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/SB 2044
INTRODUCER:	General Government Appropriations Committee, Banking and Insurance Committee, and Senator Richter
SUBJECT:	Property Insurance
DATE:	April 13, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich/Burgess	Burgess	BI	**Fav/CS**
2.	Frederick	DeLoach	GA	**Fav/CS**
3.			RC	
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 numerous changes to the laws related to property insurance, primarily residential property insurance. The bill addresses the following primary issues:

- Directs the Office of Insurance Regulation (OIR) to develop a comprehensive insurance website to provide information that will assist consumers in making informed purchases of homeowners' insurance and authorizes an appropriation;
- Increases the minimum surplus requirements for residential property insurers to $15 million;
- Specifies that the Consumer Advocate's annual report card be prepared by June 1, 2012, and objectively grade insurance companies;
- Allows insurers offering personal lines property insurance to provide written notice of policy changes to their policyholders without having to non-renew an entire insurance policy due to a change in policy terms;
- Expands the expedited rate filing procedure for property insurers to include a rate adjustment for reinsurance costs, financing products, and an applicable inflation trend factor capped at ten percent per policyholder;

- Extends by two years, to December 1, 2012, the requirement to reduce the boundaries of the Citizens' High Risk Account (wind-only coverages) if the probable maximum loss is not reduced at least 25 percent from the benchmark;
- Allows an insurer seeking to take policies out of Citizens to do so in 45 days;
- Revises procedures for insurers and policyholders relating to standards for sinkhole insurance claim investigations and repairs and revises the selection and qualifications of a neutral evaluator as to sinkhole disputes;
- Provides changes to the procedures pertaining to sinkhole reports by professional engineers or professional geologists and repeals the sinkhole database;
- Prohibits mitigation inspectors from committing misconduct in performing hurricane inspections of homes or providing false information on inspection forms;
- Authorizes OIR to monitor insurer funds going to affiliates when an insurer's surplus falls below specified levels;
- Modifies current replacement cost coverage and actual cash value provisions relating to dwellings and personal property;
- Clarifies the ethics requirements for specified board members of the Citizens Property Insurance Corp. and provides that Board members abstain from voting under certain circumstances;
- Repeals the provision requiring the OIR to develop a method correlating mitigation discounts to the uniform home grading scale;
- Extends the current prohibition on "use and file" rate filings until December 31, 2012;
- Requires the Department of Financial Services to prepare information for consumers relating to the mediation process;
- Allows an insurer to cancel or nonrenew a property insurance policy upon a minimum of 45 days' notice based on a finding that the insurer lacks adequate reinsurance coverage for hurricane risk and other financial factors; and
- Extends the exemption of medical malpractice insurance premiums from Florida Hurricane Catastrophe Fund (FHCF) emergency assessments by three years, from May 31, 2010, to May 31, 2013.

This bill substantially amends the following sections of the Florida Statutes: 215.555, 624.408, 624.4085, 624.4095, 626.7452, 626.9744, 627.0613, 627.062, 627.0629, 627.351, 627.4133, 627.41341, 627.7011, 627.7015, 627.707, 627.7072, 627.7073, 627.7074, and 627.711. The bill creates the following section of the Florida Statutes: 628.252. The bill repeals the following section of the Florida Statutes: 627.7065.

II. Present Situation:

Florida's Rating Law

Section 627.062, F.S., specifies the rate filing process for property and casualty insurers and provides rating standards for these insurers. Currently, property insurers are prohibited from using the "use and file" option for filing rate increases with the OIF until December 31, 2010.[1] Instead, insurers must use the "file and use" rate filing procedure, which prohibits insurers from

[1] Section 626.062(2), F.S. The use and file option is allowed for rate *decreases*, as well as for rate *increases* for casualty insurance lines subject to this section, such as general and professional liability, medical malpractice, boiler and machinery, credit insurance as well as motor vehicle collision and comprehensive coverages.

increasing their rates prior to approval by the OIR, unless deemed approved by failure of the OIR to issue a notice of intent to disapprove within 90 days. Prior to 2007,[2] property and casualty insurers filing rates for approval with the OIR had the option of utilizing either of the two procedures: "file and use" or "use and file." Under the use and file option, insurers could file their rates 30 days *after* the rate filing was implemented. With this option, insurers could implement the filing prior to approval, but may be ordered by the OIR to refund to the policyholder that portion of the rate found to be excessive.

Legislation enacted in 2009 allows insurers to make a separate expedited rate filing with the OIR for residential property insurance, which is exempt from the rate filing requirements otherwise applicable under s. 627.062, F.S.[3] The provision (s. 627.062(2)(k), F.S.) is limited to allowing adjustments to rates for reinsurance or financing costs related to the purchase of reinsurance or financing products to replace or finance the payment of the amount covered by the Florida Hurricane Catastrophe Fund's temporary increase in coverage limit (TICL) layer. This includes replacement reinsurance for the TICL reductions, as well as the cash build-up factor and the increase in the price for the remaining TICL layers.[4] All costs contained in the filing are capped at ten percent per policyholder. However, financing products such as a liquidity instrument or line of credit cannot result in an overall premium increase exceeding three percent. The law also provides that insurers purchasing this reinsurance do so at a price no higher than would be paid in an arms-length transaction. An insurer may make only one filing under this provision in any 12-month period.

As of February 24, 2010, 17 different insurers made various filings under the separate expedited rate filing provision, some making multiple filings for different types of coverages, i.e., mobile home, multi-peril; homeowners, multi-peril; and rental, fire. Of these companies, 15 were approved by the OIR, one filing is pending, and one insurer withdrew its filing. Almost all insurers that filed under this provision obtained OIR approval for all, or for more than, the amount sought in their initial rate filings. Most insurers withdrew their filings at least once and refiled before receiving final approval. The approval time by the OIR ranged from 14 to 128 days from the initial filing to final approval. Most insurers obtained final approval between 40 and 80 days following their initial filing.

[2] During the 2007 Special Session A (Ch. 2007-1, L.O.F.), the Legislature required property and casualty insurers, through December 31, 2008, to utilize only the file and use procedure to implement a rate change if the rate was greater than the rate most recently approved by the OIR. 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 (Ch. 2007-90, L.O.F), legislation was enacted limiting the applicability of the file and use provision to property (as opposed to casualty) insurance. In 2008 (Ch. 2008-66, L.O.F.), the Legislature extended the prohibition on the use and file option to December 31, 2009, and in 2009 (Ch. 2009-87, L.O.F.), the Legislature extended the prohibition to December 31, 2010.

[3] Ch. 2009-87, L.O.F. The OIR has 45 days after the date of the filing to review it and determine if the rate is excessive, inadequate, or unfairly discriminatory.

[4] The TICL or Temporary Increase in Coverage Limit Options allows residential property insurers to purchase additional reinsurance *above* the FHCF's mandatory coverage. The 2009 legislation also authorized the FHCF to implement a "cash build up" factor which would increase the reimbursement premiums that the Fund charges property insurers for the mandatory layer of coverage provided by the fund. The cash build up factor is based on a 5 percent annual increase which will be phased in over a 5-year period, at which time the increase will be 25 percent.

Insurer Surplus Requirements

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

The current surplus and capital requirements for property and casualty insurers have not been changed since 1993.[5] Surplus is the reserves an insurer has available to pay claims and is a critical component in measuring the financial strength of a company.[6] It is the financial cushion that protects policyholders in case of unexpectedly high claims. According to OIR officials, in the past 17 years, circumstances have changed and costs have increased, particularly for residential property insurers, such that increased minimum surplus requirements are necessary. For example, in 2009, the rating agency A.M. Best downgraded nine insurers that sell homeowners insurance in Florida, and Demotech, a company that rates some of the smaller domestic Florida insurers, withdrew its rating from six insurers.[7] Two such insurers were ordered into receivership.[8]

The office has found that the current level of surplus is not sufficient to support the business plan of a residential property insurer in Florida and has cited several reasons for this position.

