HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 447 Residential Property Insurance
SPONSOR(S): General Government Policy Council, Insurance, Business & Financial Affairs Policy Committee; Proctor and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 876, CS/SB 2044, SB 2108

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	11 Y, 3 N, As CS	Callaway	Cooper
2)	General Government Policy Council	14 Y, 1 N, As CS	Callaway	Hamby
3)				
4)				
5)				

SUMMARY ANALYSIS

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

- Eligible insurers use of a rate for personal lines residential and commercial lines residential property insurance that is different than the insurer's filed rate with restrictions on rate increases to a specified percentage each year.
- Extension of the medical malpractice insurance exemption from the assessment base of the Florida Hurricane Catastrophe Fund (FHCF).
- Increased surplus required for certain property insurance companies to obtain and keep a certificate of authority to transact insurance.
- Payment of acquisition costs by insurance companies.
- Change in insurance companies' base rates to account for the impact of mitigation discounts on reductions in revenue of insurance companies.
- Use of mitigation debits for homeowners who do not install mitigation features.
- Repeal of the correlation of mitigation discounts to the uniform home grading scale.
- Implementation of a program allowing consumers to compare homeowners' insurance.
- Reduction of the wind-only zones in Citizens Property Insurance Corporation (Citizens) due to the insufficient reduction in Citizens' probable maximum loss.
- Implementation of a conflict of interest exemption and voting abstention provisions for members of the Citizens' Board of Governors.
- Reduced policyholder notice of nonrenewal for nonrenewals due to an insurance company's problematic financial condition or for policies depopulated from Citizens.
- Procedure and payment timing related to payment of replacement costs to policyholders.
- Numerous revisions to the laws governing sinkholes claims, including repeal of the sinkhole database.
- Change of policy terms by insurers at policy renewal under specified conditions.
- Notification about potential assessments on every insurance policy subject to assessments by Citizens, the Florida Insurance Guaranty Association, or the FHCF.
- Responsibility of Citizens' policyholders at the time an assessment is levied against their Citizens' policy for payment of the assessment.

The bill has no fiscal impact on local governments. Implementation of a program allowing consumers to compare property insurance has a fiscal impact on the Office of Insurance Regulation (OIR). Many of the other provisions in the bill have fiscal impacts on consumers and the insurance industry. Some of the provisions may raise property insurance rates and premiums. (See Fiscal Analysis Section of the staff analysis).

The bill presents a single subject constitutional issue. (See Constitutional Issues Section of the staff analysis).

The bill is effective July 1, 2010 unless otherwise provided.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill makes numerous changes to the laws related to property insurance, primarily residential property insurance.[1]

"Property insurance," as defined by s. 624.604, F.S., includes insurance covering personal lines residential risks, commercial lines residential risks, and commercial nonresidential risks as follows:

- Personal lines residential coverage - homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, cooperative unit owner's and similar policies,
- Commercial lines residential coverage - coverage provided by condominium association, cooperative association, apartment building and similar policies, and
- Commercial nonresidential coverage - coverage provided by commercial business policies.[2]

Generally, residential property insurance covers a policyholder's residence, providing reimbursement due to damages sustained by the residence, including windstorm damage.

Ratemaking Regulation for Property, Casualty, and Surety Insurance

Background

The Rating Law for property, casualty, and surety insurance is located in Part I of ch. 627, F.S., (ss. 627.011 – 627.311, F.S.). The primary purpose of the Rating Law is to ensure insurance rates are not excessive, inadequate, or unfairly discriminatory. This standard applies to every property insurance rate.

Section 627.0645, F.S, requires every property insurance company to make a rate filing with the Office of Insurance Regulation (OIR) each year. The rate filing contains the insurance company's proposed rates. The OIR reviews the rate filing and either approves or disapproves the proposed rates. If an insurance company does not want to change its rates one year, instead of a rate filing, the insurer can file a certification by an actuary that the existing rate level produces rates which are actuarially sound and which are not inadequate.

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[1] Section 627.4025(1), F.S. defines residential property insurance as including both personal lines residential property insurance and commercial residential property insurance. Personal lines residential property insurance consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies covering damage to property. Commercial lines residential property insurance Consists of condominium association, apartment building and homeowner's association policies covering damage to property.

[2] s. 627.4025, F.S.

In determining whether a rate is excessive, inadequate, or unfairly discriminatory, the OIR uses the following statutory factors.[3]

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, when applicable.
- A reasonable margin for underwriting profit and contingencies.
- Cost of medical services, when applicable.
- Other relevant factors impacting frequency and severity of claims or expenses.

Excess Rates
The consent to rate law (s. 627.171, F.S.) permits an insurer to use a rate in excess of the insurer's filed rate on a specific risk if the insurer obtains the signed, written consent of the insured prior to the policy inception date. The signed consent form must include the filed rate and the excess rate for the risk insured. An insurer may not use excess rates for more than five percent of its personal lines insurance policies written or renewed in each calendar year.

