The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL:	CS/SB 2108
INTRODUCER:	Banking and Insurance Committee and Senator Richter
SUBJECT:	Property Insurance
DATE:	April 13, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Burgess	BI	**Fav/CS**
2.				
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:

Committee Substitute for Senate Bill 2108 makes changes to the laws related to property insurance, primarily affecting residential property insurance, as follows:

- Allows insurers to provide written notice of policy changes to policyholders without having to non-renew an entire insurance policy due to a change in policy terms.
- 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 provision requiring the Office of Insurance Regulation (OIR) to develop a method correlating mitigation discounts to the uniform home grading scale.

- Provides that mitigation inspectors may not commit misconduct in performing hurricane mitigation inspections of homes or provide false or fraudulent information on mitigation inspection forms.

- Allows insurers to accept hurricane mitigation inspection forms from persons possessing qualifications and experience acceptable to the insurer.

- Provides that an insurer may not use the same accountant or partner of an accounting firm for preparing its audited financial report for more than 5 consecutive years.

- Subject to the approval of the OIR and in advance of hurricane season, an insurer may use financial contracts, e.g., derivatives,[1] rather than reinsurance contracts to provide for catastrophe loss funding. The insurer must demonstrate to the OIR that theses financial contracts will provide adequate protection for policyholders in the event of any natural catastrophe.

- Deletes the provision pertaining to the neutral evaluator's recommendations in sinkhole disputes which provided that the actions of the insurer are not a confession of judgment or an admission of liability.

- Clarifies that the Division of Insurance Fraud must send a copy of its investigative report to the OIR and the agency responsible for the licensure of an inspector only after it concludes its investigation and finds probable cause that a violation has occurred.

This bill substantially amends ss. 624.424, 624.611, 627.0629, 627.707, 627.7073, 627.7074 and 627.711 of the Florida Statutes and creates s. 627.41341 of the Florida Statutes.

II. Present Situation:

Residential Property Mitigation Discounts, Credits or Other Rate Differentials
Current law requires rate filings for residential property insurers 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.[2] The intent of this provision is to provide savings to consumers who install or implement windstorm damage mitigation solutions to their properties to prevent windstorm losses. The construction techniques which are specified include, but are not limited to, those which enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength. Pursuant to this provision, the Office of Insurance Regulation (OIR) established mitigation discount amounts based on wind loss relativities developed in a study adopted by the OIR in 2002. The wind loss relativities used by

[1] In finance, derivatives is the collective name used for a broad class of financial instruments that derive their value from other financial instruments (known as the underlying), events or conditions. Essentially, a derivative is a contract between two parties where the value of the contract is linked to the price of another financial instrument or by a specified event or condition.
[2] S. 627.0629(1)(a), F.S.

the OIR in establishing rates, however, are not linked to a uniform home grading scale established under s. 215.55865, F.S.[3]
In 2008, legislation was enacted which required the OIR to develop a method by February 1, 2011, for insurance companies to establish mitigation discounts, credits, or other rate differentials for hurricane mitigation measures that correlate to the home's rating calculated by the uniform home grading scale.[4] Insurers have until October 1, 2011, to make rate filings to revise their mitigation discounts, credits, or other rate differentials that correlate to the home's rating. Homeowners then have two years to obtain their home's rating in order to continue to receive mitigation discounts. The most likely way for a homeowner to obtain a home rating is by having a windstorm mitigation inspection that will delineate the home's mitigation features and provide a mitigation rating based on the grading scale.

Representatives with the OIR state that the agency does not have the resources or funds to develop the proposed method for insurers to establish mitigation discounts, credits, or other rate differentials that directly correlates to a home's numerical rating under the uniform home grading scale. Further, the Florida Commission on Hurricane Loss Projection Methodology recommended repeal of the uniform home grading scale since it is not feasible and presumes a level of accuracy that does not currently exist.[5]

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.[6] 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;[7] 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.

