina (2005)	.85 billion	0.73 billion
Rita (2005)	0.03 billion	0.02 billion
Wilma (2005)	9.66 billion	8.85 billion
Total	**$35.90 billion**	**$33.35 billion**

Source: Office of Insurance Regulation (OIR), Hurricane Reporting Summaries (August 2006).
Total amounts may not equal the sum of amounts for individual hurricanes due to rounding.

Property Insurance Legislation in 2006

Following the hurricanes of 2004 and 2005, the Legislature in 2006[1] enacted significant changes to the insurance laws and appropriated over $1.2 billion in state funds, which included the following major provisions, among many others.

- Appropriating $715 million from General Revenue to Citizens Property Insurance Corporation ("Citizens") to offset the 2005 deficit.
- Establishing the Insurance Capital Build-Up Incentive Program, and appropriating $250 million to loan state funds in the form of "surplus notes" to residential property insurers that commit to writing increased residential coverage at specified levels.
- Establishing what is now called the My Safe Florida Home Program and appropriating $250 million for free inspections and matching grants to qualified residential property owners to add shutters and other retrofits to mitigate hurricane damage.
- Adding a 25 percent rapid cash build-up factor for premiums paid by insurers for coverage from the Florida Hurricane Catastrophe Fund (which had been depleted).
- Changing the insurance rating laws to provide some greater rate flexibility for insurers.
- Requiring the OIR to reevaluate the insurance discounts and credits to give full actuarial value.
- Requiring rates for Citizens to be sufficient to cover the cost of reinsurance at specified levels, requiring assessments on Citizens' policyholders to fund deficits, and other major changes (summarized in Citizens, below).

[1] Chapter 2006-12, Laws of Florida (CS/CS/SB 1980, 2006 Regular Session)

- Authorizing the Florida Insurance Guaranty Association to impose annual emergency assessments on insurers of up to 2 percent of premium to cover claims of insolvent property insurers.

Property Insurance Legislation in 2007

Chapter 2007-1, L.O.F., includes the following major provisions, among many others.

- Substantially increasing the amount of hurricane losses covered by the Florida Hurricane Catastrophe Fund (FHCF) for 2007, 2008, and 2009, by allowing insurers to purchase $12 billion of coverage in addition to the $16 billion mandatory coverage.
- Repealing the 25 percent rapid cash buildup factor for FHCF premiums.
- Requiring insurers to make a rate filing reflecting the savings or reduction in loss exposure to the insurer due to the expanded FHCF, pursuant to a "presumed factor" determined by the OIR.
- Prohibiting insurers, until January 1, 2009, from making a "use and file" rate increase prior to OIR approval or using the option to arbitrate a rate disapproved by the OIR.
- Requiring insurers to make available options to exclude windstorm coverage, to increase windstorm deductibles, or to exclude contents coverage.
- Requiring property insurers to pay or deny a claim within 90 days of the receipt of the claim, subject to interest penalties.
- Rescinding a previously approved rate increase for Citizens and freezing rates until January 1, 2008; authorizing Citizens to sell commercial coverage; suspending for one year assessment changes enacted in 2006; and other major changes (summarized in Citizens, below).
- Requiring officers of an insurer to provide a sworn certification as part of a rate filing, attesting to certain facts.
- Requiring the Financial Services Commission to adopt a uniform home grading scale to grade a home's ability to withstand the wind load from a hurricane.
- Requiring the Florida Building Code be revised to repeal the so-called "Panhandle exemption" and other changes to strengthen the windstorm resistance requirements.
- Authorizing various types of self-insurance funds to be formed.

Chapter 2007-126, L.O.F., makes additional major changes to Citizens, including continuation of the rate freeze until January 1, 2009, prohibiting issuance of a new certificate of authority to a Florida domestic insurer to write residential property insurance if the insurer is a wholly owned subsidiary of an insurer authorized to do business in another state, and many other provisions.

Chapter 2007-126, L.O.F., makes major changes to eligibility for grants for mitigation improvements from the My Safe Florida Home program and changes to the Building Code for new roofs to mitigate windstorm damage.

Senate Select Committee in 2008; Status of "Presumed Factor" Filings

In January 2008, Senate President Pruitt appointed the Select Committee on Property Insurance Accountability. The committee hearings received sworn testimony and information from the

Office of Insurance Regulation, insurance companies, and others. In a letter to the Senate President, dated March 12, 2008, Co-chairs Atwater and Geller provided a list of proposals for further consideration by the appropriate standing committees.[2] Many of the provisions of this bill were included in those proposals (not including proposals related to Citizens.)

As a result of the 2007 legislation requiring insurers to make rate filings reflecting the savings of the expanded FHCF coverage, 119 residential property insurers made "presumed factor' and "true up" rate filings with the OIR. According to the OIR, as of March 28, 2008, the average rate decrease is 16.93 percent for all of the homeowners rate filings for these 119 insurers. This is the average rate decrease per filing, not a market-share weighted average, and includes multiple filings per company. For the 119 insurance companies (counting all filings per company), 84 have been resolved, of which 63 were approved, 10 have agreements that will be approved, and 11 final disapprovals. Of the remaining 35 insurers, 22 have been issued a notice of intent to disapprove, 2 are pending, and 11 have been withdrawn (and may or may not be re-filed).

State of the Property Insurance Market

Florida is at greater risk for hurricane losses than any other area of the country, having approximately 25 percent of the coastal property exposed to hurricanes in the United States. The density of the population, especially on coastal areas, exposes Florida to tremendous risk that is only expected to grow. The OIR estimates that a 1-in-100 year hurricane event in Florida would result in $50 billion of insurance industry losses. In a report issued March 24, 2008, Fitch Ratings said that, in spite of Florida's reform efforts in 2007, the Florida homeowners market continues to be unstable. Fitch said that its main concern from a ratings perspective is that if a major storm(s) were to hit Florida this year, the fragile market could effectively "collapse," especially if such an event intensifies the withdrawal of private capacity.[3]

Competing with these concerns are problems of affordability, particularly for homeowners in coastal counties with average or median value homes or less, who may have lived in Florida for many years or have fixed incomes, who saw their property insurance rates increase significantly after the hurricanes of 2004 and 2005, due in large part to increased costs of private reinsurance. The 2007 expansion of the Florida Hurricane Catastrophe Fund directly addressed this problem, but insurance representatives point to other reforms, such as prohibiting new Florida-only "pup" subsidiaries and making it more difficult for insurers to obtain rate increases or to compete with Citizens, as having acted to limit or impair an insurer's ability to write property insurance.

Enforcement of the Insurance Code

The Office of Insurance Regulation is responsible for regulating all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, examinations, issuance of certificates of authority, and solvency.[4] The office, through its ongoing oversight and

[2] Letter from Senators Jeff Atwater and Steve Geller, Co-Chairs of the Select Committee on Property Insurance Accountability to President Pruitt, dated March 12, 2008, available at: http://www.flsenate.gov/data/committees/senate/spa/select_committee_letter.pdf

[3] *Fitch Comments on Florida Homeowners Insurance Market*, Fitch, Inc., as reported by NAMIC Online (National Association of Mutual Insurance Companies, posted on March 25, 2008 at: www.namic.org

[4] Section 20.121(3)(a), F.S.

examination process, determines whether insurance companies are operating in compliance with the code. This includes regulating the insurance rates to ensure that the rates are not excessive, inadequate, or unfairly discriminatory.[5]

Mandatory Insurer Suspension – Section 624.418, F.S., requires the Office of Insurance Regulation to suspend or revoke an insurer's certificate of authority if the insurer:

- Is in unsound financial condition.
- Is using business methods and practices that result in the insurer's transaction of insurance hazardous or injurious to its policyholders or the public.
- Has failed to pay a final judgment against it within 60 days.
- No longer meets the requirements for its certificate of authority

Discretionary Insurer Suspension – Further, the section grants the office discretionary authority to suspend or revoke an insurer's certificate of authority if the insurer:

- Violates a lawful order or rule of the OIR or Financial Services Commission, or violates a provision of the Florida Insurance Code.
- Refuses to be examined by the office, or to produce its accounts, records, and files for examination, or its officers refuse to give information or perform any legal obligation pursuant to an examination.
- Refuses to properly pay claims as a general business practice in Florida, or without just cause forces claimants to accept less than the amount due them, or to hire attorneys to secure full payment.
- Is affiliated with or managed by an insurer transacting insurance in Florida unlawfully without a certificate of authority.
- Has been convicted of a felony.
- Fails to meet the a 4:1 net premium to surplus ratio and the OIR believes the financial condition of the insurer endangers the interests of policyholders.
- Is under suspension or revocation in another state.

Administrative Fines - The office is authorized under s. 624.4211, F.S., to impose administrative fines in lieu of suspension or revocation if the office finds that one or more grounds exist for the discretionary revocation or suspension of the certificate of authority. The office may impose an administrative fine, not to exceed $2,500, per nonwillful violation, with a limit of $10,000 for all nonwillful violations arising out of the same action. With respect to any willful violation, the office is authorized to assess a fine, not to exceed $20,000 per violation and $100,000 in aggregate for all willful violations arising out of the same action. Additionally, if an insurer owes restitution due to a violation, the insurer must provide the restitution and include 12 percent interest from the date of the violation or the inception of the insured's policy.