Insurance Companies Using Rates Different than the Insurer's Filed Rates

Eligibility For Use
The bill allows insurers meeting specified criteria to use a rate for personal lines residential and commercial lines residential property insurance[4] that is different than the insurer's filed rate. The bill does not allow insurance companies to charge rates different than filed rates for commercial nonresidential property insurance policies (i.e. property insurance covering businesses). Rates different than an insurer's filed rate used in accordance with the bill will not count in the insurer's five percent consent to rate limitation. Insurance companies using rates different than the insurer's filed rate are limited to rate increases of ten percent statewide average over the insurer's filed rate the first year and ten percent statewide average over the rate in effect at the time of filing for each year after. However, the rate charged an individual policyholder in any year cannot be more than two times the statewide average rate increase included in that year's rate filing.

In order to qualify to use rates different than the filed rate, an insurer must:
- hold a certificate of authority to write property insurance in Florida and
- not purchase coverage in the Florida Hurricane Catastrophe Fund for the temporary increase in coverage limit options (TICL options).[5]

Citizens Property Insurance Corporation (Citizens) will not be able to offer property policies with rates different than the rate filed and approved by OIR because Citizens does not hold a certificate of

[3] s. 627.062(2), F.S.
[4] Personal lines residential property insurance policies include homeowner, mobile homeowner, dwelling, tenant's, condominium unit owner's, and cooperative unit owner's policies. Commercial lines residential property insurance policies include condominium association, cooperative association, apartment building and similar policies.
[5] The TICL options allow insurers to purchase reinsurance through the Florida Hurricane Catastrophe Fund in an amount up to $10 billion in excess of the reinsurance required by law to be purchased through the Fund.

authority, one of the conditions of eligibility provided in the bill for insurers to use rates higher than their filed rates.[6]

Even if an insurance company meets the eligibility provided in the bill to offer rates different than the insurer's filed rates, not every residential property policy written by the insurer will qualify for these rates. Under the bill, residential property insurance policies that exclude windstorm coverage[7] or are depopulated from Citizens[8] cannot have rates different than the insurer's filed rate. Thus, rates on these types of property insurance policies must be approved by the OIR as under current law.

The bill does not require an insurance company to offer property insurance policies with rates different than the insurer's filed rate; the company has the option to offer this type of policy. And if offered by the insurer, the bill does not require the consumer to purchase the policy. The bill, however, also does not require an insurance company to offer policies with regulated rates. Accordingly, it is possible every insurer in the private market eligible to offer policies with rates different than filed rates will do so and will not offer any policies with regulated rates. However, it is also possible no insurer in the private market eligible to offer policies with rates different than their filed rates will offer these policies and all eligible insurers will offer policies with regulated rates. And, it is possible eligible insurers in the private market will offer a number of policies with rates different than their filed rates and a number of policies with regulated rates. Citizens, however, will always offer policies with regulated rates as they are not eligible to offer policies with rates different than their filed rates under the bill and explained previously.

Review of Rates by the OIR

Although the rates allowed by the bill must be filed with the OIR, the bill does not make these rates subject to the same rate regulation as residential property insurance policies with rates filed with and approved by the OIR. Rather, the OIR is only authorized to disapprove a rate for residential property polices different than the insurer's filed rate if the OIR determines the rate is inadequate or uses rating factors that discriminate on the basis of race, color, creed, marital status, sex, or national origin. It cannot disapprove the rate because the rate is excessive or unfairly discriminatory on the basis of other factors.[9]

Policyholder Notification and Acknowledgement

Before a property insurance policy with a rate different than the insurer's filed rate can be issued or renewed by an insurer, the insurer must provide notice to the applicant or policyholder in 12-point boldfaced type the policy's rate is not fully regulated by the OIR and may have a higher rate than a policy with a rate that is regulated and approved by the OIR. The notice must also indicate a policy subject to full rate regulation may be purchased. The bill specifies how this notice must be given for policy renewals.

An insurance company writing a policy with a rate different than their filed rate must provide an applicant for new coverage with a premium estimate for a similar policy written by Citizens. This estimate must be given before the effective date of the new policy. Likewise, a premium estimate for a similar policy written by Citizens must be given before renewal to an existing policyholder whose policy is going to have a rate different than the insurer's filed rate at renewal.

An applicant or renewal policyholder must also sign an acknowledgement form relating to review of the required disclosures and premium comparison, an acknowledgement about the deregulated rate applicable to the policy and the availability of a policy with a regulated rate, and a notification about the

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[6] Citizens is a governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not an insurance company and thus not required to obtain a certificate of insurance in order to transact insurance. (s. 627.3351(6)(a)1., F.S.)

[7] Insurance companies in the private market are only allowed to write property insurance policies that exclude windstorm coverage in the wind-zone areas of Citizens. In these areas, Citizens writes the windstorm coverage and an insurance company in the voluntary market writes the non-windstorm (or other peril) coverage. Insurance companies in the private market are also allowed to write property insurance policies in areas outside the wind-zone areas only if the policyholder opts to exclude windstorm coverage in accordance with s. 627.712(2), F.S. (i.e. written request to exclude windstorm coverage and approval of the property mortgage or lien holder, if any)

[8] Section 627.351(6)(q)3., F.S., requires Citizens to adopt a program to reduce new and renewal writings in Citizens (i.e. a depopulation program). The depopulation process for Citizens is further governed by s. 627.3511, F.S.