- Reinsurance costs continue to rise. The rates charged by reinsurers have increased and the amount of reinsurance being purchased by most insurance companies has also increased. Reinsurance costs vary from insurer to insurer, but currently average at least 30 percent of an insurer's written premium, and in many cases reach 50 percent. The prices reinsurers charge Florida companies change yearly, based on general worldwide losses and capital costs, as well as Florida losses. The reinsurance rates cannot be regulated by the OIR and are discretionary.
- Changes to the Florida Hurricane Catastrophe Fund (FHCF) have resulted in increases in reinsurance costs to residential property insurers in Florida because insurers will need to purchase more reinsurance from the private market. Since 2007, such insurers have had the option of purchasing coverage from the FHCF above its mandatory layer. This coverage is referred to as TICL coverage. The amount of such coverage available for insurers to purchase decreases each year and is currently scheduled to be phased out over the next five years.[9] Reinsurance purchased by insurers from the FHCF is considerably less expensive than private market reinsurance. As TICL coverage is replaced with coverage from the private market, reinsurance costs to insurers will increase. Also, the cost of coverage in the FHCF's mandatory layer is increasing by five percent per year under the "cash build-up" factor. This provision is intended to ensure that the FHCF will have the funds necessary to pay losses when they arise.

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

- Non-catastrophe losses are increasing. Even in years with no hurricanes in Florida, property writers are experiencing increased losses. This may be attributable to some extent to the current economy. Also, fraudulent or inflated claims are being filed and are expected to increase in times of stressed economic conditions.

In addition to the total surplus amount required by statute, an insurer must also meet specific requirements for its ratios of gross written premium to surplus and net written premiums to surplus.[10] A company's calculated gross written premium is not allowed to exceed 10 times its surplus as to policyholders; the calculated net written premium may not exceed 4 times its surplus as to policyholders.[11] If a company's premiums exceed either of these ratios, the OIR shall either suspend the insurer's certificate or establish by order the insurers gross or net written premiums, unless the insurer demonstrates to OIR's satisfaction that exceeding the statutory ratios does not endanger the financial condition of the insurer or the interests of the policyholders.

Risk-Based Capital Requirements for Insurers

A risk-based capital (RBC) system provides a capital adequacy standard for insurers that is related to risk, raises a safety net for insurers, and provides the regulatory authority for timely action. A separate RBC formula exists for each of the primary insurance types: life, property and casualty and health. At its core, the RBC system is a method of financial review of insurance companies which measures the minimum amount of capital necessary to support an insurer's overall business operations, given the size and risk profile of the company.

Under Florida law, insurers are subject to annual reporting and disclosure requirements to the OIR of their RBC levels.[12] Insurers must seek to maintain capital above the required RBC levels. A property and casualty insurer's RBC is determined in accordance with a formula which takes into account four types of risk: (1) asset risk; (2) credit risk ; (3) underwriting risk; and (4) any other business or other relevant risk. The OIR uses the RBC reports solely for monitoring the solvency of insurers and assessing the need for corrective action with respect to insurers.

In recent months, the OIR has reviewed the amounts paid by insurance companies to related or affiliated parties including Managing General Agencies (MGAs). Insurers typically pay MGAs to do some of the policyholder services, e.g., policy processing, issuing policies and endorsements. While it is permissible under Florida law for an insurer to operate as part of a group of companies and to pay fees to other members of the group, those fees are required by current rule[13] and statute to be reasonable in relation to the services provided by the other companies in the group. The cost of those services should be paid by the insurer to the MGA. In some instances, however, the OIR has found insurers paying MGAs substantially more than the cost of services and the investors are receiving dividends not from insurer profit, but from the MGA fees. In these cases, the MGAs are being paid so much that the insurance companies show losses but the MGA or holding company makes profits at the expense of the insurance company,

[10] S. 624.4095, F.S.

[11] S. 624.4095, F.S., specifies that for property insurers, the calculated premium is the product of 0.90 times the actual or projected premium.

[12] Section 624.4085, F.S. "Risk-based capital level" means an insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital, or mandatory control level risk-based capital.

[13] Rule 69O-143.047, F.A.C.

according to OIR officials. A possible result could be that after the investors receive a profit through a dividend distribution, if a major storm occurs, that same company may not have sufficient surplus or reserves to pay policyholder' claims. In such an event, FIGA[14] could be required to pay those claims, which in turn are paid in the form of assessments of all policyholders.

The OIR has the current authority to disapprove these agreements under the RBC law and related rule, but the office has found instances in which it did not know of the full effect of the payments until long after the funds were paid. Proponents of this legislation state that the amendment strengthening the RBC law will aid the OIR in its regulation of insurer solvency.

Change of Policy Terms In Insurance Policies

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

The process of non-renewing an entire insurance policy due a change in a policy term, and subsequently offering coverage to the policyholder, has caused confusion to policyholders. The proposed legislation seeks to remedy this problem by allowing insurers to change a term or terms contained in a personal lines insurance policy without nonrenewing the entire policy so long as proper notice is provided to the policyholder.

Replacement Cost Insurance Coverage

There are two basic ways that property insurance losses can be adjusted: replacement cost value (RCV) or actual cash value (ACV), which is the depreciated value of the property being replaced or repaired. Current law requires that companies issuing homeowners' insurance policies must offer policyholders an option for replacement cost coverage.[15] The law provides that if a loss is insured for replacement cost, the insurer must pay the replacement costs without holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling or property. Until 2005, under a replacement cost policy an insurer could make an initial payment based on an ACV basis and require the insured to complete the repair before the insurer paid the balance of the full replacement cost. Following the multiple hurricanes of 2004 and 2005, regulators received complaints from policyholders who were given the ACV, but could not afford to fund the balance necessary to make the repairs or replacements. As a result, these policyholders had paid premiums for replacement cost coverage, but were only being paid ACV. In 2005, the Legislature addressed this problem by requiring that for any loss sustained by a policyholder who has purchased replacement cost coverage, the insurer must pay the full replacement cost, whether or not the insured replaces or repairs the damaged property. [16] Insurers assert that the current

[14] Ch. 631, F.S., (Part II), establishes the Florida Insurance Guaranty Association or FIGA.
[15] S. 627.7011, F.S.
[16] Ch. 2005-111, L.O.F.

requirement has led to excessive, and sometimes fraudulent claims for repairs which the policyholder never intends to make.

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

Mediation of Property Insurance Claims

The DFS administers the nonadversarial alternative dispute resolution procedure for property insurance claims in Florida. Section 627.7015, F.S., directs the department to prepare a consumer information pamphlet to be used by participants. The insurer is to bear the cost of the mediation, except in certain circumstances. These circumstances include if the insurer fails to attend, it must pay the insured's expenses to attend and reschedule; and if the insurer's representative does not have authority to settle the full value of the claim, the insurer will be deemed to have failed to appear. This provision does not apply to commercial coverages, motor vehicle insurance coverages, or to disputes relating to liability coverages in property insurance policies.

According to representatives with the DFS, they conducted 2,701 mediations in 2008 and 3,911 mediations in 2009.[17] For 2008, there were 1,547 storm related mediations and 1,154 non-storm related mediations; for 2009, there were 1,526 storm related mediations and 2,385 non-storm related mediations. The great majority of the storm related mediations for both years were attributable to Hurricane Wilma issues (1,341 mediations in 2008 and 1,327 mediations in 2009). The majority of non-storm related mediations involved residential property and casualty matters for both 2008 and 2009.

Mitigation Credits, Discounts, or Other Rate Differentials

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

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 each premium discount, credit, other rate differential, or reduction in deductibles, 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. 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. The form as adopted by the commission informs the consumer of the estimated premium discount as a percentage of their premium payment, and the annual dollar amount by which the premium will be reduced.

[17] There were 10,291 mediations in 2005; 9,033 in 2006, and 4,349 in 2007.

Although the windstorm mitigation program has been beneficial for many consumers, there have been problems since the program's inception relating to fraud, the determination as to how the credits and discounts are calculated and applied, and the negative impact such a program has had on insurer performance and financial viability.[18] In order to improve the process of assessing, determining, and applying windstorm mitigation discounts, the Legislature required the Florida Hurricane Loss Projection Methodology Commission (commission) to review this issue and make recommendations to the Legislature on February 1, 2010.[19] The commission issued its report and made recommendations based on four areas of concern that is summarized below.