Section 624.15(1), F.S., provides that each willful violation of the code or rule of the department, office, or commission as to which a greater penalty is not provided is a misdemeanor of the second degree, and is in addition to any suspension or revocation. The cited penalties for a

[5] Section 627.031, F.S.

misdemeanor of the second degree are a term of imprisonment not to exceed 60 days and a fine of up to $500.

Unfair Insurance Trade Practices Act

Part IX of ch. 626, the "Unfair Insurance Trade Practices Act," provides the office and the Department of Financial Services (department) with enforcement actions against persons that engage in unfair methods of competition or unfair or deceptive practices involving insurance. For example, the office may impose these penalties against an insurer and the department may impose these penalties against an insurance agent, since the department licenses and regulate insurance agents pursuant to chapter 626, F.S. (See, also, s. 11.121, F.S.)

Unfair methods of competition and unfair or deceptive acts or practices are defined in s. 626.9541, F.S. Section 626.9521, F.S., establishes penalties on any person engaging in these prohibited acts. The office or department may impose an administrative fine, not to exceed $2,500, per nonwillful violation, with a limit of $10,000 for all nonwillful violations arising out of the same action. With respect to any willful violation, the maximum fine is $20,000 per violation, not to exceed $100,000 for all willful violations arising out of the same action. These fines may be imposed in addition to any other applicable penalty.

Immediate Final Order

Currently under s. 120.569(2)(n), F.S., an agency may issue an immediate final order (IFO) if there is a finding of immediate danger to the public's health, safety, or welfare. The IFO may be issued by an agency without advance notice or hearing. The order must contain a factual recitation demonstrating the existence of an immediate danger to the public which shall be appealable or enjoinable from the date rendered. A party challenging the sufficiency of the IFO may file an appeal before the First District Court of Appeal and the Court may grant or stay the final order or, if a party contests the facts contained in the IFO, the party may either file a Motion to Quash or file a Petition for Injunctive Relief in Circuit Court.

In a recent case, the OIR issued an IFO against Allstate Floridian Company, finding that the insurer had failed to provide subpoenaed documents which constituted continuous criminal violations of Florida law constituting an immediate danger to the public welfare so as to require the issuance of an IFO.[6] The OIR ordered that the Allstate companies were no longer authorized to transact any new insurance in Florida. Allstate filed an emergency motion for immediate relief before the First District Court of Appeal arguing that the order lacked any factual basis demonstrating the existence of an immediate danger to the public health, safety, or welfare and that the OIR failed to seek enforcement of its subpoenas in Circuit Court. The Court granted Allstate's motion and stayed the IFO pending final disposition on the merits of the appeal.

On April 4, 2008, a panel of the Court issued its opinion, finding for the OIR. Specifically, the Court found that "in at least three ways, the IFO showed the immediate suspension of Allstate's certificate of authority to transact new insurance in Florida until it complied with the subpoenas

[6] The OIR filed the IFO on January 17, 2008, and Allstate filed an appeal before the First District Court of Appeal (*Allstate Floridian Insurance Company, et al. vs. Office of Insurance Regulation*, Case No. 1D08-275).

was narrowly tailored to address the harm" resulting from Allstate's actions. The Court further ruled that the "OIR was not required to pursue enforcement of its subpoenas in circuit court. Suspension of Allstate's Certificates of Authority is one of OIR's available enforcement options. Because the IFO facially complies with the requirements of section 120.60(6), Florida Statutes, it is AFFIRMED and the stay is lifted."[7]

Federal and State Antitrust Laws

The Florida Antitrust Act (Act) under ch. 542, F.S., codifies the provisions of the federal Sherman Antitrust Act[8] by prohibiting restraints of trade or commerce in order to foster effective competition in the state. The intent of the Act is to complement the body of federal antitrust law in order to protect trade and commerce from unlawful restraints, price discrimination, price fixing and monopolies. The Act provides that every contract, combination or conspiracy in restraint of trade or commerce is unlawful and that it is unlawful for any person to monopolize, attempt to monopolize, or conspire with any other person to monopolize any part of trade or commerce in Florida.[9] A person who is injured in his/her business or property by reason of persons or entities violating the Act may sue in circuit court and recover treble damages, including the cost of the suit and reasonable attorneys' fees. Furthermore, the Attorney General (AG) or a state attorney, after receiving written permission from the AG, may bring an action in circuit court representing an injured party (or bring a class action) and recover treble damages.[10]

Natural persons who violate the Act's provisions are subject to civil penalties of not more than $100,000; other persons, e.g., corporations, etc., that violate the same provisions are subject to civil penalties of not more than $1 million. Persons who knowingly violate the Act's provisions or knowingly aid others to do so, are guilty of a felony punishable by the above fines, or imprisonment not exceeding 3 years, or both fines and imprisonment. The AG and state attorney may also bring criminal actions under the Act and there is a four year statute of limitations provision.

The Act provides that any activity or conduct exempt under common or statutory law or exempt from federal antitrust laws is exempt from the Act's provisions. Currently, insurers are exempt from Florida's antitrust provisions and are exempt from certain provisions of the federal antitrust regulations under the McCarran-Ferguson Act (McCarran), a law enacted by the Congress in 1945. McCarran was passed to permit states to continue regulating the business of insurance after the U. S. Supreme Court in *U.S. v. South-Eastern Underwriters Association,*[11] overruled the decision in *Paul v. Virginia,*[12] declaring insurance to be interstate commerce and within Congress's constitutional authority to regulate. Under McCarran, the state regulated insurance

[7] Allstate Floridian Insurance Company v. Office of Insurance Regulation, No. 1D08-0275 (FLA, 1DCA, April 4, 2008)
[8] The Sherman Act prohibits any unreasonable interference, by contract, or combination, or conspiracy, with the ordinary, usual and freely-competitive pricing or distribution system of the open market in interstate trade.
[9] Section s 542.18 and 542.19, F.S.
[10] The Attorney General or state attorney have *parens patriae* authority to bring actions on behalf of state residents for antitrust offenses and to recover on their behalf (s. 542.22, F.S.).
[11] 322 U.S. 533 (1944). In *South-Eastern*, the Court held, contrary to decade's worth of precedent, that insurance transactions constituted interstate commerce and thus were subject to federal regulation. *South-Eastern* prompted Congress to enact McCarran in response to concerns that application of federal laws to the insurance industry would abrogate states' traditional power to regulate insurance.
[12] 75 U.S. 168 (1886).

industry is exempt from section s of the federal antitrust laws in order to promote competition in the insurance marketplace by allowing companies to exchange data regarding losses and other factors for the purpose of rate making.[13] Otherwise, federal antitrust laws prohibit insurers from boycotting, intimidating, acting coercively, restraining trade, or violating the Sherman or Clayton[14] acts.

According to a document produced by the National Association of Insurance Commissioners, 26 states have enacted antitrust laws that do not exempt the business of insurance.

Claims Handling Requirements

The Unfair Insurance Trade Practices Act lists prohibited practices related to claims handling.[15] For example, the act prohibits, if performed with such frequency as to indicate a general business practice, misrepresenting pertinent facts or policy provisions relating to coverage; failing to acknowledge and act promptly upon communications with respect to claims; denying claims without conducting reasonable investigations; and failing to affirm or deny full or partial coverage and the dollar amount, or failing to provide a written statement that the claim is being investigated, upon the written request of the insured within 30 days after proof-of loss statements have been completed. In addition to the administrative penalties explained above, violation of these claims handling practices are grounds for a civil action under s. 624.155, F.S. That law allows a person to bring a civil action against an insurer to collect damages and attorney fees if the person is damaged by a violation of specified prohibited acts, including the claims-handling provisions of the Unfair Insurance Trade Practices Act.

Rate Filing Standards and Procedures

"File and Use" and "Use and File" - Section 627.062, F.S., provides the rating standards for property and casualty insurers. Prior to 2007, property and casualty insurers filing rates for approval with the OIR had the option of utilizing two procedures: "file and use" or "use and file." Under file and use, insurers are required to file rates 90 days *before* the proposed effective date while under the use and file provision, insurers could file their rates 30 days *after* the rate filing is implemented. Under the file and use option, the OIR must finalize its review by issuing a notice of intent to approve or disapprove within 90 days after receipt of the filing; otherwise the filing is deemed approved. Under the use and file option, an insurer may implement the filing prior to approval, but may be ordered by the OIR to refund to the policyholder that portion of the rate found by the OIR to be excessive.