[9] Section 627.062(2)(e), F.S., enumerates what standards the OIR can use under current law to find a rate filing is excessive, inadequate, or unfairly discriminatory.

assessability of the policy for deficits in Citizens. This acknowledgment form must be retained by the insurance company or insurance agent for at least three years. If an insurance company receives a premium payment for a policy with a rate different than the filed rate, the insurer is deemed to comply with the acknowledgment form and premium estimate requirements as long as the company provided the acknowledgement form and premium estimate to the policyholder before the premium payment was remitted.

Policy Nonrenewal Notification

The bill requires a property insurance company to give a policyholder 180 days written notice of nonrenewal if the policyholder has a policy with the insurer with a rate that is different than the insurer's filed rate. Current law[10] requires a 100 day written notice, or notice by June 1st, whichever is earlier, for property insurance policies with rates approved by the OIR and 180 days written notice for policyholders insured by the insurer for the previous five years.

Policy Cancellation

Insurers cancelling property insurance policies with rates different than the insurer's filed rate must follow the cancellation protocol listed in current law (s. 627.4133, F.S.) Generally, this protocol requires written notice of cancellation 100 days before the cancellation is effective or by June 1st, whichever is earlier, or written notice 180 days before the cancellation's effective date if the policyholder has been insured with the company for the prior five years. Cancellation of a policy for nonpayment of premium only requires a 10 day written notice.

Use of Expedited Rate Filing

Section 627.062(2)(k), F.S., enacted in 2009,[11] allows property insurance companies to make a rate filing that is separate from the insurer's annual rate filing and that is approved or disapproved by the OIR on an expedited basis. This expedited rate filing can only request rate changes due to the recovery of reinsurance or financing costs to replace or finance payment of amounts covered by the Florida Hurricane Catastrophe Fund Temporary Increase in Coverage Limit (TICL) option coverage[12], the costs to replace TICL option coverage due to the yearly TICL option coverage reductions,[13] the costs of the price increase of TICL option coverage,[14] and the costs of the price increase of the FHCF mandatory option coverage.[15]

Reinsurance costs to be recouped by an expedited filing may not be more than 10 percent for any individual policyholder. Costs associated with the purchase of liquidity instruments or lines of credit, instead of reinsurance, to be recouped in the expedited rate filing may not be more than 3 percent for any individual policyholder.

The insurance company must submit proof of the purchase of reinsurance or other financing product in order to recoup the costs in an expedited rate filing. If the insurance company purchases the reinsurance or other financing product from an affiliated company, the insurance company can only recoup the cost of reinsurance or other financing product an unaffiliated company would charge the insurance company.

The OIR may disapprove an expedited rate filing as excessive, inadequate or unfairly discriminatory. An insurer can only make an expedited rate filing once every 12 months.

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[10] s. 627.4133(2), F.S.

[11] Section 7, Ch. 2009- 87, L.O.F.

[12] The Temporary Increase in Coverage Limit option coverage offers reinsurance from the Florida Hurricane Catastrophe Fund for insurers above the Fund's mandatory coverage. When this coverage was initially enacted in 2007, it provided an additional $12 billion in coverage. Starting in 2009, however, the coverage amount is decreased each year by $2 billion until it reaches zero in 2013.

[13] Legislation enacted in 2009 (Ch. 2009-87, L.O.F.) reduced the TICL option $2 billion a year for six years starting in the 2009-2010 contract year (June 1, 2009-May 31, 2010).

[14] Legislation enacted in 2009 (Ch. 2009-87, L.O.F.) increased the price for TICL coverage each year for five years. The price increase is in conjunction with the TICL coverage decreases discussed in footnotes #5 and 6.

[15] Legislation enacted in 2009 (Ch. 2009-87, L.O.F.) increased the price of the mandatory coverage from the Florida Hurricane Catastrophe Fund by requiring the Fund to include a cash build up factor of 5 percent in its reimbursement premium each year until the factor reaches 25 percent. When the factor reaches 25 percent (in 2013), it becomes a permanent part of the Fund's rate and is put into the rate yearly.

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; 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 fastest approval time by the OIR was 14 days from the initial filing to final approval and the longest approval time was 128 days from the initial filing. Most insurers obtained final approval between 40 and 80 days following their initial filing.