Rating and the Determination of Windstorm Mitigation Discounts
The commission determined that the process of assessing, determining, and applying windstorm mitigation discounts had resulted in disagreements between insurers and regulators. It found that the authority of the OIR should *not* include determining windstorm mitigation relativities and discounts and such factors should be incorporated into the hurricane computer modeling review process. Thus, the commission should determine appropriate windstorm mitigation standards and review models according to those standards. Also, mitigation features should be considered separately for the different coverages and mitigation discounts should only apply to that portion of the premium affected by the mitigation features. Finally, the commission determined that larger deductibles should be applied to wind losses if windstorm mitigation features, such as shutters, are not used at the time of a loss.

The Residential Structure Inspection Process
The commission found that in the process of re-inspecting residential structures, numerous errors were found, some of which were related to inspection fraud while others were a byproduct of the process or level or expertise of the inspector. The commission recommended that penalties should be increased to the level of a felony for conviction of fraudulent activities. It also found that the current residential structure inspection process should be replaced with an independent inspection organization that would provide oversight and administer all aspects of the inspection process.

Data Quality
The commission found that all residential structures in the state should ultimately be inspected and the results entered into a centralized database. On-line data collection systems need to be utilized that have built-in data and edit checks and re-inspections of residential structures should be conducted on a random sample basis. The uniform home grading system should be repealed since it is not feasible and presumes a level of accuracy that does not currently exist.

Hurricane Computer Modeling
The commission found that hurricane loss models should be reviewed for their ability to model windstorm mitigation relativities as applied to policies on individual residential structures. This would require an expanded role for the commission which should be tasked with developing

[18] "Windstorm Mitigation Discounts Report" by the Florida Commission on Hurricane Loss Projection Methodology.
[19] Ch. 2009-87, L.O.F. The Legislation required the Commission to hold public meetings for the purpose of receiving testimony and data regarding the implementation of windstorm mitigation discounts, credits, other rate differentials, and appropriate reductions in deductibles and to make recommendations on improving the process of assessing, determining and applying these factors.

appropriate mitigation standards. Also, the commission's process of developing standards should revert back to an annual basis which would expedite the development of the appropriate mitigation standards and the implementation of the windstorm mitigation discounts. Finally, insurers should use the same hurricane loss models to justify windstorm mitigation discounts as they do for justifying loss costs.

The commission found that their recommendations would help achieve less fraud and abuse in the system; a higher quality of data; more efficient and refined hurricane loss models; an improved and equitable rating system; a more financially sound private insurance market and a hardening of residential structures to better withstand windstorm losses.

The Florida Geological Survey and the Florida Sinkhole Database

The Florida Geological Survey (the Survey) within the Department of Environmental Protection (DEP) is the state agency responsible for identifying, tracking, and investigating mines, minerals, sinkholes, the water supply, and other natural resources in the state. The State Geologist, a registered professional geologist, is designated as the head of the Survey.

There is currently no single state agency in Florida with responsibility and authority for sinkhole inspections, although the Survey maintains a database of reported sinkholes. The database is available through the website of the Department of Environmental Protection, along with a form to be used to report suspected new sinkholes. The Survey reports that it lacks sufficient staff to visit all new sinkholes, although some of the state's water management districts have staff available to check local sinkholes, particularly if they contain water.

The sinkhole database maintained by the Survey dates to the early 1950s, but it contains only those sinkholes officially reported by observers. As a result, the Survey notes the sinkholes reported and included in the database tend to cluster in populated areas where they are readily seen and commonly affect roads and dwellings. However, numerous sinkholes also occur in more remote and less populated areas, many of which go unseen and unreported. As a result, sinkholes that formed earlier than the 1950s may still be unrecorded in the database.

Section 627.7065, F.S., enacted in 2005, creates a sinkhole information database for the purpose of tracking sinkhole claims made against property insurance policies. The Department of Financial Services (DFS) is primarily responsible for the development of this database, with input from the Department of Environmental Protection and the Florida Geological Survey.

By law, the content of the database is determined by DFS with agreement from DEP and is managed and maintained by DFS unless DFS contracts the management and maintenance to another entity. The DFS has authority to require insurers to report past and present sinkhole claims. The DEP must investigate reports of sinkhole activity and report its findings to the database. The DFS has rulemaking authority to implement rules relating to the sinkhole database.

The sinkhole database was built by DFS after the sinkhole database statute was enacted; however, DFS had difficulty obtaining sinkhole claim information voluntarily from insurance companies. Thus, administrative rules relating to the collection of sinkhole claim information for input into the database were proposed by DFS in late 2009. A proposed rule relating to the

sinkhole database was published on December 18, 2009 and a rule hearing was held on January 11, 2010.

During the rule hearing, property insurance companies presented a number of concerns about the rule to DFS. In response to the concerns raised, DFS filed a notice of change for the sinkhole database rule in March 2010. The rule, with the proposed changes, will be set for a rule workshop in the coming months with a rule hearing after the workshop is held.

Sinkhole Claims

The Legislature in 2005 and 2006 substantially amended the laws on sinkhole claims in response to a continuing crisis regarding the availability and affordability of sinkhole coverage.[20] The legislation enacted a specific process for investigation of sinkhole claims by insurance companies in accordance with standards set forth in the law, for completion and utilization of sinkhole reports in the adjusting and settling of sinkhole claims, for reporting of sinkhole claims to the county clerk of courts for recording and to future buyers of the property subject to the sinkhole claim, and for utilization of an alternative dispute procedure for resolution of sinkhole insurance claims.

Under current law, when a claim is made for sinkhole loss, the insurer must inspect the premises in question and make a determination whether there has been physical damage to a structure that may be the result of sinkhole activity.[21] Following the insurer's initial inspection, the insurer must provide written notice to the policyholder that details the insurer's initial determination, when the insurer is required to engage a professional engineer or professional geologist to perform testing, and a statement of the policyholder's right to demand certain testing to be conducted by a geologist or engineer. If the insurer is unable to determine the cause of the damage during the inspection or if the inspection reveals damage consistent with sinkhole loss, then the insurer must retain a qualified engineer or geologist to perform testing on the property. The policyholder can also demand testing if the insurer denies the sinkhole claim without performing testing.

Testing standards for sinkholes are established in s. 627.7072, F.S. The professional geologist or engineer must perform whatever tests are sufficient to determine the presence or absence of sinkhole loss within reasonable professional probability and for the engineer to make recommendations regarding any necessary building stabilization and foundation repair. Once testing is complete, s. 627.7073, F.S., requires the engineer or geologist that did the testing to issue a report and certification to the insurer and policyholder verifying sinkhole loss or eliminating sinkhole activity as the cause of damage to the property. The statute provides criteria for the sinkhole report and the findings of the report are presumed correct.

The insurer can deny the sinkhole claim if it determines there is no sinkhole loss. If the insurer verifies there is a sinkhole loss, the insurer must pay to stabilize the land and building and repair the foundation in accordance with the recommendation of the professional engineer and in consultation with the policyholder. The insurer must pay for repairs to the structure and contents as required in the insurance policy.

[20] Ch. 2005-111, L.O.F.; ch. 2006-12, L.O.F.
[21] S. 627.707, F.S.

In cases of verified sinkhole loss, the insurer can limit its payment for the sinkhole loss to actual cash value of the loss until the policyholder enters into a contract for building stabilization or foundation repairs. Once a contract for stabilization or repair is entered into, the insurer can pay the repair costs as the repair work is completed. The policyholder cannot be required to advance any funds for the repair work. If the required repairs are started but during the repair work it is determined that the repair costs will exceed the property insurance policy limits, the insurer must either complete the repair work recommended by the engineer or tender policy limits to the policyholder without reducing the amount tendered for the repair costs incurred.

Insurers are prohibited from nonrenewing any property insurance policy because a sinkhole claim was filed as long as the property was repaired in accordance with the engineer's recommendation, the claim filed was for partial loss and the total payment for the sinkhole claim or claims does not exceed the current policy limits of the property insurance policy.