During the 2007 Special Session A, the Legislature required property and casualty insurers, through December 31, 2008, to utilize only the file and use procedure to implement a rate change

[13] According to representatives with the National Association of Insurance Commissioners (NAIC), the limited federal antitrust exemption allows insurers to collectively develop loss costs and policy language which makes data more credible, aids smaller insurers with responsible rate-setting, and makes it less costly for competitors to enter or expand in the market.
[14] The Clayton Act prohibits price discrimination, tying and exclusive dealing contracts, mergers, and interlocking directorates, where the effect may be substantially to lessen competition or tend to create a monopoly in any line of commerce.
[15] Section 626..9541(1)(i), F.S.

if the rate was *greater* than the rate most recently approved by the OIR.[16] If the rate change was *lower* than the rate most recently approved, insurers were allowed to continue to elect the use and file procedure. During the 2007 Regular Session, legislation was enacted which limited the applicability of the file and use requirement to property insurance.[17] Insurers filing rates for casualty insurance may use either procedure. Casualty insurance includes general liability, professional liability, medical malpractice, boiler and machinery, credit insurance, etc., and the 2007 legislation further specified that "property insurance" does not include commercial motor vehicle collision and comprehensive coverage. This statute also does not apply to private passenger motor vehicle insurance or workers' compensation insurance, which are subject to s. 627.0651 and s. 627.072, F.S., respectively.

Factors for Determining Excessive Rates - The OIR may disapprove a rate filing if it determines such rates to be "excessive, inadequate, or unfairly discriminatory" as these terms are defined.[18] The law specifies numerous factors which the OIR must consider in making this determination. One of the factors is the cost of reinsurance. An insurer may fully recoup premiums paid to the Florida Hurricane Catastrophe Fund together with reasonable costs of other reinsurance, but may not recoup costs that duplicate coverage provided by the Fund.[19]

One factor the OIR must consider in a rate filing is a reasonable margin for profit and contingencies. Legislation in 2006 required the OIR to approve a profit factor that provides the insurer a reasonable rate of return that is commensurate with the risk, for that portion of the rate covering hurricanes and other catastrophic losses for with the insurer has not purchased reinsurance. At hearings before the Select Committee on Property Insurance Accountability, the OIR testified that it generally considers a profit factor of 3.9 percent of premium as reasonable. The OIR further testified that insurers were asserting that the legislative change in 2007 should be interpreted as allowing them to receive a profit for covering hurricane losses commensurate with the profit factor charged by reinsurers.

Arbitration Option - Insurers making rate filings for property and casualty insurance under s. 627.062, F.S., other than medical malpractice, have been allowed to elect binding arbitration of a rate filing denial by the OIR since 1996.[20] This section does not apply to private passenger auto insurance or workers' compensation insurance, as noted above. After the OIR issues a notice of intent to disapprove a rate filing, insurers may, instead of demanding an administrative hearing under the Administrative Procedure Act (APA) under chapter 120, F.S., request

[16] Chapter 2007-1, Laws of Florida.
[17] Chapter 2007-90, Laws of Florida. Casualty insurers are free to use the use and file option for all rate filings. Casualty insurance includes motor vehicle collision and comprehensive coverages, medical malpractice and workers compensation insurance.
[18] Under s. 627.062(2)(e), F.S., rates are deemed "excessive" if they are likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved in the class of business or if expenses are unreasonably high in relation to services rendered; rates are deemed "inadequate" if they are clearly insufficient, together with investment income attributable to them, to sustain projected losses and expenses in the class of business to which they apply; also, rates are "inadequate" as to premium charged to a risk if discounts or credits are allowed which exceeded a reasonable reflection of expense savings and expected loss experience from the risk; and rates are deemed "unfairly discriminatory" as to a risk if the application of premium discounts, credits, or surcharges among such risks does not bear a reasonable relationship to the expected loss experience among the various risks.
[19] Section 62i7.062(5), F.S.
[20] Section 627.062(6), F.S. Chapter 682, F.S., is cited as the Arbitration Code.

arbitration before a panel of three arbitrators. Under arbitration, the insurer and the OIR each select one arbitrator, and the third is chosen by the other two arbitrators. An arbitrator must be certified by the American Arbitration Association and may not be an employee of an insurance company or insurance regulator. Rate arbitration follows the procedures of the Arbitration Code and the costs of arbitration are paid by the insurer. Upon initiation of arbitration, the insurer waives all rights to challenge the action of the OIR under the APA. The decision of the panel constitutes final approval of a rate filing.

Either party to the arbitration proceeding may apply to the circuit court to vacate or modify the panel's decision. Grounds for vacation include corruption or fraud, evident partiality by an arbitrator, and action beyond the arbitrators' powers or jurisdiction. Grounds for modification include miscalculations, errors as to form, and actions on matters not submitted for arbitration.

The OIR reviews and takes action on nearly 3,000 property and casualty filings annually. Since the inception of the arbitration provision (1996) through March 2005, the OIR had disapproved 103 rate requests. Of the 103 disapprovals, 11 insurers requested arbitration and the OIR prevailed in just one case.[21] From April 2005 to January 2007,[22] the OIR had settled the great majority of rate denials with insurers. Representatives with the OIR state that arbitration panels have usurped its statutory obligation to ensure rates are not excessive, inadequate or unfairly discriminatory.

In 2007, the Legislature prohibited property and casualty insurers from electing arbitration for rate disputes until January 1, 2009.[23] The effect of the prohibition meant that rate appeals would be subject to the provisions of the APA. Under the APA, a formal adversarial hearing is held before a State Administrative Law Judge (ALJ) with the Division of Administrative Hearings. Once the hearing is completed, the ALJ has 30 days to issue a recommended order to the OIR. The recommended order contains findings of fact and conclusions of law as found by the ALJ. The OIR then has 90 days to issue a final order which may reject or modify the conclusions of law contained in the recommended order. However, the OIR's final order may not substitute findings of facts contained in the recommended order which were supported by competent substantial evidence. An insurer may then appeal the OIR's final order to the First District Court of Appeal.

Rate Certification - Another change in 2007 was the requirement for insurers to require the chief executive officer or chief financial officer and the chief actuary of a property insurer to sign a sworn certification, subject to the penalties for perjury and administrative penalties, that the information in the rate filing does not contain any untrue statements of a material fact or omit material facts and reflects premium savings that are reasonably expected to result from legislative enactments and are in accordance with accepted actuarial techniques.

Florida Commission on Hurricane Loss Projection Methodology

In 1995 the Legislature established the Florida Commission (Commission) on Hurricane Loss Projection Methodology to serve as an independent body within the State Board of

[21] These eleven insurers represented the largest insurers in terms of market share in Florida.
[22] In January 2007, the Legislature prohibited insurers from electing arbitration pursuant to chapter 2007-1, Laws of Florida.
[23] CS/HB 1A, enacted during the 2007 Special Session A (Chapter 2007-1, Laws of Florida).

Administration. The Commission's role is to adopt findings relating to the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. The members include experts in insurance finance, statistics, computer system design, and meteorology who are full-time faculty members in the State University System, appointed by the CFO, an actuary member from the FHCF Advisory Council, an actuary employed with a property and casualty insurer appointed by the CFO, an actuary employed by the OIR, the Executive Director of Citizens, the senior employee responsible for FHCF operations, the Insurance Consumer Advocate, and the Director of Emergency Management in the Department of Community Affairs (DCA). The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission standards.

The law provides that an insurer may use in its rate filing hurricane loss models found by the commission to be accurate or reliable and that such findings are admissible and relevant in consideration of the rate filing by the OIR or on any arbitration or administrative or judicial review. However, legislative changes in 2005 provided that the findings are admissible and relevant only if the OIR and the consumer advocate appointed by the DFS have access to all of the assumptions and factors that were used in developing the model and are not precluded from disclosing such information in a rate proceeding. A public records exemption applies to a trade secret, as defined in s. 812.081, F.S., that is used in designing and constructing a hurricane loss model that is provided to the Commission, the OIR, or the consumer advocate.

Citizens Property Insurance Corporation

Overview of Citizens - Citizens is a state-created insurance company that is a government entity intended (since 2007) to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. Legislation in 2007 provided that an applicant is eligible for coverage in Citizens unless the applicant has an offer of coverage from an authorized insurer at a premium that is not more than 15 percent greater than the premium charged by Citizens. A policyholder of Citizens may remain covered by Citizens regardless of any offer of coverage from an authorized insurer. The income to Citizens is exempt from state and federal taxation.

Citizens is currently the largest writer of property insurance policies in Florida, with 1,255,749 polices as of February 29, 2008. A good measure of Citizens' percentage of the statewide hurricane risk for residential policies is Citizens' percentage of the total premiums paid to the Florida Hurricane Catastrophe Fund (FHCF), which is about 42 percent. The premiums paid by insurers to the FCHF are based on hurricane loss models that take into account the risk of hurricane loss based on insured value, geographic area, type of construction, and other factors.

Citizens maintains three accounts, with the following policies and premiums as of December 31, 2007:

- Personal Lines Account (PLA) – Homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies. Standard personal lines property policy forms that are comprehensive multi-peril policies providing full coverage or a residential property equivalent to the coverage provided in the private insurance market.

  - 845,976 Policies in Force
  - $1.84 billion Direct Written Premium
- Commercial Lines Account (CLA) – Commercial residential - condominium association, apartment building and homeowner association policies; and commercial non-residential. Commercial Non-Residential policies are currently wind-only, beginning in 2008 multi-peril non-residential policies will be offered.
  - 12,911 Policies in Force
  - $566 million Direct Written Premium
- High Risk Account (HRA) – Provides windstorm coverage for properties within defined eligible areas. Includes personal residential, commercial residential and commercial non-residential properties. In August of 2007, Citizens began offering a multi-peril policy in the High Risk Account.
  - 446,181 Policies in Force
  - $1.131 billion Direct Written Premium.