The bill amends the expedited rate filing law enacted in 2009. The bill changes the costs that can be included in an expedited rate filing. Current law allows the following costs to be included in an expedited rate filing: cost of reinsurance or the financing costs to finance or replace the Temporary Increase in Coverage Limits (TICL) option in the Florida Hurricane Catastrophe Fund, the cost paid for the TICL option if purchased, and the cost paid for FHCF coverage to include the cash build-up factor. The bill continues to allow the cost of reinsurance to be included in the expedited filing but does not require the reinsurance costs to be due to replace of finance TICL or FHCF coverage. It also removes current law allowing financing costs to replace TICL coverage, the cost of TICL coverage if purchased, and the cost paid for FHCF coverage including the cash build-up factor. The bill adds new types of costs that an insurer can include in an expedited rate filing. The new types of costs that can be included are financing products to replace insurance[16] and an inflation trend factor set by the OIR. Current law prohibiting costs included in an expedited rate filing to be loaded for expenses or profit is deleted. Thus, the costs allowed to be included in an expedited rate filing will be able to be loaded for profit and expense by the insurer.

As under current law, an expedited rate filing to recoup the costs allowed under the bill cannot be used to increase rates more than 10 percent per policyholder and can only be made once every 12 months. However, the bill removes current law that restricts insurers from using an expedited rate filing if the insurer has implemented a rate increase in the prior six months and restricts insurers from making any other rate filing for six months after the expedited rate filing. Current law relating to the recoupment of reinsurance or other financing costs by affiliated insurers is not changed by the bill. An insurer using an expedited rate filing is still required to submit documentation of reinsurance or other financing product costs as under current law.

Starting January 1, 2011, the OIR is required to annually publish an inflation trend factor for use in an expedited rate filing. The inflation trend can set cost increases or decreases and must be based on data and economic indices, including overall claim cost data. The OIR is required to annually publish an inflation trend factor for residential property insurance and is allowed to publish a factor for other lines of insurance. The trend factor for residential property insurance must be published by March 1st each year.

Certification of Rate Filings

Current law requires all property insurance rate filings to include a certification from the insurance company's chief executive officer or chief financial officer and the chief actuary of the insurance company. The certification must be under oath, subject to the penalty of perjury, and on a form approved by the Financial Services Commission.[17] Contents of the certification are provided in s. 627.062(9)(a), F.S. Knowingly making a false certification subjects the officer and actuary to penalties under the Insurance Code. A property insurance rate filing must be disapproved if the filing does not contain a certification.

The bill provides a rate filing certification is not rendered false if the insurance company provides the OIR with additional or supplementary information or clarification after the rate filing is submitted for approval. A new certification is not required for additional information submitted by an insurance

[16] Financing products of this type are used by insurers to shed risk much like reinsurance but the product is not traditional reinsurance.
[17] The Financial Services Commission is comprised of the Governor and Cabinet.

company to the OIR relating to a rate filing that is pending with the OIR. Furthermore, no certification is required for expedited rate filings.

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.[18] 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 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).[19]

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 emergency 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 emergency assessments for as long as 30 years.

The fund had a deficit due to the 2005 hurricanes that resulted in a one percent emergency assessment, which will remain in effect until approximately 2014 on all assessable lines of business. Although historically the Fund's assessment base has increased 7 percent a year, the assessment base declined by -2.42 percent in 2006 and -4.69 percent in 2007. The 2009 year-end calculations are not yet finalized, but it is anticipated that the base will decline further, according to officials with the fund.[20]

Proposed Changes Relating to Medical Malpractice Exemption from FHCF Assessment Base
The bill continues the exemption of medical malpractice insurance premiums from the FHCF emergency assessment for 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, 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.[21] 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.[22]

Insurer Surplus Requirements

Surplus Needed To Obtain A Certificate of Authority
With limited exceptions, a certificate of authority from the Office of Insurance Regulation (OIR) is needed to act as an insurer and transact insurance.[23] Generally, a new property and casualty company

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[18] Section 215.555, F.S.
[19] 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.
[20] Information obtained from the Florida Hurricane Catastrophe Fund on file with the Insurance, Business & Financial Affairs Policy Committee.
[21] The Florida Hurricane Catastrophe Fund's assessment base is currently $34.9 billion.
[22] http://www.floir.com/pdf/MedicaMalReport10012009.pdf
[23] s. 624.401(1), F.S.

must have the greater of $5 million in surplus[24] or ten percent of the insurer's liabilities to obtain a certificate of authority.[25]

Under the bill, an insurance company formed under Florida law and licensed on or after July 1, 2010 to write residential property insurance must have the greater of ten percent of the insurer's liabilities or $15 million, rather than $5 million, in surplus to obtain a certificate of authority. However, there are two exceptions to the increased surplus requirement for newly formed insurance companies. An insurance company licensed on or after July 1, 2010 to write residential property insurance must only have the greater of ten percent of the insurer's liabilities or $5 million in surplus to obtain a certificate of authority if the insurance company is a wholly owned subsidiary of an insurance company formed in another state. In addition, an insurance company formed under Florida law that is a subsidiary or an affiliate of an insurance company formed in Florida and licensed prior to July 1, 2010 must only have the greater of ten percent of the insurer's liabilities or $5 million in surplus to obtain a certificate of authority to write property insurance.