Alternative Dispute Resolution Process for Sinkhole Claims

Section 627.7074, F.S., provides an alternative dispute resolution process for sinkhole claims which supersedes the mediation procedures regarding property insurance claims contained in s. 627.7015, F.S. The process begins once an insurer receives the sinkhole report under s. 627.7073, F.S., or denies a sinkhole claim, at which point the insurer must notify the policyholder of the right to participate in the neutral evaluation process.[22] The Department of Financial Services (DFS or department) is required to produce a consumer information pamphlet that details the neutral evaluation process and provides the directions and forms necessary for the policyholder to request a neutral evaluation. The insurer is required to distribute the pamphlet to its policyholders.

Participation in the neutral evaluation process is optional and nonbinding. Either the policyholder or insurer can decline to participate. If a party desires neutral evaluation, the request must be filed with the DFS on a form approved by the department. The request must state the reason that neutral evaluation is being sought and include an explanation of all issues in dispute. The filing of a request for neutral evaluation tolls the time period for filing suit for 60 days following the conclusion of neutral evaluation or the time prescribed in s. 95.11, F.S., whichever is later.

Once the DFS receives a request for neutral evaluation, it must provide each party with a list of certified neutral evaluators. The neutral evaluators must be professional engineers or professional geologists who have completed an alternative dispute resolution course designed or approved by the DFS. The evaluators must be fair and impartial and attempt to resolve the dispute at issue. The parties mutually select a neutral evaluator from the list with the DFS choosing the evaluator if the parties cannot agree.

The neutral evaluation is an informal process and the formal rules of evidence and procedure do not apply. Though the process is informal, the DFS must adopt rules of procedure for the neutral evaluation process. All parties must participate in good faith. The neutral evaluation conference must be held within 45 days of the department's receipt of a request and the neutral evaluator must notify the policyholder and insurer when and where the neutral evaluation conference will be conducted. A party does not need to attend if a representative attends and has the authority to

[22] "Neutral evaluation" means the alternative dispute resolution provided for in this section.

make a binding decision on behalf of the party. If a policyholder is not represented by an attorney, a consumer affairs specialist of the DFS or an employee of the DFS designated as the primary contact for consumers on issues related to sinkholes under s. 20.121, F.S., must be available to consult with the policyholder to the extent he or she may lawfully do so.

For matters not resolved by the parties during the neutral evaluation, the neutral evaluator must prepare a report stating whether the sinkhole loss has been verified or eliminated. If the existence of sinkhole loss is verified, the report must include the evaluator's opinion regarding the need for the estimated costs of stabilizing the land and any covered structures as well as appropriate remediation or structural repairs. The evaluator's report must be sent to all parties in attendance at the neutral evaluation and to the DFS and the recommendation of the neutral evaluator is admissible in any subsequent action or proceeding relating to the sinkhole claim.

Evidence of an offer to settle a claim during the neutral evaluation process, or other relevant conduct or statements made concerning an offer to settle are inadmissible to prove or disprove liability or a sinkhole claim's value. However, the recommendation of the neutral evaluator is admissible in any subsequent action or proceeding only for a determination regarding the award of attorney's fees.

If a policyholder declines to follow the recommendations of the neutral evaluator, the insurer is not liable for attorney's fees under the insurance code or s. 627.428, F.S., unless the policyholder obtains a judgment that is more favorable than the neutral evaluator's recommendation. Further, the insurer is not liable for extra contractual damages related to a claim for sinkhole loss related to the issue determined by the neutral evaluator. If the neutral evaluator verifies a sinkhole and recommends costs that exceed the amount the insurer has offered to pay the policyholder, the insurer is liable for up to $2,500 in attorney's fees for the claimant attorney's participation in the neutral evaluation process.

Fraud Involving Uniform Mitigation Verification Inspections

Section 627.711, F.S., requires insurers to notify an applicant or policyholder of a personal lines residential property insurance policy of the availability and range of each premium discount, credit, other rate differential, or reduction in deductibles, for wind mitigation. The notice must be provided when the policy is issued and upon each renewal and must be on a form developed by the OIR.[23] All insurers are required to use the uniform mitigation verification inspection form (inspection form) developed by rule by the Financial Services Commission when factoring discounts for wind insurance. The form informs the consumer of the estimated premium discount as a percentage of premium payment, and the annual dollar amount by which the premium will be reduced.

Section 627.711(2), F.S., provides that insurance companies must accept as valid an inspection form signed by a hurricane mitigation inspector certified by the My Safe Florida Home program;[24] a building code inspector; a general building or residential contractor; a professional engineer; or any other individual or entity recognized by the insurer as possessing the necessary qualifications to properly complete an inspection form.

[23] Uniform Mitigation Verification Inspection Form, OIR-B1-1802 (Rev. 09/09); adopted by Rule 69O-170.0155.
[24] The My Safe Florida Home program no longer certifies inspectors.

Although the mitigation inspection program has been beneficial for many consumers, there have been numerous problems since the program's inception relating to fraud. In February 2010, the Florida Hurricane Loss Projection Methodology Commission (Commission) issued its report[25] and found that in the process of re-inspecting residential structures, numerous errors were found, some of which were related to inspection fraud while others were a byproduct of the process or level or expertise of the inspector. The Commission recommended that penalties should be increased to the level of a felony for conviction of fraudulent activities.

Florida Hurricane Catastrophe Fund Emergency Assessments

The Florida Hurricane Catastrophe Fund (FHCF or fund) is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers.[26] All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The fund is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention (deductible).[27]

If the cash balance of the FHCF is not sufficient to cover losses, the law allows the issuance of revenue bonds, which are funded by emergency assessments on property and casualty policyholders. The fund is authorized to levy emergency assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation, accident and health, federal flood and, until May 31, 2010, medical malpractice insurance), including surplus lines policyholders, when reimbursement premiums and other fund resources are insufficient to cover the fund's obligations. Annual assessments are capped at 6 percent of premium with respect to losses from any one year and a maximum of 10 percent of premium to fund hurricane losses from multiple years. Revenue bonds issued by the FHCF may be amortized over a term up to 30 years. Thus, the FHCF may levy assessments for as long as 30 years.

The fund had a deficit due to the 2005 hurricanes that resulted in a one percent assessment, which will remain in effect until approximately 2014 on all assessable lines of business. The FHCF assessment base was $34.9 billion as of December 31, 2008, and has declined by -2.42 percent in 2006 and -4.69 percent in 2007. The 2009 year-end assessments are not yet finalized, but it is anticipated that the base will decline further according to officials with the fund.

III. Effect of Proposed Changes:

Section 1. Amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund. The bill extends the exemption of medical malpractice insurance premiums from FHCF emergency assessments by three years, from May 31, 2010, to May 31, 2013. Medical malpractice premiums were subject to FHCF's emergency assessments from 1993 (when the Fund was created) until 2003 when an exemption was enacted. The exemption was initially enacted for three years, until May 31, 2007, but was extended for another three years in 2006, until May 31,

[25] "Windstorm Mitigation Discounts Report" by the Florida Commission on Hurricane Loss Projection Methodology.
[26] Section 215.555, F.S.
[27] Retention is defined to mean the amount of losses below which an insurer is not entitled to reimbursement from the fund. A retention is calculated for each insurer based on its proportionate share of fund premiums.

2010. Because the bill extends the exemption another three years, until May 31, 2013, the FHCF will not be able to assess medical malpractice insurance for deficits until after May 31, 2013. Medical malpractice premiums in 2008 totaled approximately $597 million, about 1.7 percent of the Fund's assessment base. Thus, this amount will continue to be excluded from the Fund's assessment base due to the bill's extension of the medical malpractice exemption.[28]

Section 2. Amends s. 624.408, F.S., relating to the minimum surplus requirements for various lines of insurance. The bill requires "new" residential property insurers, meaning those insurers who do not have a certificate of authority before July 1, 2010, to have a minimum surplus as to policyholders of $15 million. This is an increase of $10 million above the current surplus requirements for new residential property insurers. The bill provides that for residential property insurers having a certificate of authority prior to July 1, 2010, the minimum surplus requirement will be $5 million until July 1, 2015, and, thereafter, the requirement will be $15 million. The bill provides that the OIR may reduce the surplus requirements if the insurer is not writing new business, has residential property insurance premiums in force of less than $1 million per year, or is a mutual company.