Citizens estimates that its 100-year probable maximum loss for the 1.3 million policies that it had at the end of 2007 was $23.9 billion for all three accounts combined ($14.6B for HRA, $6.7B for PLA and $2.6B for CLA).

Citizens estimates that its claims-paying ability, based on estimated year-end resources for 2008, are as follows, for the PLA/CLA and HRA combined.[24]

Unaudited Year-end 2007 Surplus	$2.643 billion
Projected 2008 Net Income	$1.538 billion
Total Available for Claims from Surplus	$4.181 billion
Pre-event Liquidity Available	$6.5 billion*
Total Funds Available to Pay Claims (prior to FHCF recoveries)	$10.681 billion
Projected FHCF Coverage (1st Layer only)**	$7.041 billion
Projected FHCF Coverage (TICL Layer only)**	$4.895 billion
Total Funds Available to Pay Claims	$22.617 billion

*Pre-event liquidity reflects current liquidity which will be replaced in approximately equal amounts with other financing alternatives currently being structured.
**FHCF projections assume that the PLA/CLA and HRA represent approximately the same percentage of the FHCF as they did in 2007.

The pre-event liquidity represent bond and notes that will have to be funded by assessments if they are required to be used to pay claims (as would a significant portion of the obligations of the FHCF). Citizens estimates that if the 100-year PML loss event of $23.89 billion occurred (as of 12/31/07), the source of claims payments would be as follows:

[24] Citizens PowerPoint presentation toe Senate Banking and Insurance Committee, March 11, 2008.

Surplus	$4.181 billion (17.5 percent)
FHCF Recovery	$11.936 billion (50 percent)
Assessments on Citizens' Policyholders	$1.935 billion (8.1 percent)
Regular Assessment	$3.809 billion (15.9 percent)
Emergency Assessment on P&C Policyholders	$2.032 billion (8.5 percent)
Total	$23.893 billion (100 percent)

Deficits from Hurricanes of 2004 and 2005 - At the end of February 2006, after the 8 hurricanes impacted Florida in 2004 and 2005, Citizens provided coverage to 815,482 policyholders, making it the second largest insurer in Florida. At that time Citizens estimated its total losses for the 2004 and 2005 storms at $2.92 and $2.7 billion respectively. The Legislature in 2006 appropriated $715 million from General Revenue to Citizens to offset the 2005 deficit, estimated to be about $1.73 billion. This appropriation was expected to reduce an estimated $920 million regular assessment against property insurers to about $205 million, and thereby reduce an estimated average 11 percent premium surcharge to about 2.5 percent for property insurance policyholders in the state (including Citizens policyholders). The bill also required that the remaining estimated $800 million of the deficit, which would require about an 8 percent emergency assessment on policyholders if billed in one year, to be amortized and collected from policyholders over a 10-year period.

Legislative Changes in 2006 - Legislation in 2006[25] included the following changes to Citizens related to this bill.

- Required that rates in 2007 for the PLA and CLA be sufficient to purchase reinsurance to pay all claims expected to result from a 100-year probable maximum loss (PML) event, and that the rates for the HRA be sufficient to purchase reinsurance to cover a 70-year PML event, increasing in 2008 and 2009 to an 85-year and 100-year PML.
- Required that effective March 1, 2007, nonhomestead property is not eligible for coverage in Citizens and is not eligible for renewal, with certain exceptions.
- Changed the method for funding deficits, beginning in 2007, by revising assessments for each of the three accounts, in the following priority:
  1) An immediate assessment of up to 10 percent of premium against all Citizens' nonhomestead policyholders (as defined).
  2) An additional assessment of up to 10 percent of premium against all Citizens' policyholders (including nonhomestead), collected upon issuance or renewal of a policy.
  3) A regular assessment against insurers which may be recouped from their policyholders, of up to 10 percent of premium for most lines of property and casualty insurance, or 10 percent of the deficit, whichever is greater.
  4) Any remaining deficit is funded by a bond issue, funded by multi-year emergency assessments on policyholders of most types of property and casualty insurance, of up to 10 percent of premium, or 10 percent of the deficit, whichever is greater.
  5) If a regular assessment is imposed under 3), above, Citizens must make a rate filing to impose a surcharge on Citizens policyholders equal to the average percentage regular assessment imposed on insurers (and recouped from non-Citizens policyholders).

[25] Chapter 2006-12, L.O.F. (CS/CS/SB 1980)

- Defined "homestead property" broadly to include certain rental-owned property and all commercial residential policy, etc., as well as property granted a homestead tax exemption.
- Effective July 1, 2008, a personal lines residential structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more, is not eligible for coverage by Citizens. Such dwellings insured by Citizens on June 30, 2008, may continue to be covered until the end of the policy term and may reapply for coverage for up to an additional three years if the property owner provides a sworn affidavit from one or more insurance agents that they have made their best efforts to obtain coverage and that the property has been rejected by at least one authorized insurer and three surplus lines insurers (for all agents combined).

Citizens Legislation in 2007 - Legislation enacted in the 2007 Special Session "A"[26]and the 2007 Regular Session[27] included the following changes to Citizens related to this bill.

- Revised the legislative findings for establishing Citizens, in order to support its tax-exempt status, finding that the absence of affordable property insurance threatens the public health, safety, and welfare and that the state has a compelling public interest in assuring that property is insured at affordable rates.
- Deleted the requirement added in 2006 that Citizens charge rates sufficient to purchase reinsurance to cover specified levels of probable maximum loss for each of its three accounts. This avoided a 56.5 percent average premium increase for Citizens' High-Risk-Account (HRA) that was under consideration.
- Rescinded the approved rate increase that took effect January 1, 2007, and required Citizens to provide refunds to persons who paid that rate. This avoided an average 23.1 percent rate increase in the HRA for homeowners' policies.
- Froze rates at the December 31, 2006 level for the remainder of 2007, except for any rate decreases, which was then extended for one additional year through the end of 2008, requiring an actuarially sound rate filing, effective January 1, 2009.
- Substantially expanded the types of insurance subject to assessments to fund deficits of Citizens, to be substantially the same as the assessment base of the FHCF, which includes all lines of property and casualty insurance, including auto insurance, but not workers' compensation or accident and health, or medical malpractice premiums.
- Delayed until 2008 the requirement added in 2006 that Citizens impose up to a 10 percent of premium assessment on its nonhomestead policyholders if a deficit occurs in any account, and if insufficient, that Citizens impose an additional 10 percent renewal surcharge on all Citizens' policyholders, including nonhomestead policyholders.
- Deleted the provision added in 2006 that nonhomestead property, as defined, is ineligible for coverage from Citizens, effective March 1, 2007.
- Placed Citizens in more direct competition with the voluntary market by providing that if a new applicant to Citizens is offered coverage from an insurer at its approved rate, the property is not eligible for a Citizens' policy, unless the insurer's premium is more than 15 percent greater than the premium for comparable coverage from Citizens. However, a policyholder of Citizens remains eligible for coverage regardless of any offer of coverage from a private market insurer.

[26] Chapter 2007-1, L.O.F. (HB 1-A)
[27] Chapter 2007-90, L.O.F. (CS/SB 2498)

- Provides that as of January 1, 2009, to qualify for Citizens, properties within 2,500 feet landward of the Coastal Construction Control Line must be built to "Code-Plus" building standards developed by the Florida Building Commission.
- Authorized Citizens to provide commercial nonresidential (i.e., business) coverage in all areas of the state, previously limited to commercial residential coverage statewide and wind-only coverage in HRA territories. The plan of operation may establish limits of coverage and may require commercial property to meet specified hurricane mitigation construction features.
- Authorized Citizens, upon approval by the Financial Services Commission and the Legislative Budget Commission, to issue multi-peril policies in its HRA. The expressed goal was to reduce average premiums by 10 percent or more for a Citizens' wind-only policyholder who obtains a multi-peril policy from Citizens. It further allowed Citizens to offer multi-peril coverage and wind-only coverage, or both, at the option of the policyholder, for risks located in areas eligible for coverage in the HRA.
- Extended, until January 1, 2009 the ineligibility of coverage in Citizens for personal lines residential structures that have a dwelling replacement cost of $1 million or more.

Uniform Home Grading Scale

Legislation in 2007 required the Financial Services Commission to adopt by rule a uniform home grading scale to grade a home's ability to withstand the wind load from a hurricane. The previous year, 2006 legislation required the OIR to conduct a study and develop a program to provide a rating system to evaluate residential properties ability to withstand hurricane wind loads. The OIR contracted with the Shimberg Center for Affordable Housing of the University of Florida to develop the rating scale, which was called the Hurricane Structure Rating System. The University of Florida subcontracted with Applied Research Associates, Inc. (ARA) to design, develop, and test the rating system. The rating system is based largely on research done on single-family, site-built homes from 2001 to 2002, and is not accurate when applied to manufactured housing or multifamily structures. The Financial Services Commission adopted the rating system by rule effective November 1, 2007, renaming it the Uniform Home Grading Scale (UHGS).