Surplus Needed To Maintain A Certificate of Authority

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.[26] In addition, generally, a property insurer's written premium to surplus ratio must not exceed 4 to 1 for net written premiums or 10 to 1 for gross written premiums to keep its certificate of authority.[27]

Under the bill, an insurance co company formed under Florida law and licensed on or after July 1, 2010 to write residential property insurance must have the greater of ten percent of the insurer's liabilities or $12 million, rather than $4 million, in surplus to keep a certificate of authority. However, there are two exceptions to the increased surplus requirement needed to keep a certificate of authority for newly formed insurance companies. An insurance company licensed on or after July 1, 2010 to write residential property insurance must only have the greater of ten percent of the insurer's liabilities or $ 4 million in surplus to keep a certificate of authority if the insurance company is a wholly owned subsidiary of an insurance company formed in another state. In addition, an insurance company formed under Florida law that is a subsidiary or an affiliate of an insurance company formed in Florida and licensed prior to July 1, 2010 must only have the greater of ten percent of the insurer's liabilities or $4 million in surplus to keep a certificate of authority to write property insurance.

Insurer Report Card

Section 627.0613(4), F.S., enacted in 2007, requires the Insurance Consumer Advocate[28] to prepare a report card each year for each personal residential property insurance company. This report card must grade each company according to factors specified in the statute. Current law, however, does not specify a starting date for the report card issuance and to date no report cards have been issued. The bill requires report cards to be issued by June 1, 2012, at the latest, and requires the report card to be done by June 1st each year after June 1, 2012. The bill specifies the report card should include only "valid" consumer complaints and other "measurable and objective" factors.

Payment of Acquisition Costs by Insurance Companies

An insurer's acquisition costs are typically costs associated with acquiring, maintaining and renewing insurance business. These costs include agent commissions, company sales expenses, and other

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[24] Surplus is the amount an insurance company has after the insurer's liabilities are subtracted from its assets. An insurance company uses surplus to pay claims.

[25] ss. 624.407(1)(a) and (d), F.S. The $5 million surplus requirement is increased to $50 million for pup companies writing residential property insurance in Florida. Pup companies are wholly owned Florida subsidiaries of an insurer domiciled in another state.

[26] s. 624.408(1)(a), F.S.

[27] s. 624.4095(1), F.S. Net Premiums = Gross Premiums minus reinsurance premiums ceded

[28] The Office of the Insurance Consumer Advocate is created by s. 20.121, F.S., as a division of the Department of Financial Services. Although the Advocate is appointed by and reports directly to the state's Chief Financial Officer, the Advocate is not otherwise under the authority of the DFS. (s. 627.0613, F.S.). According to the Advocate's website, the Insurance Consumer Advocate is committed to finding solutions to insurance issues facing Floridians, calling attention to questionable insurance practices, promoting a viable insurance market responsive to the needs of Florida's diverse population and assuring that rates are fair and justified. (http://www.myfloridacfo.com/ica/) (last viewed March 22, 2010).

related expenses. Agent commissions may vary based on numerous factors - the line of business, the agent's expertise, the functions the agent must perform, and competition among other insurers. Agents are prohibited from charging the policyholder any part of their commission. Agent commissions are typically based on a percentage of the premium; however, insurers can apply the agent's percentage to only a portion of the premium (for example, the non-catastrophe portion).

Citizens Property Insurance Corporation has budgeted $205 million for agent commissions for FY 2010 and it is the third largest single expense after reinsurance ($619 million) and losses (and loss adjustment expenses) incurred ($459 million).[29]

Representatives of insurance agents allege the OIR has questioned the amount of acquisition costs, namely agent commissions, in recent rate hearings and has encouraged insurers to reduce these costs even though under current law the OIR cannot prohibit any insurer from paying acquisition costs based on the full amount of the premium or prohibit an insurer from including the full amount of acquisition costs in a rate filing.[30] The bill adds the term, "directly or indirectly," to modify the two prohibitions in current law relating to payment of acquisition costs 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.

OIR Website Of Residential Property Insurance Rate Filings

For residential property insurance rate filings, section 627.0621(2), F.S., requires the OIR to provide information on an Internet website of:

- the overall rate change requested by the insurer;
- the rate change approved by the OIR;
- all assumptions made by any OIR actuary; and
- a certification by the office's actuary that based on the actuary's knowledge, that his or her recommendations are consistent with accepted actuarial principles.

The bill removes the publication of a certification by the OIR's actuary on the website and removes the definitions of "rate filing" and "recommendation" from the statute applicable to the OIR website of residential property insurance rate filings.