Section 3. Amends s. 624.4085, F.S., pertaining to risk-based capital (RBC) requirements for insurers. Current law requires that when a "company action level" event occurs for an insurer, that insurer must submit to the OIR a risk based capital plan, which must:

- Identify the conditions that contribute to the surplus action level event;
- Contain proposals of corrective actions that the insurer intends to take that are reasonably expected to ultimately result in the elimination of additional surplus losses;
- Provide projections of the insurer's financial results in the current year and at least the two succeeding years, including projections of statutory operating income, net income, capital, and surplus.
- Identify the key assumptions affecting the insurer's projections; and
- Identify the quality of, and problems associated with, the insurer's business.

In addition to the information that current law mandates in the risk based capital plan, the bill provides that when a "company action level" event occurs for a residential property insurer that conducts any business with affiliates, the OIR may require additional detailed information that includes for all affiliates with which the insurer has conducted business, the following:

- Total assets;
- Total liabilities;
- Surplus or shareholders equity;
- Net income after taxes or distributions made solely for satisfying tax liabilities;
- Total amounts received or receivable from parents, subsidiaries, and affiliates;
- Total amounts paid or payable to any parent, subsidiaries, and affiliates;
- Dividends paid or payable to shareholders of common stock;
- Debt service, including principle and interest, paid on debt incurred to capitalize or recapitalize insurance companies or fund other insurance-related activities; and
- Payments made for other contractual obligations to support insurance-related activities.

[28] http://www.floir.com/pdf/MedicaMalReport10012009.pdf

The bill defines the term "surplus action level" to mean a loss of surplus on any quarterly or annual financial report which exceeds 15 percent, or which cumulatively for the calendar year exceeds 15 percent, as of the most recently filed quarterly or annual report. The bill requires that if a surplus action level event occurs, the insurer must submit to the OIR a risk based capital plan, which includes all of the same mandatory information required by a company action level event noted above. In addition, if a surplus action level event occurs for a residential property insurer that conducts any business with affiliates, the OIR may require the same additional detailed information that it can require under a company action level event, also noted above.

Section 4. Amends s. 624.4095, F.S., relating to restrictions on written premium. The bill creates subsection (7) specifying that for the purposes of s. 624.4095, F.S., and s. 624.407, F.S., gross written premiums for federal multi-peril crop insurance which are ceded to the Federal Crop Insurance Corporation or to an authorized reinsurer will not be included in the calculation of an insurer's gross writing ratio. Some insurers that provide multi-peril crop insurance cede the entire risk to the Federal Crop Insurance Corporation or to a private reinsurer. Insurers that provide crop insurance coverage in this way encounter two special problems that this bill is intended to address.

Current law limits the ratio of gross written premiums for property insurers to nine times the surplus as to policyholders,[29] and requires surplus to be at least ten percent of total liabilities.[30] When a primary insurer cedes all of the crop risk to a reinsurer, however, it is not underwriting any of the loss, so it is not necessary to limit its gross written premiums directly to a ratio of its surplus. The bill provides that gross written premiums that are ceded to the Federal Crop Insurance Corporation or to an authorized reinsurer will not be included in the calculation of an insurer's gross writing ratio.

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

.

Section 5. Amends s. 626.7452, F.S., pertaining to managing general agents (MGAs). Under current law, the acts of the MGA are considered to be the acts of the insurer on whose behalf it is acting and the MGA may be examined by the OIR as if it were an insurer, except in the case where the MGA solely represents a single domestic insurance company. The bill deletes this exception so that the OIR may examine an MGA even though the entity represents only one insurer.

[29] S. 624.4095, F.S., specifies that the calculated premium cannot exceed 10 times the surplus as to policyholders. For property insurers, the calculated premium is the product of 0.90 times the actual or projected premium.
[30] Ss. 624.407 and 624.408, F.S.

Section 6. Amends s. 626.9744, relating to claim settlement practices relating to property insurance. Under current law, certain requirements apply if a homeowner's insurance policy provides for the adjustment and settlement of first-party losses based on repair or replacement cost. The bill adds a provision which states that in determining repair or replacement cost estimates, an insurer must use either: the retail cost quotations obtained by the insurer or insured from licensed contractors or retail establishments in the local market; or computer software or other databases that produce estimates based on market prices for products, materials, and labor in the local geographic region, if the pertinent portions of the valuation documents generated by a database are provided by the insurer to the first-party insured upon request.

Section 7. Amends s. 627.0613, F.S., pertaining to the Insurance Consumer Advocate. The bill specifies that the Consumer Advocate's annual report card, which grades personal residential property insurers, must be prepared by June 1, 2012, and each June 1 thereafter, and must "objectively" grade such insurers. The legislation clarifies that the report card include only "valid" consumer complaints and other "measurable and objective" factors, and defines the term "valid consumer complaint" to be a written communication from a consumer expressing dissatisfaction with the personal residential property insurer and the conduct described is found to be a violation of the insurance laws by the Division of Consumer Services of the DFS.

Section 8. Amends s. 627.062, F.S., relating to rate standards for insurers. Under current law, property insurers are prohibited from using the "use and file" option for filing rate increases with the OIR until December 31, 2010. The bill extends the prohibition to December 31, 2012.

Under current law, the OIR cannot currently prohibit, during a rate filing procedure, any insurer from paying acquisition costs based on the full amount of the premium applicable to any policy or prohibit such insurer from including the full amount of acquisition costs in a rate filing.[31] The bill adds the term, "directly or indirectly," to modify these two provisions such that the office cannot directly or indirectly prohibit such actions by insurers. The bill also provides that the OIR shall not, directly or indirectly, impede, abridge, or otherwise compromise an insurer's right to acquire policyholders, advertise, or appoint agents, including the calculation, manner, or amount of agent commissions.

An insurer's acquisition costs are typically costs associated with acquiring, maintaining, and renewing insurance business which includes the agents' commission, the company's sales expense, and other related expenses. An agent's commission is typically based on a percentage of the premium; however, carriers can apply the agent's percentage to only a portion of the premium (for example, the non-catastrophe portion) and agents are prohibited from charging the policyholder any part of their commission. Commissions may vary based on numerous factors including the line of business, the agent's expertise, the functions the agent is required to perform, and competition among other insurers. Citizens Property Insurance Corporation has budgeted $205 million for agent commissions for 2010 and it is the third largest single expense after reinsurance ($619 million) and losses (and loss adjustment expenses) incurred ($459 million).

[31] S. 627.062(2)(i), F.S.

This section also expands s. 627.062(2)(k), F.S., the expedited rate filing procedure, to allow an insurer to include a rate adjustment for reinsurance costs, financing products used to replace reinsurance, and applicable inflation trend factors published annually by the OIR. The provision specifies that the increase from this filing and any other rate filing combined cannot exceed 10 percent for any individual policyholder, excluding coverage changes and surcharges, within the same policy year. The bill eliminates current language which limited the purchase of reinsurance or financing costs to replacing or financing the payment of the amount covered by the Florida Hurricane Catastrophe Fund's TICL layer and the cash build up factor.[32]

The bill also requires the OIR, beginning January 1, 2011, to publish an annual informational memorandum establishing one or more inflation trend factors estimating cost increases or decreases for personal and residential property. The informational memorandum is exempt from the requirements of Chapter 120, F.S., (Administrative Procedure Act) and insurers are not required to adopt the factors. An insurer making an expedited filing as a result of a change in the inflation factor may support the filing with rates and rating examples and an explanation demonstrating the insurer's eligibility to adopt the trend factor.