The Uniform Home Grading Scale produces scores between 1 and 100 and measures the relative ability of a structure to withstand the forces associated with a sustained hurricane or severe tropical storm. The UHGS currently does not produce scores of 100 at the top of the scale, as it has been designed to accommodate future building code improvements and implementation of code-plus mitigation techniques. The UHGS takes into account the construction features of the home, the wind zone location of the home, and the terrain surrounding the home. In evaluating the home itself, eight primary wind resistive building features are considered: roof shape (hip and other); secondary water resistance; roof cover (whether meeting enhanced post 2001 Florida Building Code requirements); roof deck attachment; roof-wall connection; opening protection; number of stories; and roof covering type (Tile and non-tile). Eleven secondary factors are also considered.

Because the home's construction, location, and surrounding terrain are considered in the final rating, a score rendered by the scale can be interpreted consistently across the state regardless of wind zone location. In more severe wind zones a home will need to have stronger construction

features to achieve a high score than a home located in a milder wind zone. Homes built compliant with the 2001 Florida Building Code (or later) will receive a score between 40 and 90, with code plus improvements and effective loss mitigation raising the score within that range.

Windstorm Mitigation Premium Credits

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-to-wall strength; wall-to-floor-to-foundation strength opening protections; and window, door, and skylight strength.

In evaluating the propriety of windstorm mitigation discounts, the OIR uses factors developed by a 2002 study on wind-resistive features of residential structures conducted by Applied Research Associates, Inc. Prior to 2007, the OIR required insurers to offer discounts as mandated by statute, but also permitted them to offer a lower discount (approximately 59 percent lower) than are indicated by the 2002 study. In response to a 2006 legislative requirement, the rule was revised to require insurers to provide the full discount as based upon the 2002 study, unless a modification is supported by a detailed alternate study.

Section 627.711, F.S., requires insurers to clearly notify an applicant or policyholder of a personal lines residential property insurance policy of the availability and range of premium discounts for wind mitigation. The notice must be provided when the policy is issued and upon each renewal. The notification must be done on a form developed by the OIR. Further, all insurers are required to use the uniform mitigation verification inspection form developed by rule by the Financial Services Commission when factoring discounts for wind insurance.

Insurance Capital Build-Up Incentive Program

In 2006, the Legislature created the Insurance Capital Build-Up Incentive Program, which provides for the lending of state funds in the form of surplus notes to new or existing authorized residential property insurers under specified conditions. The maximum dollar amount of a surplus note is set at $25 million. The surplus note is repayable to the state, with a 20 year term, at the 10-year Treasury Bond interest rate (with interest only payments the first three years).

In order to qualify for a surplus note, an insurer that applied prior to June 1, 2007 was required to contribute new capital to its surplus equal to the amount of the surplus note; an insurer applying after that date but before June 1, 2008 was limited to a surplus note equal to one-half of its new capital contribution. The insurer's surplus, new capital, and the surplus note must total at least $50 million. Additionally, the insurer must commit to meeting a minimum writing ratio of net written premium to surplus of at least 2:1 for the term of the surplus note, for residential property insurance in Florida that covers the peril of wind. Premium to surplus ratios are a measure of insurer solvency and provide a measure of the potential liabilities of an insurer in comparison with the insurer's surplus that can be used to pay those liabilities. Section 624.4095, F.S., requires property insurers to have a ratio of no more than 4 to 1 for net written premiums, or

10 to 1 for gross written premiums, as modified by a multiplier of 0.9 of the premium amount. The difference between "net written premiums" and "gross written premiums" is that gross written premiums includes premiums that are ceded via reinsurance, while net written premiums do not include premiums that are ceded via reinsurance. The lower the ratio, the more surplus an insurer has on hand to pay claims. Legislation in 2007 revised the conditions for an insurer writing a specified amount of manufactured housing residential property insurance.

The program has issued $247,500,000 in funds to thirteen qualifying insurers, according to information provided by the State Board of Administration and the Office of Insurance Regulation. These insurers contributed a combined $296,000,000 in new capital to their surplus amounts, resulting in $543,500,000 in new capital introduced into the Florida market. The thirteen companies pledged to write a total of 1,713,135 new policies pursuant to the terms of the program. As of the end of 2007, the OIR estimates that 508,304 new policies have been written. The entire legislative appropriation for the program has been utilized ($247.5 million in loans, and $2.5 million in administrative costs).

Florida Building Code and Wind-Borne-Debris Region

The Florida Building Code establishes minimum safety standards for the design and construction of buildings. The first edition of the code replaced all local codes in Florida on March 1, 2002. The Florida Building Code undergoes major updates every three years, while also being subject to amendment each year. The Florida Building Commission is charged with updating and amending the Florida Building Code, often by incorporating updates made to the various source building codes that constitute the Florida code. The code contains design and construction enhancements targeted at preventing hurricane damage. Enforcement of the Florida Building Code is carried out by local governments.

For protection against hurricane winds, the code requires new construction to meet the wind-borne-debris protection requirements of the International Building Code (2006) and the International Residential Code (2006) within the wind-borne-debris region (120 mph+) as defined by those codes. This does not apply to the High Velocity Hurricane Zone, for which the Florida Building Commission currently adopts stringent construction standards. This had the effect of deleting the internal pressurization option for buildings in the wind-borne-debris region. Amendments or modifications to the code that diminish provisions related to wind resistance or water intrusion are prohibited. However, the commission may amend such provisions to enhance those requirements.

III. Effect of Proposed Changes:

Insurance Capital Build-Up Incentive Program

Section 1 amends s. 215.5595, F.S., related to the Insurance Capital Build-Up Incentive Program. The bill revises the legislative findings and requirements for the Insurance Capital Build-Up Incentive Program. The basic form of the program is maintained as it will continue to offer surplus note loans to insurers of up to $25 million, repayable over 20 years at the 10-year Treasury bond rate, as approved by the State Board of Administration. In order to receive the loan, an insurer must contribute an equal amount of new capital and commit to meeting a

specified minimum premium-to-surplus writing ratio for residential policies covering windstorm (the bill revises the required ratios). Additionally, the insurer must have at least a $50 million surplus after receiving program funds.

The bill deletes provisions that limited the program to applicants in 2006 and 2007, instead requiring insurers to apply to the SBA by October 1, 2008, for funds to be provided no earlier than January 1, 2009. The changes will not affect the terms or conditions of surplus notes approved prior to January 1, 2008, but the bill allows the SBA and an insurer to renegotiate the terms of previously issued surplus notes pursuant to the amended requirements.

The bill modifies the requirements that an insurer must comply with pursuant to receiving a surplus note. The writing ratios insurers must meet are modified to allow insurers additional time to fully meet the requirement. An insurer must meet a minimum writing ratio of net written premium to surplus of at least 1:1 the first year after receiving a surplus note, 1.5:1 for the second year, and then 2:1 for the remainder of the 20-year term of the note (2:1 is the current requirement and applies to the entire term of the note). Alternatively, the insurer may choose to comply with gross written premium to surplus requirements of at least 3:1 in the first year after receiving a surplus note, 4.5:1 for the second year, and then 6:1 for the remaining term of the note.

The bill requires the insurer to commit to writing at least 15 percent of its net or gross written premium for new policies for policies taken out of Citizens during each of the first three years after receiving state funds via a surplus note. The removal of Citizens policies must result in a reduction in the probable maximum loss in the Citizens account from which the policies are removed.

The bill also requires the insurer to maintain surplus and reinsurance to cover at least its estimated 100-year probably maximum loss.

If an insurer fails to meet these requirements the SBA may change the interest rate, accelerate the repayment of interest and principal, or shorten the term of the surplus note. The bill allows the SBA to charge late fees of up to five percent for late payments or other late remittances.

The bill requires the SBA to make semiannual reports to the Legislature on the results of the program and each insurer's compliance with the terms of the surplus note.

The bill requires the SBA to transfer to Citizens uncommitted funds, interest and principal payments for surplus notes that were funded by appropriations from Citizens (See Section 16 of the bill for the $250 million appropriation from Citizens that will fund the program).

Florida Anti-Trust Act Applied to Insurance

Section 2 amends s. 542.20, F.S., known as the Florida Antitrust Act. The bill subjects the business of insurance to the Florida Antitrust Act. Enforcement of the act is limited to actions by the Attorney General or a state attorney, rather than by private lawsuit. The bill provides that application of the act does not prohibit a rating organization or advisory organization from

collecting data on claims, losses, or expenses and filing rates or advisory rates with the OIR. (See Present Situation, above, for prohibited acts and penalties, and other states' laws on this subject.)

Required Filing of Claims-Handling Practices

Section 3 amends s. 624.3161, F.S., related to market conduct examinations. The bill authorizes the OIR to require an insurer to file its claims handling practices and procedures with the OIR as a public record based on findings of a market conduct examination that the insurer has caused harm to policyholders through a pattern or practice of willfully committing an unfair insurance trade practice related to claims-handling as prohibited by s. 626.9541(1)(i), F.S. The records must be held for 36 months and such information is declared to be a public record and not a trade secret. This would apply to the practices and procedures for the line of insurance that was the subject of the market conduct exam. The legislation broadly defines claims-handling practices and procedures.