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[8]

[3] The uniform home rating scale is an objective rating system which rates a homes' ability to withstand wind load from a tropical storm or hurricane. The grading scale scores homes on a scale of 1 to 100 and takes into account the construction features of the home, the wind zone location, and the terrain surrounding the home.
[4] S. 627.0629(1)(b), F.S. S. 12; ch. 2008-66, L.O.F.
[5] "Windstorm Mitigation Discounts Report" issued in February 2010.
[6] Uniform Mitigation Verification Inspection Form, OIR-B1-1802 (Rev. 09/09); adopted by Rule 69O-170.0155.
[7] The My Safe Florida Home program no longer certifies inspectors.
[8] "Windstorm Mitigation Discounts Report" by the Florida Commission on Hurricane Loss Projection Methodology.

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.

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.

Reinsurance

In general, reinsurance is purchased by an insurance company from a reinsurer as a means to transfer risk. The reinsurer and the insurer enter into a reinsurance agreement which details the basis in which the reinsurer will pay the insurer's losses. The reinsurer is paid a reinsurance premium by the insurer. Section 624.610, F.S., governs reinsurance and the purpose of the section "is to protect the interests of insureds, claimants, ceding insurers, assuming insurers, and the public."

Insurance companies authorized in Florida that buy reinsurance are allowed to receive credit on their financial statements only if the reinsurance is a type that is approved or acceptable to the OIR, as specified in s. 624.610, F.S. For example, an insurer is limited by state law as to the amount of premiums it may write as a percentage of its surplus ("premium to surplus ratio"). By buying reinsurance and ceding premiums to an approved reinsurer, the insurer may obtain credit on its financial statements and deduct the ceded premiums from its net premium to surplus limitations. The insurer buying the reinsurance is referred to as the ceding insurer and the reinsurer is referred to as the assuming insurer.

An insurer that is "accredited" as a reinsurer in Florida is not subject to rate or form approval by the OIR; however, it must submit to the OIR's jurisdiction as to submission of its books and records; be licensed to transact insurance or reinsurance in at least one state, or in the case of a U.S. branch of an alien assuming insurer, is entered through or licensed to transact insurance in at least one state; files copies of its annual and quarterly statements filed with the insurance department of its state of domicile and its most recent audited financial statement; and maintains a surplus of not less than $20 million.

Proponents of the bill argue that insurers should be allowed to use other types of financing contracts that should be treated as reinsurance. An example of such a product is called

"Insurance Futures Exchange (IFEX) Event Linked Futures (ELF) contracts, which are listed on the Chicago Climate Futures Exchange. Several insurers are interested in these IFEX-ELF contracts and urge that they should be accounted for as reinsurance, which will benefit Florida licensed insurers because they expand the type of alternatives that insurers can use to spread risk and are much less expensive than purchasing traditional reinsurance. The IFEX-ELF instruments replicate the economics of reinsurance, but have the added benefit of being traded on a transparent, regulated exchange platform, and are cleared through the Chicago exchange.

Opponents of IFEX-ELF contracts raise several concerns: that these contracts are far riskier than traditional reinsurance products; that the entities providing the contract benefits are not subject to solvency oversight by the OIR; that the event which triggers payment under the IFEX-ELF contracts may not match the actual losses sustained by the individual insurer; and that payments obtained by insurers under these contracts may not be received in a timely fashion to pay the claims of the policyholders.

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.[9] 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.[10] 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

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

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.

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.[11] 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.

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

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 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.

III. Effect of Proposed Changes:

Section 1. Amends s. 624.424, F.S., pertaining to annual statements. Under current law an insurer may not use the same accountant or partner of an accounting firm that is responsible for preparing the company's audited financial report for more that 7 consecutive years. An insurer may request the OIR to waive this prohibition based on unusual hardship to the insurer and a determination that the accountant is using independent judgment that is not unduly influenced by the insurer. The bill reduces this period to 5 consecutive years. This provision will conform Florida law's with the Model Act developed by the National Association of Insurance Commissioners and with all other states.