This section requires the OIR to develop or contract with an entity to develop a comprehensive program to provide consumers with all available information necessary to make informed purchases of homeowners' insurance. The OIR is to consider a separate website that consolidates consumer information for price comparisons, filed complaints, financial strength, underwriting and receivership information, and other data useful to consumers. The OIR is to rely as much as is practical on currently available information, but should consider whether additional information must be submitted by insurers and whether insurers should be required to provide a link into each individual insurer's website to access product information and apply for quotations. Before establishing the program, the OIR must conduct a cost benefit analysis and submit a proposed implementation plan for review and approval by the Financial Services Commission. The implementation plan must include an estimated time line, a description of the data that would be provided, a strategy for publicizing the website, the recommended approach for developing and operating the website, and an estimate of recurring and nonrecurring costs. The bill deletes an obsolete section that required the OIR to establish a presumed factor to reflect the changes resulting from medical malpractice legislation passed during the 2003 Special Session. The bill provides that a certification made under the rating law is not rendered false if, after making a rate filing, the insurer provides the OIR with additional information pursuant to a request by the OIR.

Section 9. Amends s. 627.0629, F.S., relating to residential property insurance rate filings. The bill adds to the legislative intent that the implementation of mitigation discounts not result in a loss of income to insurers. The bill provides that if an insurer demonstrates that the aggregate of its mitigation discounts results in a reduction of revenue that exceeds the reduction of the aggregate loss that is expected to result from the mitigation, the insurer may recover the lost revenue through an increase in its base rates. The provision adds the term "debits" to the list of mitigation terms which include discounts, credits, reductions, or other rate differentials.

[32] This limitation was enacted in 2009 (Ch. 2009-87, L.O.F.).

Section 10. Amends s. 627.351, F.S., relating to Citizens Property Insurance Corporation. The bill provides that members of the Citizens' Bd. of Governors who are appointed for having expertise in insurance are within the scope of the code of ethics under s. 112.313, F.S. That ethics provision states that a public officer (Citizens Bd. member) is not prohibited by the ethics code from practicing in a particular profession when such practice is required or permitted by law.

The bill also provides that notwithstanding s. 112.3143(2), F.S.,[33] a board member of Citizens is prohibited from voting on any measure which would inure to his or her own benefit, to the benefit of any principal for whom he or she is retained, or would inure to the benefit of a relative or business associate. Prior to the vote, the board member is required to publically state to the board the nature of his or her interest in the matter from which he or she is abstaining from voting, and within 15 days after the vote occurs, disclose the nature of the interest as a public record to be filed with the person responsible for recording the minutes of the meeting. An exception is allowed if the board member is retained by a state or local government entity, including any public school or state university.

The bill changes the name of the Citizens' "High Risk" account to the "Coastal" account.

The bill extends by two years, to December 1, 2012, the requirement that the Citizens' board reduce the boundaries of the High Risk Account (wind-only coverages) if the probable maximum loss is not reduced by at least 25 percent from the benchmark provided under s. 627.351, F.S.

Section 11. The bill directs the Division of Statutory Revision to prepare a reviser's bill for introduction at the next regular session of the Legislature to change the term "high-risk account" to "coastal account" to conform the Florida Statutes to the amendment to s. 627.351, F.S., which is the provision creating the "high risk" account within Citizens.

Section 12. Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

The bill provides that insurers offering Citizens' policyholders replacement coverage must give notice of nonrenwal to such policyholders at least 45 days prior to the effective date of the nonrenewal. This provision will facilitate policies being taken out of Citizens.

The bill provides, notwithstanding any other provisions of law, that if the OIR determines that early cancellation of some or all of an insurer's property insurance policies is necessary to protect the best interest of the public or the policyholders, the insurer may cancel or nonrenew policies upon a 45 day notice to policyholders, providing the OIR approves the insurer's plan for early cancellation or nonrenewal. The OIR may base its finding on the insurer's financial condition, reinsurance inadequacy, or other relevant factor. The OIRs finding may be conditioned on the insurer's consent to be placed in administrative supervision or its consent to the appointment of a receiver.

[33] This provision states that no public officer is prohibited from voting in an official capacity on any matter; however, it requires that if a public officer votes on a measure which inures to his or her special private gain, such officer must, within 15 days after the vote, disclose the nature of his or her interest as a public record.

Under current law, personal lines or commercial lines residential property insurers must give policyholders a notice of cancellation, nonrenewal, or termination at least 100 days prior to the effective date of the cancellation, nonrenewal, or termination and 180 days notice if the insured's residential structure has been insured for at least a five year period immediately prior to the date of the notice. Further, an insurer must provide at least 100 days written notice, or notice by June 1, whichever is earlier, for any cancellation, nonrenewal, or termination that would be effective between June 1 and November 30.

Section 13. Creates s. 627.43141, F.S., relating to notice of change in policy terms. The bill defines the terms "policy," "change in policy terms," and "renewal."[34] The bill specifies that a renewal policy may contain a change in policy terms. If a renewal policy does contain a change in policy terms, the insurer must give the insured a written notice of the change, along with the written notice of renewal premium that must be provided to the policyholder in accordance with current law under ss. 627.4133 and 627.728, F.S. A policyholder is deemed to accept the policy term change if the renewal premium is paid. If the insurer does not provide the notice of change in policy terms to the policyholder, the terms of the insurance policy are not changed. The insurer will still be required to obtain approval from the OIR for the change in policy terms made by the insurer through a form filing.

The bill provides that the intent of this section is to allow an insurer to make changes in policy terms for property that the insurer intends to continue to insure. It is also intended to alleviate the confusion to the policyholder caused under current law by the required policy nonrenewal in the limited instance when an insurer intends to renew the policy, but the new policy contains a change in policy terms.

Section 14. Amends s. 627.7011, F.S., relating to replacement cost coverage. The bill revises the requirements for payment by insurers under homeowners' insurance policies when a loss occurs that has been insured with replacement cost coverage:

- For dwelling losses, an insurer must initially pay the actual cash value of the insured loss, less any deductible. The policyholder shall subsequently enter into a contract for repairs and the insurer must pay any remaining amounts necessary to perform such repairs as the work is performed and expenses incurred. The insurer or contractor cannot require the policyholder to advance payment for such repairs. The insurer may further waive the requirement for a contract.

- For personal property losses, an insurer shall pay 50 percent of the replacement cost value, less any deductible. The insurer may require the policyholder to provide receipts from the

[34] "Policy" is defined to mean a written contract of personal lines property insurance, or a written agreement for effecting insurance, or a certification thereof, and includes all clauses, riders, endorsements, and papers that are a part thereof; however, it does not include a binder for insurance, unless the binder duration exceeds 60 days. "Change in policy terms" means the modification, addition, or deletion of any term, coverage, duty, or condition from the prior policy; however, it does not include the correction of typographical or scrivener's errors or mandated legislative changes. "Renewal" means the issuance or delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term. A policy having a policy period or term of less than 6 months or any policy that does not have a fixed expiration date shall, for purposes of this section, be considered as if written for successive policy periods or terms of 6 months.

purchase of property financed by the initial 50 percent payment provided under this procedure, and the insurer must use such receipts to make the remaining payments requested by the policyholder. Should a total loss occur, the insurer must pay the replacement cost for contents coverage without reservation or holdback of any depreciation in value and must not require the policyholder to advance payment for the replaced property.

Section 15. Amends s. 627.7015, F.S., relating to mediation procedures for property insurance claims under the Department of Financial Services. The bill provides that in a dispute over the cost to replace insured property, the insurer and the insured must bring to the mediation conference documentation that supports the respective estimated costs to replace or repair the property.

The insurer's documentation must include reports or other evidence to show that its estimates were created in compliance with s. 626.9744(3), F.S., (Section 6 of the bill). The insured's documentation must also include quotes obtained from licensed local contractors, retail price quotes, or other documentation clearly demonstrating the actual cost to repair or replace the property. The bill requires the DFS to adopt by rule the types of documentation required to be submitted by parties during the mediation process. The bill excludes from the mediation process losses that occurred more than 5 years prior to the request for mediation, unless both parties agree to mediate such a claim.

Section 16. Repeals s. 627.7065, F.S., pertaining to the sinkhole database. This bill repeals the sinkhole database statute which means that insurers will no longer have to report sinkhole information to the DFS for the database and information relating to sinkhole claims filed against property insurers will no longer be compiled and kept by the DFS.