Hurricane Mitigation Discounts and Premium Credits

Background on Mitigation Discounts

Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques which reduce the amount of loss in a windstorm have been installed. To facilitate insurer compliance with the windstorm mitigation discounts required by statute the Department of Community Affairs in cooperation with the Department of Insurance contracted with Applied Research Associates, Inc. for a public domain study to provide insurers data and information on estimated loss reduction for wind resistive building features in single-family residences. The study, titled Development of Loss Relativities for Wind Resistive Features of Residential Structures, was completed in 2002. The study's mathematical results, termed "wind loss relativities", were the basis for calculating the specific mitigation discount amount on the wind premium for mitigation features contained by the property.[31]

Mitigation discounts were initially given at 50 percent of the actuarial value of the discount.[32] In 2006, the Legislature amended the mitigation discount law (s. 627.0629(1)(a), F.S.) to require the OIR to

[29] https://www.citizensfla.com/shared/corpfinance/2010Budget.pdf (last viewed March 16, 2010).
[30] s. 627.062(2)(i), F.S.
[31] The relativities applied only to the portion of a policy's wind premium associated with the dwelling, its contents and loss of use.
[32] In an Informational Memorandum issued on January 23, 2003, the OIR notified insurance companies of its suggested mitigation credits for new and existing construction based on its analysis of a 2002 study completed by Applied Research Associates. However, the OIR tempered the mitigation credits derived from the study by 50 percent. As stated by the OIR in the memorandum, the 50 percent tempering of the credits was due to the large rate decreases that could result from application of the credits, the approximations needed to produce practical results, and the potential for

reevaluate the mitigation discounts and require insurers to give full actuarial value for them.[33] Thus, the OIR amended the mitigation discount administrative rule to require insurers to provide mitigation discounts in an amount equal to 100 percent of the mitigation discount amount as determined by the loss relativities in the 2002 study done by Applied Research Associates, Inc.[34] In 2008, the OIR obtained a new study to evaluate the appropriate mitigation discount amounts, however, the OIR has not changed the mitigation discount amounts or mitigation discount administrative rule due to the results of the 2008 study.

Section 627.711, F.S., requires insurers to clearly notify an applicant or policyholder of a personal lines residential property insurance policy of the availability and range of 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 (FSC)[35] when factoring discounts for wind insurance. The form, as adopted by the FSC, 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.

Mitigation Discount Report by the Florida Hurricane Loss Projection Methodology Commission
Although the provision of windstorm mitigation discounts has been beneficial for many consumers, questions were raised in 2008 and 2009 about fraud, the calculation and application of mitigation discounts, and the impact of the discounts on the financial viability of insurance companies.[36] Therefore, 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 mitigation discounts and make recommendations to the Legislature by February 1, 2010.[37]

The Commission's recommendations relating to the manner in which mitigation credits are included in the ratemaking process are as follows:
- The authority of the Office of Insurance Regulation should not include determination of windstorm mitigation relativities and discounts. Windstorm mitigation relativities and discounts should be incorporated into the hurricane computer modeling review process. The Florida Commission on Hurricane Loss Projection Methodology should determine appropriate windstorm mitigation standards and review models according to those standards.
- The determination and application of windstorm mitigation discounts to a policyholder's rates should be actuarially appropriate.
- The base rates and the mitigation plan need to be balanced to achieve adequate rates. The current application of windstorm mitigation credits should be modified to allow an insurance company to use debits as well as credits if more appropriate given its base rate, and offsets should be applied in an actuarially appropriate manner.
- Windstorm mitigation discounts should only apply to that portion of the premium affected by the mitigation features.
- Larger deductibles should be applied to wind losses if windstorm mitigation features such as shutters are not used at the time of a loss.

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differences in results using different hurricane models. The OIR cautioned in the memorandum that the tempering implemented would be curtailed in the future.
[33] Section 14, Ch. 2006-12, L.O.F.
[34] The rule allowed insurance companies to modify the mitigation discounts if the insurer provided detailed alternate studies supporting the modification and allowed the OIR to review all assumptions used in the studies supporting the modification. To date, no insurer has used an alternate wind mitigation discount study to set mitigation discounts.
[35] The Financial Services Commission is comprised of the Governor and Cabinet (s. 20.121(3), F.S.).
[36] "Windstorm Mitigation Discounts Report" by the Florida Commission on Hurricane Loss Projection Methodology, pps. 4-6, 15, 19-20, 21-23, available at http://www.sbafla.com/methodology/pdf/2010/wmc/Mitigation%20Discount%20Report%202-1-10.pdf.
[37] 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.

The Commission's recommendations relating to a flawed residential structure inspection process are as follows:

- Statutory penalties should be increased to the level of a felony for conviction of fraudulent activities.
- The current residential structure inspection process should be replaced with an independent inspection organization. (The report also lists recommendations for the structure and operation of the independent inspection organization).

The Commission's recommendations relating to incomplete and poor data quality about the impact of windstorm mitigation credits on insurers and the level of mitigation credit activity at the exposure level for insurers are as follows:

- 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.
- Re-inspections of residential structures should be conducted on a random sample of the residential structure to establish an error rate as a base line for quality improvement measurement purposes.
- The uniform home grading system should be repealed since it is not feasible and presumes a level of accuracy that does not currently exist.

The Commission's recommendations relating to hurricane computer modeling limitations associated with modeling windstorm mitigation relativities are as follows:

- The current statute regarding the Commission, s. 627.0628, F.S., should be modified to:
    - Task the Commission with developing the appropriate mitigation standards,
    - Add a structural engineer to the Commission, and
    - Revert the Commission's process of developing standards back to an annual basis rather than "every odd year."
- Insurers should use the same hurricane computer simulation model to justify windstorm mitigation discounts as they do for justifying loss costs.