Section 2. Creates s. 624.611, F.S., relating to catastrophe contracts. The bill would allow an insurer, in advance of hurricane season, to use financial contracts (i.e., IFEX-ELF contracts) rather than reinsurance contracts to provide for catastrophe loss funding. The insurer must demonstrate that these financial contracts will provide adequate protection for policyholders in the event of any natural catastrophe. The OIR must approve of these financial products in place of reinsurance. The bill further provides that if the financing contracts do not provide coverage that is "highly correlated" with the actual losses of the insurer, the company must demonstrate its ability to cover the risk created by such lack of correlation. Once the OIR approves an insurer's plan, the insurer may purchase the contracts and take credit for reinsurance for the amounts expected or due from other parties to the contracts in accordance with the terms established by the OIR.

Section 3. Amends s. 627.0629, F.S., pertaining to residential property insurance and repeals the requirement under s. 627.0629(1)(b), F.S., that OIR, by February 1, 2011, develop a proposed method for insurers to establish discounts, credits, or other rate differentials for hurricane mitigation measures which directly correlate to the numerical rating assigned to a structure under the uniform home rating scale, adopted by the Financial Services Commission (FSC) pursuant to s. 215.55865, F.S. The section being repealed requires that by October 1, 2011, the FSC adopt rules requiring insurers to make rate filings for residential property insurance which revises insurers' discounts, credits, or rate differentials for hurricane mitigation measures so that the new discounts, credits or rate differentials correlate to the uniform home rating scale. The rules must allow a period of at least 2 years after the effective date of the revised mitigation discounts, credits, or other rate differentials for a property owner to obtain an inspection to qualify for the revised credits, during which time the previously approved mitigation credits will continue to apply.

Section 4. Creates s. 627.41341, F.S., relating to changes in policy terms. The bill defines the terms "policy," "change in policy terms," and "renewal."[12] The bill specifies that a renewal policy may contain a change in policy terms. If a renewal policy does contain a change in terms, the insurer must give the insured a written notice of the change in terms, 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.

[12] "Policy" is defined to mean a written contract of personal lines 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.

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 5. Amends s. 627.707, F.S., relating 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 is defined in the same statute.
- 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.
- Once 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 structural repairs, less the insured's deductible. Once the policyholder contracts for stabilization or repairs, the insurer may:
    - Limit its initial payment to 10 percent of estimated costs to implement stabilization or repairs, or
    - Limit its initial payment to the actual cash value of the sinkhole loss for structural repairs.

Final payment for the structural or stabilization and repairs must be remitted once work is complete and in accordance with policy terms.

- Policyholders are required to enter into contracts to stabilize the building or repair the foundation within 90 days after the insurer approved coverage for the sinkhole loss. 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 or the lack of qualified persons to repair the property is due to factors outside the policyholder's control.
- 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 litigation, unless the sinkhole claim is in the neutral evaluation process, or unless factors outside the control of the policyholder prevent completion within the 12-month period.
- 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 6. Amends s. 627.7073, F.S., pertaining to sinkhole reports. The bill provides for the following changes to sinkhole reporting procedures:

- The 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.
- The presumption of correctness of the sinkhole report under current law is clarified to be a presumption shifting the burden of proof because the presumption is a public policy presumption. Thus, a sinkhole report is presumed correct and public policy compels a homeowner to have the burden to disprove the findings and recommendations of the engineer or geologist completing the sinkhole report. This change is in response to the case of *Warfel v. Universal Insurance Company of North America*, 2009 WL 4640882 (Fla. 2nd DCA 2009), which ruled against the insurer. In this case, the court held the sinkhole report presumption was a "vanishing" or "bursting bubble" presumption, rather than a public policy-related presumption that shifts the burden of proof. Thus, the court determined the report's presumption of correctness vanished when the homeowner in the case presented credible evidence contradicting the fact(s) giving rise to the presumption. With vanishing presumptions, the jury is not told of the presumption and must decide the case based on the evidence presented by the parties as though no presumption ever existed.
- 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 seller of property on which a sinkhole claim has been made and paid 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. These disclosures are in addition to the disclosures required under current law.

Section 7. Amends s. 627.7074, F.S., pertaining to alternative procedures for resolution of disputed sinkhole insurance claims. Under current law, the term "neutral evaluation" means the alternative dispute resolution process. The bill provides that neutral evaluation for sinkhole claims is available to either party if a sinkhole report is issued and further provides that neutral evaluation does not supersede the appraisal clause, if provided by the insurance policy.