Increased Administrative Fines for Violations

Section 4 amends. s. 627.4211, F.S., related to administrative fines. The bill increases the maximum fines that may be imposed by the OIR upon an insurer for violation of the Insurance Code or any lawful rule or order, (and other specified acts specified by current law):

- Non-Willful Violations – $25,000 per violation, up to an aggregate amount of up to 1 percent of the insurer's surplus for violations arising out of the same action. Current law allows for a $2,500 fine up to an aggregate $10,000 fine for violations arising out of the same action.
- Willful Violations - $100,000 per violation, up to an aggregate amount of up to 5 percent of the insurer's surplus for violations arising out of the same action. Current law allows for a $20,000 fine up to an aggregate $100,000 fine for all willful violations arising out of the same action.

The bill authorizes the OIR to impose a fine for each day of noncompliance up to $25,000 per violation per day, beginning after the 10^{th} day of noncompliance. Fines for non-compliance and all other fines authorized by this section combined may not exceed 5 percent of the insurer's surplus. The new authority to impose fines granted by this bill is wider ranging than the authority contained in current law, which limits the fines to violations that are grounds for the suspension or revocation of an insurer's certificate of authority as specified in s. 624.418(2), F.S.

The bill specifies factors that the OIR must consider when determining the amount of the fine, as follows. In determining the amount of the fine, the bill requires the office to consider the following factors:

- The degree of consumer harm caused or potentially caused by the violation;
- Whether the violation constitutes an immediate danger to the public;
- Whether the violation is a repeat violation or similar to past violations by the insurers;
- The impact on the solvency of the insurer;
- The premium volume of the company; and
- The effect of the fine on the insurer's ability to comply with the code.

Trade Secret Documents

Section 5 creates s. 624.4213, F.S., related to trade secret documents. The bill specifies requirements for submission of a document to the OIR or the DFS in order for a person to claim that the document is a trade secret. The requirements include labeling each page or portion as a trade secret and to separate the trade secret documents from the non-trade secret material.

The bill requires the submitting party to include an affidavit certifying certain information as to the trade secret status of the documents. These requirements are in substantial conformity with the definition of "trade secret" in s. 812.081(1)(c), F.S.

The bill authorizes OIR to release a document marked as trade secret to a requestor if OIR provides the person submitting the document with 30-days notice and opportunity to obtain a court order barring disclosure.

If a court or administrative tribunal finds that the document is not a trade secret, the bill requires an award of reasonable attorney's fees to the third party requesting the documents and to the OIR or DFS against the person who certified the document as trade secret.

The bill allows the OIR or the DFS to disclose a trade secret to an employee or officer of another governmental agency whose use of the trade secret is within the scope of their employment.

Increased Administrative Fines for Unfair Insurance Trade Practices

Section 6 amends s. 626.9621, F.S., related to penalties for unfair insurance trade practices. The bill increases the maximum fines that may be imposed by the OIR or the DFS for a violation by any person of any unfair or deceptive act or practice related to insurance:

- Non-Willful Violations – $25,000 per violation, up to an aggregate amount of up to 1 percent of the insurer's surplus for violations arising out of the same action. Current law allows for a $2,500 fine up to an aggregate $10,000 fine for violations arising out of the same action. (The aggregate cap applies only to an insurer.)
- Willful Violations - $100,000 per violation, up to an aggregate amount of up to 5 percent of the insurer's surplus for violations arising out of the same action. Current law allows for a $20,000 fine up to an aggregate $100,000 fine for all willful violations arising out of the same action. (The aggregate cap applies only to an insurer.)

New Unfair Insurance Trade Practices Related to Claims Handling

Section 7 amends s. 626.9541, related to unfair insurance trade practices. The bill adds the following prohibited practices.

- Prohibits an insurer considering age, race, income level, education, credit score, or any other personal characteristic of a policyholder when evaluating or adjusting a property insurance claim.

- Prohibits an insurer from failing to pay undisputed amounts of partial or full benefits owed under first-party property insurance polices within 90 days after determining the amount and agreeing to coverage.

Violations of these provisions would be grounds for a private civil remedy action, due to the cross-reference in current s. 624.155, F.S.

Changes to Insurance Rating Law

Section 8 amends s. 627.062, F.S., related to the rating law for property and casualty insurance.

Repeal of "Use and File" - The bill repeals the "use and file" option for property insurance rate increases, thereby requiring that an insurer make a "file and use" filing that prohibits an insurer from increasing its rates prior to approval by the OIR (or unless deemed approved by failure of the OIR to issue a notice of intent to disapprove within 90 days). Current law prohibits "use and file" rate increases until January 1, 2009.

The prohibition applies only to property insurance rate increases. The "use and file" option would continue to be allowed for rate decreases, as well as for rate increases for casualty insurance lines subject to this section, such as general liability, professional liability, medical malpractice, boiler and machinery, credit insurance and, as defined for this purpose, commercial motor vehicle collision and comprehensive coverage.

Repeal of Arbitration - Repeals the option for an insurer, for any property and casualty insurance rate filing, to appeal a rate filing disapproved by OIR to an arbitration panel in lieu of an administrative hearing. Current law prohibits use of arbitration until January 1, 2009.

Use of Approved Hurricane Loss Models - The bill requires that projected hurricane losses must be estimated using a model or method found to be accurate or reliable by the Florida Commission on Hurricane Loss Projection Methodology (as further provided in s. 627.0628, F.S., as amended in Section 10).

OIR May Not Find Rate Excessive Due to Covering 250-Year PML - The bill prohibits the OIR from disapproving a rate as excessive solely because the insurer obtained reinsurance to cover its estimated 250-year probably maximum loss or any lower level of loss.

OIR Disapproval of Rates Based on Non-Renewals - The bill provides an exception to the current law that prohibits the OIR from disapproving as excessive a rate within one year after the rate has been approved, if the OIR determines that the insurer has nonrenewed a number or percentage of policies that may result in the insurer having an excessive rate.

Additions to Certification Requirements for Rate Filings - The bill adds requirements for an officer and chief actuary of a property insurer to certify certain information as part of a rate filing by:

- Requiring the officials to certify that the actuary has reviewed the OIR indications used in approving the insurer's last rate filing and has identified factors in the current filing that are inconsistent with factors previously used by the OIR.
- Requiring the officials to certify the number of policies that the insurer intends to nonrenew and that the rate filing reflects the reduced risk of loss.

Expedited Administrative Hearing Process for Rate Filings - The bill provides an expedited hearing process for insurance rate filings as follows.

- Requires the Division of Administrative Hearings (DOAH) to hold a hearing within 30 days after the request for the hearing. Currently, there is no requirement regarding the time period by which a hearing must be held. Representatives from the DOAH indicate that generally the DOAH attempts to hold the hearing within 90 days of the request.
- The hearing officer must issue the recommended order within 30 days after the hearing or after receipt of the hearing transcript.
- Parties must submit written exceptions to the recommended order within ten days. Current law provides 15 days.
- The OIR must enter a final order within 30 days after the entry of the recommended order. Current law provides 90 days.
- Upon entry of a final order, the insurer may request an expedited appellate review in the First District Court of Appeal. The bill states it is the intent of the Legislature that the request for expedited appellate review be granted.

The expedited administrative hearing process created by the bill is modeled on the current law for bid protests in s. 120.57(3)(e), F.S.

Continuance of Hearing if New Evidence Offered – Requires an administrative law judge to grant at least a 30-day continuance if an insurer or the OIR offers evidence that was not made available to the other party prior to the OIR's issuance of a notice of intent to disapprove the rate filing.

Technical Change

Section 9 makes a technical change to s. 627.0613, F.S., related to the repeal of the arbitration option for rate filings in Section 8 of the bill.

Required Use of Models Approved by Florida Commission on Hurricane Loss Projection Methodology

Section 10 amends s. 627.0628, F.S., related to the Florida Commission on Hurricane Loss Projection Methodology. The bill requires that for purposes of a rate filing and in determining probable maximum loss levels for reinsurance costs used in a rate filing, insurers must use, and may not modify or adjust, a model or method found to be accurate or reliable by the Commission on Hurricane Loss Projection Methodology. The bill deletes the requirement in current law that in order for an approved model to be admissible and relevant, the OIR must have access to all of the assumptions and factors used in developing the model.

Windstorm Mitigation Premium Credits Tied to Uniform Home Rating Scale

Section 11 amends s. 627.0629, F.S., related to windstorm mitigation credits. The bill requires the OIR to develop, by February 1, 2009, a proposed method for insurers to establish windstorm mitigation premium credits (discounts) that correlate to the numerical rating of a structure pursuant to the uniform home rating scale. By October 1, 2009, the Financial Services Commission must adopt rules requiring insurers to make rate filings for residential property insurance which revise insurers' mitigation discounts to directly correspond with the uniform home grading scale. The rules may include changes to the uniform home grading scale that the commission determines are necessary, and may specify the minimum required discounts. However, the discounts must be consistent with generally accepted actuarial principles and wind loss mitigation studies. The rules must also allow property owners at least two years after the effective date of the revised credits for a property owner to obtain an inspection or otherwise qualify for the revised credit, during which time the insurer must continue to apply the old mitigation credit.