The Commission found 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, a healthier Florida reinsurance market, and a hardening of residential structures to better withstand windstorm losses.[38]

Proposed Changes Relating to the Calculation of Mitigation Discounts

The bill adds legislative intent to the statute requiring mitigation discounts that the implementation of mitigation discounts should 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. Although in their report the Commission recommended an insurer's base rates be balanced with the mitigation plan to achieve adequate rates, the Commission did not specifically detail the balancing recommended meant insurers should recover lost revenue from mitigation discounts by increasing base rates.

The bill adds the term "debits" (i.e. surcharges) to the list of mitigation terms which include discounts, credits, reductions, or other rate differentials. The Commission specifically recommended the use of mitigation debits in their report. The bill does not specify how mitigation debits are to be calculated, but it is presumed the OIR will determine the appropriate debits using the wind loss relativities calculated in the 2002 study on residential wind resistive features done by Applied Research Associates, Inc.

[38] Windstorm Mitigation Discounts Report, pg. 27.

Proposed Changes Relating to the Correlation of Mitigation Discounts to the Home Grading Scale

In 2008, legislation was enacted[39] requiring the OIR to develop, by February 1, 2011, a method for insurers to establish mitigation discounts that correlate to the numerical rating of a structure issued pursuant to the uniform home rating scale. The uniform home rating scale is an objective rating system rating a homes' ability to withstand wind load from a tropical storm or hurricane. The rating system scores homes on a scale of 1 to 100 and was promulgated by rule in November 2007.[40] The primary factors used to calculate the home rating score include roof shape, secondary water resistance, roof cover, roof deck attachment, roof-to-wall connection, opening protection, number of stories, and roof covering type. General geographic features of wind zone location and local terrain are also used to calculate a home's score.

The 2008 legislation also required the Financial Services Commission to adopt rules by October 1, 2011 that require insurers to make rate filings for residential property insurance to correlate the mitigation discounts to the home grading scale.

The bill repeals the requirements that the OIR develop the method for correlating mitigation discounts to a home's rating and the Financial Services Commission to adopt rules requiring rate filings to correlate mitigation discounts to a home's rating.

Mitigation Verification Inspection Form

Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify for a mitigation discount. The Financial Services Commission (Governor and Cabinet) adopted a uniform mitigation verification form in 2007 for use by all insurers to corroborate a home's mitigation features. An updated form was approved by the Financial Services Commission on March 9, 2010. The form must be signed by a hurricane mitigation inspector certified by the My Safe Florida Home Program; a building code inspector; a general, building, or residential contractor; a professional engineer meeting specified criteria; a professional architect; or any other individual or entity acceptable to the insurance company. A form certified by the Department of Financial Services (DFS) must also be accepted by the insurer. The bill deletes the requirement that an insurance company accept a mitigation form certified by the DFS. The bill also deletes current law allowing any individual or entity acceptable to the insurance company to sign the mitigation form and deletes the authority of mitigation inspectors certified by the My Safe Florida Home Program to sign the mitigation form because the My Safe Florida Home Program is inactive. The bill allows an insurance company to accept a form signed by any person the insurance company determines possess qualifications and experience to sign the form.

The bill adds additional requirements on persons who sign mitigation forms in order to alleviate fraud or abuse related to use of the form.[41] The bill requires the person signing the mitigation form to certify or attest he or she personally inspected the structure covered by the form. The bill prohibits the person signing the mitigation form to commit misconduct in doing the mitigation inspection or completing the form. The bill specifies misconduct occurs when an inspector:

- signs a form that indicates he or she personally inspected the structure and the inspector did not do the inspection;
- indicates on the mitigation form the structure has a mitigation feature the inspector knew did not exist or did not inspect;
- signs the mitigation form containing erroneous information due to the gross negligence of the inspector; or
- indicates on the mitigation form false information about the mitigation features of the structure such that the homeowner has a false evaluation of the home's strength which endangers the homeowner's life and property.

[39] Section 12, Ch. 2008-66, L.O.F., creating s. 627.0629(1)(b), F.S.
[40] Rule 69O-167.015, F.A.C.
[41] In the Windstorm Mitigation Discounts Report prepared by the Florida Commission on Hurricane Loss Projection Methodology on February 1, 2010, the Commission found "[t]he residential structure inspection system lacks checks and balances . . . and the system invites abuse and inefficiencies. Regarding the residential structure inspection system, there are indications of widespread fraudulent and unethical behavior." (Windstorm Mitigation Discounts Report, pps. 5-6).

Inspectors committing misconduct in the mitigation inspection or mitigation form completion can be disciplined by the regulatory agency regulating the inspector's profession, if a regulatory agency exists for the profession.

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.