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 cause which include a familial relationship between the proposed neutral evaluator and either party; the proposed evaluator has previously represented either party; the proposed evaluator has represented other persons in the same or substantially related matter; or the proposed evaluator works in the same firm as a person who has previously represented either party.

The bill requires appointment of a neutral evaluator who can determine causation and method of repair if either party requests appointment of a neutral evaluator with these qualifications. If a neutral evaluator who can determine both causation and method of repair is not chosen by either

party and the neutral evaluator selected is not qualified to determine both issues, the evaluator can obtain assistance on the issue from another neutral evaluator on the DFS list as long as that evaluator has not been disqualified.
The 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 report verifies the sinkhole loss and determines damage was caused by the loss and the insurer agrees to comply with the report, the insurance policy's terms and conditions govern the company's payment for stabilizing the land and building and repairing the foundation and structure.

The bill also requires any court proceeding related to the sinkhole claim be stayed during the neutral evaluation and for five days after the neutral evaluation report is filed with the court. This stay is effective regardless of when it is invoked.

Section 8. Amends s. 627.711, F.S., relating to hurricane loss mitigation. 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 forms from persons 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 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/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 9. Provides that the act will 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.

D. Other Constitutional Issues:

Single Subject Issue
Article III, Section 6 of the Florida Constitution provides in relevant part: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." The subject matter which should be considered when determining whether an act embraces a single subject is the subject expressed in the title. *Ex parte Knight*, 41 So. 786 (Fla. 1906). The test is whether the bill is designed to accomplish separate objectives which have no natural or logical connection to each other. *Board of Public Instruction v. Doran*, 224 So. 2d 693 (Fla. 1969). Where an act contains two subjects that "are designed to accomplish separate and dissociated objects of legislative effort," the act violates single subject. *State ex rel. Landis v. Thompson*, 163 So. 270, 283 (Fla. 1935). An act may contain various subtopics without violating the single-subject requirement. *Burch v. State*, 558 So. 2d 1 (Fla. 1990). The title of the bill is informative of the subject of the bill.

Where the courts find a single subject violation, the entire act fails. Once a law is readopted, however, it is no longer subject to single subject or adequate title requirements.

This bill is titled "An act relating to property insurance." Every provision in the bill, except for the provisions relating to limiting the number of consecutive years for accountants preparing insurer audited financial reports (section 1), and the notice of change in policy terms in insurance policies (section 4), applies to property insurance only. These two provisions, however, have broad application to kinds and lines of insurance other than property insurance.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurers will no longer be required to nonrenew policies for changes made to policy terms under the provisions of the bill so long as proper notice is afforded policyholders. Mitigation inspection fraud may be reduced under the provisions of the bill which sanctions inspectors who do not personally inspect structures or who file false information regarding mitigation features to a home.

C. Government Sector Impact:

The Division of Insurance Fraud will be required to issue an investigative report if it finds probable cause to exist involving inspectors who make false or fraudulent statements on inspection forms. The agency should be able to absorb the costs for such investigations under the provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance on April 13, 2010:

- Provides that an insurer may not use the same accountant or partner of an accounting firm for preparing its audited financial report for more than 5 consecutive years.
- Subject to the approval of the Office of Insurance Regulation and in advance of hurricane season, an insurer may use financial contracts, e.g., derivatives, rather than reinsurance contracts to provide for catastrophe loss funding. The insurer must demonstrate to the OIR that theses financial contracts will provide adequate protection for policyholders in the event of any natural catastrophe.
- Deletes the provision pertaining to the neutral evaluator's recommendations in sinkhole disputes which provided that the actions of the insurer are not a confession of judgment or an admission of liability.
- Clarifies that the Division of Insurance Fraud must send a copy of its investigative report to the OIR and the agency responsible for the licensure of an inspector only after it concludes its investigation and finds probable cause that a violation has occurred.

- Replaces the word "file" with the term "record" for purposes of submitting a sinkhole report with the county clerk of court.

B. Amendments:

None.