Citizens Property Insurance Corporation

Section 12 amends s. 627.351, F.S., related to Citizens Property Insurance Corporation.

Extension of Rate Freeze; Limit on Future Rate Increases - The bill extends the prohibition on increasing rates in Citizens from January 1, 2009, to July 1, 2009. Current rates have been frozen since January 1, 2007. The bill requires Citizens to make an annual rate filing for each personal and commercial line of business it writes, beginning on January 1, 2009, to be effective no earlier than July 1, 2009. For the 36-month period beginning with the effective date(s) of the 2009 rate filings, the maximum average statewide Citizens' rate increase in any year, and the maximum rate increase for any single policyholder, is limited to:

- Five percent (or ten percent for wind-only policies) for the first 12-month period.
- Ten percent for the second and third 12-month periods.

Deletion of Current Assessment Requirements for Deficits - The bill deletes the assessment requirements that begin in 2008, for funding a deficit in each of Citizens' three accounts (HRA, PLA, and CLA), that currently requires:

- An immediate assessment of up to 10 percent of premium against all Citizens' nonhomestead policyholders (as defined).
- If this is insufficient, an additional assessment of up to 10 percent of premium against all Citizens' policyholders (including nonhomestead), collected upon issuance or renewal of a policy.
- If this is insufficient, a regular assessment against insurers which may be recouped from their policyholders, of up to 10 percent of premium for most lines of property and casualty insurance, or 10 percent of the deficit, whichever is greater.
- Any remaining deficit is funded by a bond issue, funded by multi-year emergency assessments on policyholders of most types of property and casualty insurance, of up to ten percent of premium, or 10 percent of the deficit, whichever is greater.

- If a regular assessment is imposed under 3), above, Citizens must make a rate filing to impose a surcharge on Citizens policyholders equal to the average percentage regular assessment imposed on insurers (and recouped from non-Citizens policyholders).

The definition of "homestead property" and the requirement for Citizens to account separately for homestead property are deleted, as they are not relevant to determining assessments or any other purpose under the bill.

Adoption of New Assessment Requirements for Citizens - The bill revises the required assessments to fund a deficit in each of Citizens' three accounts (HRA, PLA, and CLA) to:

- Require up to a ten percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal.
- If this is insufficient, a regular assessment against insurers which may be recouped from their policyholders, of up to eight percent (rather than ten percent) of premium for most lines of property and casualty insurance or eight percent of the deficit, whichever is greater.
- Any remaining deficit is funded by a bond issue, funded by multi-year emergency assessments on policyholders on most types of property and casualty insurance, of up to ten percent of premium for most lines of property and casualty insurance, or ten percent of the deficit, whichever is greater.

The bill allows the board of Citizens the discretion to apply the amount of any assessment or surcharge which exceeds the amount of the deficit to various business purposes.

Prohibition on Issuing New Wind-Only Policies - The bill prohibits Citizens from issuing new wind-only policies, effective July 1, 2008. Citizens may continue to renew wind-only polices in effect on July 1, 2008, subject to the right under current law of the policyholder to elect multi-peril coverage. This is expected to improve the financial status of Citizens, by enabling it to receive additional premium for the predictable non-wind risk, if it is also insuring wind losses. Even though the law would continue to allow insurers in the voluntary market to issue policies without windstorm coverage for properties in the HRA territory (s. 627.712(1), F.S.), as a practical matter this could no longer be done after July 1, 2008, since the policyholder could not get a wind-only policy from Citizens. This does not affect the requirement enacted in 2007 for insurers to offer all property insurance policyholders in the state the option to exclude windstorm coverage, subject to agreement by the mortgage holder, (s. 627.712, F.S.). The bill deletes outdated language requiring Citizens to submit a report and obtain approval to offer multi-peril coverage.

Eligibility for Homes Valued Over $1 million - The bill deletes the provision that makes homes (personal lines residential structures) with a dwelling replacement cost of $1 million or more ineligible for coverage, effective January 1, 2009.

Required Opening Protections - Effective January 1, 2011, requires homes (personal lines residential structures) located in the wind-borne-debris region with an insured value of $500,000 or more to have opening protections as required under the Florida Building Code for new construction. A home with opening protections on all openings is in compliance with this requirement if it met the requirements of the Florida Building Code at the time they were

installed. (Current law applies these requirements to homes in the wind-borne-debris region with an insured value of $750,000 or more, effective January 1, 2009.)

Deletes Forced Purchase of Bonds - The bill deletes the current law requiring insurers to purchase bonds that remain unsold for 60 days.

Notice to Policyholder of Takeout Offer - The bill requires Citizens to make its database of policies available to prospective take-out insurers under certain conditions and requires Citizens to notify the policyholder if an insurer selected his or her policy for a take-out offer but the policyholder's agent refused to be appointed.

Increased Notice of Nonrenewal

Section 13 amends s. 627.4133, F.S., to increase the required notice of nonrenewal of a personal or commercial residential insurance policy from 100 days to 180 days.

Required Disclosure of Windstorm Mitigation Rating Upon Sale of Home

Section 14 creates s. 689.262, F.S., related to required disclosure of windstorm mitigation rating upon sale of a home. Effective January 1, 2011, the bill requires that a purchaser of residential property be informed of the windstorm mitigation rating of the structure based on the Uniform Home Grading Scale. The windstorm mitigation rating must be included either in the contract for sale, or as a separate document attached to the contract. The Financial Services Commission is authorized to adopt rules to administer this section, including the form of the disclosure and the requirements for the windstorm mitigation inspection or report that is required.

Criminal Penalties for Materially False Rate Filings

Section 15 amends s. 817.2341, F.S., related to criminal penalties for false or misleading statements or documents. The bill makes it a third degree felony to willfully file a materially false or misleading rate filing with the intent to deceive with knowledge that it is materially false or misleading (as current law provides for filing materially false or misleading financial statements or documents required by law or rule).

Appropriation from Citizens for Capital Build-Up Program

Section 16 requires Citizens to transfer $250 million to the General Revenue Fund for transfer to the SBA to fund the Capital Build-Up Incentive Program. The funds must be transferred from the personal lines account and the commercial lines account of Citizens on December 15, 2008, unless one or more hurricanes resulted in total losses in those accounts in excess of $750 million. The potential appropriation would not impact the high risk account, which is subject to much greater probability of loss than the other two Citizens accounts. It is unlikely that Citizens will know with certainty its total losses before December 15, 2008, so the bill requires the Citizens board of governors to make a reasonable estimate of losses no earlier than December 1, 2008, and no later than December 14, 2008. The bill limits costs of administration by the SBA to 1 percent of the amounts appropriated ($2.5 million). The unexpended balance shall revert to the General Revenue Fund on June 30, 2009. (See Section 1 of the bill which requires the SBA to

refund to Citizens uncommitted funds, interest and principal payments for surplus notes that were funded by appropriations from Citizens.)

Effective Date

Section 17 provides that the bill is effective upon becoming law, except as otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Fines and Penalties

Increasing the maximum fines against insurers for violations of the Insurance Code or persons who commit unfair insurance trade practices, and creating felony penalties for certain other practices, may prevent harm to Florida's insurance consumers and increase compliance with the Insurance Code. Insurers and other persons would be subject to additional administrative fines or criminal prosecution for such violations, which may result in more litigation and costs for all parties (private and public).

Rating Law

Changes such as repealing "use and "file," repealing arbitration and additional rate certification requirements, may make it less likely that an insurer will be able to increase rates without OIR approval. This would provide greater protection to consumers from increased rates, but may also discourage insurers from committing capital to the Florida property insurance market and act to increase policies and risk assumed by Citizens.

Unfair Trade Practices; Claims Handling

The new prohibited practices related to claims handling may result in more prompt payments of amounts owed for property insurance claims, to the benefit of policyholders. This may also result in increased litigation due to triggering a civil remedy action or result in overpayment of claims to avoid litigation.

Citizens

Continuing the rate freeze in Citizens until July 1, 2009 (under current law the rate freeze expires January 1, 2009), and limiting rate increases for the following three years, protects policyholders of Citizens from rate increases, but exposes Citizens policyholders and all policyholders of most lines of property and casualty insurance to increased assessments following a major hurricane. It also acts to make Citizens rates increasingly more competitive with, or lower than, rates charged in the voluntary market, making it likely that Citizens will continue to increase its writings and make it more difficult for the private market to do so.

The revision to the method for assessments to fund deficits will benefit Citizens policyholders, by providing for a single 10 percent of surcharge assessment, upon renewal or issuance of a policy for each of the three accounts, which could be up to 30 percent, rather than the multiple assessments under current law that may be as much as 90 percent. This will also benefit Citizens itself, by not being required to immediately issue mid-term assessment notices to non-homestead policyholders and dealing with problems of uncollectability and cancellation of policies for non-payment. Conversely, all property and casualty insurance policyholders in the voluntary market will be subject to increased potential assessments.

The reduction in the maximum regular assessment from 10 percent to 8 percent of premium will benefit property and casualty insurers who will be relieved of this portion of an assessment, which must be paid within 30 days or 12 months, depending on the classification of the insurer. This will also act to limit the amount that is recouped by such insurers from their policyholders in the first rate filing to recoup this assessment, subject to increased emergency assessments in subsequent years.