Section 17. The bill provides that this section of law is effective June 1, 2010, and applies only to insurance claims made on or after that date. The bill amends s. 627.707, F.S., pertaining to standards for sinkhole claim investigations by insurers. The bill makes the following changes to the sinkhole investigation and repair procedures:

- Insurers must inspect property to determine if there is structural damage consistent with "sinkhole loss" rather than "sinkhole activity." Sinkhole loss is defined in current law in s. 627.706(2)(c), F.S., as structural damage to a building, including foundation, caused by sinkhole activity. Sinkhole activity means settlement or weakening of the earth supporting such property when settlement results from movement of soils (s. 627.706(2)(d), F.S.).
- The insurer must provide testing if demanded by the policyholder only if the property policy covers sinkhole loss.
- Payment by the insurer to stabilize the land and building and make foundation repairs if a sinkhole loss is verified is done with notice to the policyholder, rather than in consultation with the policyholder.
- After a policyholder enters into a contract for building stabilization or foundation repairs, the claim must be paid up to the full cost of the stabilization or foundation repairs and up to full replacement cost for above-ground repairs, less the insured's deductible. After the policyholder contracts for stabilization or foundation repairs, the insurer may:
    - Limit its initial payment to 10 percent of estimated costs to implement building stabilization or repairs.

- Limit its initial payment to the actual cash value of the sinkhole loss for above-ground repairs to the structure.

- However, after the policyholder enters into the contract, the insurer must pay amounts necessary to perform stabilization and repairs as the work is performed. Final payment for the structural or building stabilization and foundation repairs must be remitted within 30 days after such work is completed in accordance with policy terms or receipts have been submitted to the insurer.
- Policyholders are required to enter into contracts for repairs within 90 days after the insurer approved coverage for the sinkhole loss to prevent additional damage to the structure. The 90-day period can be extended for a reasonable time period if a qualified person to repair the damaged property cannot be found within the initial 90-day period based on factors outside the policyholder's control or the policyholder is actively seeking to retain a professional engineer or geologist. This period must be tolled if either party invokes neutral evaluation.
- All repair work must be completed within 12 months after the contract for repair is entered into unless the insurance company and the policyholder agree otherwise; unless the sinkhole claim is in the neutral evaluation process; unless the sinkhole claim is in litigation; unless factors outside the control of the policyholder prevent completion within the 12-month period; or the claim is under appraisal.
- An insurer can nonrenew property policies due to a sinkhole claim being filed for a partial loss if the partial loss claim payment or payments exceed the policy limits of the policy in effect on the date of loss, rather than the policy limits of the current policy. The other requirements in current law relating to nonrenewals due to sinkhole claims must still be followed.

Section 18. The bill provides that this section of law is effective June 1, 2010, and applies only to insurance claims made on or after that date. The bill amends s. 627.7072, F.S., pertaining to sinkhole testing standards. The bill requires the professional engineer and professional geologist who perform sinkhole tests must do so in accordance with the Florida Geological Survey Special Publication 57 to determine the presence or absence of sinkhole loss or other cause of damage within a reasonable professional probability.

Section 19. The bill provides that this section of law is effective June 1, 2010, and applies only to insurance claims made on or after that date. The bill amends s. 627.7073, F.S., pertaining to sinkhole reports and makes the following changes to sinkhole reporting procedures:

- The professional engineer or geologist doing the testing must issue the sinkhole report only to the insurer, instead of the insurer and policyholder, as provided under current law. However, the engineer or geologist must provide an additional copy and certification of the report to the insurer which must forward the copy to the policyholder.
- If the policyholder disagrees with the findings or recommendations of the professional engineer or geologist engaged by the insurance company, the policyholder may engage a professional engineer or geologist, at the policyholder's expense, to conduct testing under s. 627.7072, F.S., in order to render findings and recommendations as to the cause of distress to the property and appropriate method of land and building stabilization and foundation repair. The policyholder's engineer or geologist must certify findings and recommendations in a report and forward the report to the insurer. Unless the policyholder engages an engineer or

geologist who dispute the findings of the insurer's engineer or geologist, the findings and recommendations of the insurer's engineer or geologist are presumed correct and that presumption shall shift the burden of proof under s. 90.304, F.S.[35]

- The report and certification of sinkhole loss submitted to the county clerk of court must include the amount paid by the insurer for the loss.
- If the policyholder had a sinkhole report prepared and that report indicates a sinkhole loss caused the sinkhole claim, the insurer must also record a copy of this report with the county clerk of court. The insurer must bear the court filing and recording fees.
- The seller of property on which a sinkhole claim has been made and paid by the insurer must disclose to the buyer of the property the amount of the claim payment and must provide the buyer with a copy of the sinkhole report prepared in accordance with the law and any other sinkhole report prepared on behalf of the insured.

Section 20. The bill provides that this section of law is to be effective June 1, 2010, and will apply only to insurance claims made on or after that date. The bill amends s. 627.7074, F.S., pertaining to alternative procedures for resolution of disputed sinkhole insurance claims. The bill provides that neutral evaluation for sinkhole claims is available to either party if a sinkhole report is issued under s. 627.7073, F.S. Neutral evaluation must determine causation, all methods of stabilization and repair both above and below ground, and information necessary to carry out subsection (13) relating to sinkhole reports. The bill provides that neutral evaluation does not invalidate the appraisal clause, if such clause is provided by the insurance policy and the appraisal process must be performed in accordance with the terms of the policy and this section of law. If such clause is in a policy, a remaining sinkhole dispute as to the amount of the loss may be resolved in the appraisal process in compliance with the terms of the policy, by other proceedings agreed to by the parties, or by trial.

Under the bill, an insurer must request neutral evaluation within one year after the insured's written notice to the insurer's claims adjuster. The bill allows either party to request disqualification of the neutral evaluator for cause from the list provided to the parties by the Department of Financial Services (DFS). One neutral evaluator can be disqualified without cause by either party. The bill specifies grounds for disqualifying a neutral evaluator for cause which include: a familial relationship between the neutral evaluator and either party; the proposed evaluator has previously represented either party in the same or a substantially related matter; the proposed evaluator has represented other persons in the same or substantially related matter and that person's interests are materially adverse to the interests of the parties; the proposed evaluator works in the same firm as a person who has previously represented either party; or the proposed neutral evaluator has, within the preceding five years, worked as an employee of any party to the case.

The parties must mutually appoint a neutral evaluator from the DFS list and so inform the department under the provisions of the bill; however, if the parties can't agree to an evaluator within ten business days, the DFS must appoint the neutral evaluator from its list of certified evaluators. A neutral evaluation conference of the parties must be held within 90 days (current law is 45 days) after receipt of the request by the DFS; however, if the neutral evaluator fails to

[35] S. 90.304, F.S., provides that all rebuttable presumptions are presumptions affecting the burden of proof.

hold a conference, the evaluator's fee is reduced by ten percent, unless the delay was due to factors beyond the control of the evaluator.

Regardless of when invoked, a court proceeding related to the neutral evaluation must be stayed pending completion of the evaluation and for five days after the filing of the neutral evaluator's report with the court.
If a neutral evaluator is qualified only to determine the causation issue or the method of repair issue, the DFS must allow the evaluator to obtain the assistance of another neutral evaluator on the DFS list as long as that evaluator has not been disqualified. Other professionals may provide services to the neutral evaluator to ensure that disputed issues are addressed and those professionals may also be disqualified for reasons listed in the bill. The neutral evaluator is authorized to request further testing be done on the property by the same engineer or geologist that did the initial testing if the evaluator believes further testing is necessary to complete the evaluation.

The neutral evaluator's report must provide an opinion on all matters not resolved at the conclusion of the neutral evaluation. The determinations in the report must be made within a reasonable degree of professional probability and must include whether the sinkhole loss is verified, whether the sinkhole loss caused any structural or cosmetic damage to the building and if so, the need for an estimated cost of land stabilization and structural building repairs needed due to the sinkhole loss. If the insurer agrees to comply with the neutral evaluator's report, the insurance policy's terms and conditions govern the company's payment for stabilizing the land and building and repairing the foundation.