Citizens reports that the change in the assessments will not impair its ability to pay claims.

The prohibition on Citizens issuing new wind-only coverage is expected to be financially beneficial to Citizens by providing additional premium for the more predictable non-wind risk, without increasing its risk for windstorm losses. This would operate to benefit all property and casualty policyholders in the state by mitigating assessments to both Citizens and voluntary market policyholders. This may also lessen the number of policies that are nonrenewed in the voluntary market and encourage insurers to write new coverage that includes windstorm, because the insurer will be required to either provide full coverage or no coverage at all, no longer having the option of issuing non-wind coverage. From the perspective of a new Citizens policyholder after July 1, this might

result in a higher rate, if the premium for the multi-peril coverage with Citizens is greater than the combined premium for the non-wind coverage with the private insurer and the wind coverage with Citizens. Since the bill would continue to require Citizens to offer wind-only coverage on renewal, this will not affect current policyholders and will not have a significant impact on insurers in the voluntary market. As homes are sold and new policies are written, this will have an increasingly bigger impact on Citizens and the voluntary market.

Owners of homes valued over one million dollars will benefit by being able to continue coverage in Citizens. The impact to Citizens is unknown, since these homes do not necessarily result in greater net losses (or net profits) to Citizens, compared to lower value homes. However, these homes act to increase the estimated probable maximum loss which affects the cost for reinsurance.

Windstorm Mitigation

Owners of homes with an insured value of $500,000 or more located in the wind-borne debris region must add shutters and opening protections as a condition of obtaining coverage in Citizens, effective January 1, 2011. This will add costs but would reduce potential windstorm damage and achieve a substantial premium credit. Shutter cost estimates[28] vary from about $6 per square foot for steel panels to about $60 per square foot for impact resistant windows. Aluminum panels have become a popular low-cost metal panel option and are estimated at $9 to $16, professionally installed. On average, the window area (including doors with windows) to be shuttered is about 15 percent of the home's total square feet. Using an estimate of $13 per sq. ft for the cost of the shutters (about the midpoint of the aluminum panel option, professionally installed), the cost is estimated at $6,435 for a home of 3,300 sq. ft., assuming that is a reasonable size for a $500,000 home. Based on other estimates obtained by staff, the cost of hardening a non-shuttered door by adding a second deadbolt and stronger hinges, is estimated to be $150 and the cost of bracing a window-less garage door is estimated to be $350.

Examples of the premium discounts for a $500,000 policy for a home with opening protections were provided by Citizens. The annual premium savings ranged from $2,403 to $2,632 in Broward Co., from $2,243 to $2,647 in Palm Beach Co., $1,347 to $1,589 in Bay Co., $2,489 to $2,938 in Miami-Dade Co., and $808 to $911 in Hillsborough Co. These examples are for a 20-year old home, masonry structure, with a 2 percent hurricane deductible, and the ranges are dependent on distance from coast and whether or not the roof covering meets the Florida Building Code.

Using the uniform home grading scale to determine hurricane mitigation credits may create more consistency and uniformity in how mitigation credits are provided by insurers, and greater understanding by policyholders and insurance agents.

[28] Obtained from Dr. Tim Reinhold, a nationally known wind engineer and professor of civil engineering at Clemson University and Director of Engineering & Vice President of the Institute for Business & Home Safety.

Insurance Capital Build-Up Incentive Program

The revised provisions of the program should result in greater numbers of policies written in the private market and fewer policies written in Citizens, which would reduce risks of assessments to all property and casualty insurance policyholders.

C. Government Sector Impact:

Fines and Penalties

The bill would provide the office and department with enhanced enforcement ability through the imposition of these additional administrative fines. Revenues attributable to these additional fines may result in increased revenues to the Insurance Regulatory Trust Fund. This amount is indeterminate.

Citizens

The impact to Citizens (a governmental entity) is described in Private Sector, above.

Windstorm Mitigation

The bill requires the OIR, in consultation with the DFS and the DCA, to develop a means by which hurricane mitigation discounts directly correlate with the uniform home grading scale. This requirement may require additional funding and builds upon funds appropriated to the OIR in October 2007. Specific Appropriation 554A of ch. 2007-326, L.O.F., provided $700,000 from the Insurance Regulatory Trust Fund to the OIR, in consultation with the Department of Community Affairs and the Florida Building Commission, for a residential wind loss mitigation study evaluating the windstorm loss relativities for construction features.

Insurance Capital Build-Up Incentive Program

The bill requires Citizens to transfer $250 million to the General Revenue Fund for transfer to the SBA to fund the Capital Build-Up Incentive Program. The funds must be transferred from the personal lines account and the commercial lines account of Citizens on December 15, 2008, unless one or more hurricanes resulted in total losses in those accounts in excess of $750 million. The bill changes the conditions for an insurer to access state funds from this program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by General Government Appropriations on April 8, 2008:

The committee substitute:

- Revises the provisions on the Insurance Capital Build-Up Incentive Program:
  - Appropriates $250 million from Citizens for the program, unless there are $750 million of hurricane losses in 2008 in the personal lines account and the commercial lines account.
  - Requires the State Board of Administration (SBA) to transfer to Citizens uncommitted funds and interest and principal payments for surplus notes, that were funded by appropriations from Citizens.
  - Reduces the required percentage of policies taken out of Citizens from one-third to 15 percent of the insurer's premiums for new policies for each of the first 3 years; and adds the requirement for a reduction in the probable maximum loss in the account from which the policies are removed.
  - Adds the requirement that the insurer must maintain surplus and reinsurance to cover its 100-year probable maximum loss.
  - Requires insurers applying for funds to apply to the SBA b y October 1, 2008.
  - Requires the SBA to make semiannual reports to the Legislature on the results of the program and each insurer's compliance with the terms of its surplus note.
- Limits enforcement of the Antitrust Act to actions by the Attorney General or a state attorney, as applied to the business of insurance.
- Limits the authority for the OIR to order an insurer to file its claims handling practices and procedures as a public record to a finding that the insurer had a pattern or practice of willful violations of an unfair insurance trade practice related to claims-handling causing harm to policyholders.
- Limits the aggregate cap on administrative fines against an insurer to one percent of the insurer's surplus for all non-willful violations arising out of the same action and to five percent of the insurer's surplus for all willful violations arising out of the same action. (Applies separately to fines for violations of the Insurance Code, rule or order, and to fines for violations of the Unfair Insurance Trade Practices Act, which could double this cap.)
- Authorizes the OIR to release a document marked as a trade secret, upon request, if the OIR provides the insurer with 30-days notice and an opportunity to obtain a court order barring disclosure.
- Deletes the provision making it a violation of the Insurance Code for a person to mark a document as a trade secret if the person knew or should have know that the document was a trade secret.
- Expands the liability for attorneys' fees against a person who marks a document as a trade secret, to cover fees of both the OIR and the third party requesting the document, if a court finds the document is not a trade secret.

- Increases the required notice of nonrenewal from 100 days to 180 days for a personal or commercial residential policy.
- Deletes the requirement for an insurer to obtain approval from the OIR of a plan to nonrenew more than 10,000 policies in a 12-month period.
- Deletes the unfair trade practice added by the bill that prohibits an insurer from failing to promptly provide an estimate of damage and a good faith explanation of the insurer's evaluation.
- Prohibits the OIR from disapproving a rate as excessive solely because the insurer obtained reinsurance to cover its estimated 250-year PML or a lower amount.
- Deletes the limits on the costs of reinsurance that may be approved by the OIR in a rate filing.
- Reinstates the current-law requirement for the OIR to approve a reasonable profit commensurate with the risk for covering un-reinsured hurricane losses.
- Deletes the prohibition against the admission of evidence in an administrative or legal proceeding on a rate filing, after the OIR issues a notice of intent to disapprove.
- Creates an expedited administrative hearing process for insurance rate filings.
- Requires an administrative law judge to grant a continuance of at least 30 days, upon request, if the insurer or the OIR presents new evidence that was not made available to the other party prior to the OIR's issuance of a notice of intent to disapprove the rate filing.
- Revises the rate freeze for Citizens, to extend the rate freeze from January 1, 2008, to July 1, 2009, rather than until (no earlier than) January 1, 2010.
- Requires Citizens to make recommended annual, actuarially sound rate filings, beginning January 15, 2009 and limits annual rate increases to five percent for the first 12 months (or ten percent for wind-only policies), ten percent for the second 12-month period, and ten percent for the third 12-month period.
- Deletes the provision added by the bill requiring policies to be guaranteed renewable for at least three years if the dwelling meets the wind-borne debris protection requirements of the Florida Building Code.
- Deletes the criminal felony penalty added by the bill for attempting to corruptly influence or obstruct the lawful regulation of the business of insurance.

CS by Banking and Insurance on March 25, 2008:

The original filed bill deals solely with the issue of increasing the maximum fines that may be imposed by the OIR or the DFS against an insurer that violates the Insurance Code or a person who violates the Unfair Insurance Trade Practices Act. The committee substitute adds all other provisions.

B. Amendments:

None.