Section 21. Amends s. 627.711, F.S., relating to hurricane loss mitigation inspections. The bill makes the following changes relating to the uniform mitigation verification process:

- Eliminates the provision allowing a hurricane mitigation inspector certified by the My Safe Florida Home program to sign a uniform mitigation verification form (form). The My Safe Florida Home program is not certifying inspectors as the program is no longer funded by the State.
- Allows an insurer to accept a form from any person possessing qualifications and experience acceptable to the insurer.
- Persons signing forms must personally inspect the structures referenced in the form and certify they have done so.
- Persons signing such forms may not commit misconduct in performing hurricane mitigation inspections which cause financial harm to an insured or the insurer or jeopardize the insured's health and safety. Misconduct occurs when an inspector signs a form that:
    - Falsely indicates he or she personally inspected the structure;
    - Falsely indicates the existence of a feature that entitles an insured to a discount that the inspector knows does not exist or has not personally inspected;
    - Contains erroneous information; or
    - Contains false information regarding the existence of mitigation features.

The bill provides that the licensing board of authorized mitigation inspectors that violate the provisions of this section may discipline and administratively fine such inspectors. The bill further provides that a person who obtains evidence of fraud or evidence an inspector has made

false statements in completing a form must file a report with the Division of Insurance Fraud (DIF) within DFS and that such person is immune from liability under s. 626.989(4), F.S. Upon the conclusion of the investigation and a finding of probable cause that a violation has occurred, the DIF must submit its investigative report to the OIR and the agency responsible for the professional licensure of the inspector, regardless of whether a prosecutor takes action based upon the report.

Section 22. Creates s. 628.252, F.S., relating to servicing affiliates of domestic property insurers. The bill requires a domestic property insurer to notify the OIR of its intention to enter into with affiliates all management agreements, service contracts, and cost-sharing arrangements. An insurer may not enter into such arrangements unless it provides the OIR with at least 30 days' written notice of its intention to do so, or such shorter period as the OIR may permit. The bill also provides that this provision does not limit any existing authority of the OIR.

Section 23. Provides a $310,700 appropriation from the Insurance Regulatory Trust Fund and authorizes one full-time equivalent position and associated salary rate to the OIR to implement the provisions of the bill related to the design, development and operation of the website on homeowners' insurance rates and products.

Section 24. Provides that except as otherwise provided for in the act, and except for this section, which will take effect June 1, 2010, this act shall take effect July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Consumers should benefit by using the comprehensive website to obtain information necessary to purchase homeowners' insurance. Consumers who have property insurance claims would also benefit by receiving mediation information provided by their insurer as authorized under the bill.

Consumers should also benefit because the bill strengthens insurer solvency in several ways:

- OIR is given the authority to ensure that insurer affiliates, e.g., MGAs, do no expend funds that would threaten the financial viability of an insurance company;
- Minimum surplus requirements for "new" or "current" residential property insurers are increased which would mean that insurers can pay policyholders claims and that fewer insurers would go through rehabilitation or liquidation proceedings; and
- Insurers may cancel or nonrenew property insurance policies within 45 days if the OIR finds that early cancellation of such policies is necessary to protect the best interest of the policyholders and the public.

Insurers will benefit under the expedited rate filing procedure by obtaining rate relief in a more timely fashion when their rate needs are limited to purchasing reinsurance, purchasing financing products used to replace reinsurance, and a nominal inflation factor.

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

Revising the adjustment and holdback procedures for homeowners' insurance policies which offer replacement cost coverage should help ensure that policyholders make necessary repairs to their dwellings.

C. Government Sector Impact:

In order to develop and operate a comprehensive website with information on homeowners' insurance rates and product comparisons for consumers, the Technology Resource Workgroup estimates that for the 2010-2011 fiscal year, an appropriation of $310,700 from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation and authorization to establish one full-time equivalent position is needed.

Activity	**Non Recurring**	**Recurring**
Website Systems Development and Design—Two augmentation contractor developers for six months @ $100 per hour.	$216,000	
Contingency for additional Website Design (20%)	$ 43,200	
Website Maintenance and Support—One full-time position for primary support services at six months (after website completion.) This position will be assigned to the Division of Information Systems /Department of Financial Services at an annualized cost of $95,000		$ 47,500
Position Expenses	$ 4,000	
Subtotals	$263,200	$ 47,500
Total Costs for FY 2010-2011 $310,700		

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 13, 2010:

- Allows insurers offering personal lines property insurance to provide written notice of policy changes to their policyholders without having to non-renew an entire insurance policy due to a change in policy terms.
- During the rate filing procedure, an insurer may provide the OIR with additional information upon request without having its certification rendered false.
- Repeals the provision requiring the OIR to develop a method correlating mitigation discounts to the uniform home grading scale.
- Extends by two years, to December 1, 2012, the requirement to reduce the boundaries of the Citizens' High Risk Account (wind-only coverages) if the probable maximum loss is not reduced at least 25 percent from the benchmark.
- Allows an insurer seeking to take policies out of Citizens to do so in 45 days.
- Authorizes a $310,700 appropriation and an additional position to the Office of Insurance Regulation (OIR) to implement the provisions of the bill relating to the development and operation of the website on homeowners' insurance rates and products.
- Revises procedures for insurers and policyholders relating to standards for sinkhole insurance claim investigations and repairs. Provides changes to the procedures pertaining to sinkhole reports by professional engineers or professional geologists. Revises criteria pertaining to the selection and qualifications of a neutral evaluator for disputed sinkhole insurance claims under the neutral evaluation procedure. Repeals the sinkhole database.
- Provides that gross written premiums for federal multi-peril crop insurance which are ceded to the Federal Crop Insurance Corporation or to an authorized reinsurer will not be included in the calculation of an insurer's gross writing ratio.
- Prohibits mitigation inspectors from committing misconduct in performing hurricane inspections of homes or providing false information on inspection forms. Persons who obtain evidence of fraud are immune from liability in specified instances and requires the Division of Insurance Fraud to send a copy of its investigative report to the OIR and the agency responsible for the licensure of an inspector upon a finding of probable cause that a violation has occurred.
- Authorizes OIR to monitor insurer funds going to affiliates when an insurer's surplus falls below specified levels. If the insurer's risk based capital level drops below 200

or when an insurer loses 15 percent of its surplus, the OIR may require the insurer to file a detailed report identifying all remunerations paid to its affiliates. Insurers are also required to notify the OIR of its intention to enter into contracts with its affiliates within 30 days of such contracts being executed.

- Modifies current law relating to replacement cost coverage and actual cash value provisions. Requires an insurer pay amounts necessary to perform repairs as work is performed on a structure. Prohibits an insurer from holding back funds on contents coverage in the event of a total loss.
- Clarifies the existing law that requires some members of the Citizens' board to have experience in insurance. Adds a requirement that Board members of Citizens abstain from voting whenever they have a conflict under specified circumstances.
- Removes provisions pertaining to insurer rehabilitation and liquidation procedures.

CS by Banking and Insurance on March 10, 2010:

- Clarifies that insurance policy coverage changes and surcharges are not to be included within the 10 percent cap for expedited rate filings by property insurers.
- Deletes the provision which provided that replacement cost coverage does not have to be offered for any roof over 20 years old.
- Extends the exclusion until May 31, 2013, of medical malpractice premiums from the assessment base for emergency assessments imposed by the Florida Hurricane Catastrophe Fund.
- Removes the provision prohibiting the Office of Insurance Regulation from disapproving or requiring an amendment to any rate filing based on the reasonableness of expenses for acquisition costs paid for advertising or compensation to insurance agents who are not employees of an insurer.
- Restores the requirement under current law that an insurer's expedited rate filing must include a sworn certification, subject to the penalty of perjury, by the chief executive officer or chief financial officer.
- Specifies the date (June 1, 2012) that the Insurance Consumer Advocate must prepare an annual report card objectively grading every personal residential property insurer and defines the term "valid consumer complaint."

B. Amendments:

None.