The bill allows insurance companies to require mitigation inspectors or inspection companies to have a quality assurance program for mitigation inspections. If the inspector or inspection company does not have a quality assurance program, the insurance company does not have to accept the inspection forms as valid until the inspection forms submitted by that inspector or inspection company are independently verified by another inspector, inspection company or independent third party quality assurance provider. The insurance company must pay the costs associated with the verification of inspection forms.

Program for Comparison of Homeowners' Insurance

The OIR currently has a website[42] which allows consumers to compare property insurance rates from a sampling of insurance companies for two types of Florida homes.

This bill requires the OIR, contingent on a specific appropriation, 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 program developed pursuant to the bill will be more comprehensive and informative than the website currently implemented by the OIR.

To meet the bill's requirement of a comprehensive program relating to 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.

Citizens Property Insurance Corporation

Background on Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[43] It is not a private insurance company.[44]

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

[42] http://www.shopandcomparerates.com/
[43] Admitted market means insurance companies licensed to transact insurance in Florida.
[44] s. 627.351(6)(a)1., F.S.

FWUA provided personal and commercial residential property wind-only coverage in designated territories.

Citizens' book of business is divided into three separate accounts[45]:

1. Personal Lines Account (PLA) – Multiperil Policies
   Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies covering damage to property from windstorm and from other perils.

2. Commercial Lines Account (CLA) – Multiperil Policies
   Consists of condominium association, apartment building and homeowner's association policies covering damage to property from windstorm and from other perils.

3. High-Risk Account (HRA) – Wind-only and Multiperil Policies
   Consists of personal lines wind-only policies, commercial residential wind-only policies and commercial non-residential wind-only policies issued in limited eligible coastal areas which cover damage to property from windstorm only. Also consists of personal and commercial residential multiperil policies in specified coastal areas (wind-only zones) issued since 2007which cover damage to property from windstorm and from other perils.

As of January 31, 2010, Citizens provides property insurance to about 1 million Florida homeowners and is the largest property insurer in Florida. Under current law, an applicant for coverage with Citizens is eligible even if the applicant has an offer of coverage from an insurer in the private market at its approved rates if the premium for that offer of coverage is more than 15 percent than the premium Citizens would charge for comparable coverage.[46]

Citizens' Wind-Only Policies

Citizens provides coverage in specially designated areas, called wind-only zones,[47] which have been determined to be particularly vulnerable to severe hurricane damage. In these areas, a property owner can obtain a property insurance policy from Citizens that covers only property damage from wind events. In such cases, the property owner will obtain a property insurance policy from an insurance company in the private market that covers property damage and liability from non-wind events (other peril/non-wind coverage).

The wind-only zones that currently exist have evolved over three decades, but originated with the creation of the FWUA in 1970. The FWUA was created to cover residential and commercial policyholders unable to secure windstorm coverage in the voluntary market. This coverage was limited to defined geographical areas in the state determined by the then Department of Insurance. Eligibility was limited to structures in areas found by the Department, after public hearings, to meet three criteria: the lack of windstorm coverage in the area was deterring development, causing mortgages to be in default, and causing financial institutions to deny loans; the area was subject to the requirements of the Southern Standard Building Code or its equivalent; and that extending windstorm coverage to the area was consistent with the policies and objectives of environmental and growth management. In July 2002, when Citizens was created by merging the Florida Residential Property and Casualty Joint Underwriting Association and the FWUA, Citizens maintained the wind-only zones from the FWUA.

The wind-only zones currently apply to 29 Florida counties. When the wind-only zones were established, only Monroe County was included. In 1992, when Hurricane Andrew hit south Florida, the wind-only zone did not include Miami-Dade, Broward, or Palm Beach counties. The Department of Insurance and the Legislature, subsequent to Hurricane Andrew, expanded the boundaries of the wind-only zones to the current ones.

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[45] s. 627.351(6)(b).2., F.S.

[46] s. 627.351(6)(c)5.a., F.S.

[47] Also called windstorm areas or windstorm boundaries.

In the wind-only zones private insurers may offer other peril/non-wind coverage, but are not required to provide windstorm coverage. Under current law,[48] beginning December 1, 2010, if Citizens' 100 year probable maximum loss[49] (PML) in its wind-only zones is not reduced by 25 percent from what it was in February 2001, the wind-only zones must reduce by an amount that allows Citizens to reduce its PML by 25 percent. It does not appear Citizens will be able to reduce its 100 year PML by 25 percent by December 1, 2010 in accordance with this statute. One reason is because Citizens has grown, in part, due to the reluctance of private insurers to expand their writings in Florida because of the significant losses sustained in the 2004 and 2005 hurricane seasons. Therefore, because the required PML reduction will not be accomplished by the statutory deadline, private insurers writing the other peril/non-wind coverage face the choice of either dropping that coverage or writing the windstorm coverage for policies.

Proposed Changes Relating to Citizens' Wind-Only Zones
The current law requiring Citizens to reduce the wind-only zones because the Citizens' probable maximum loss has not been reduced sufficiently since 2002 is repealed. A similar provision relating to Citizens' reduction of its 100 year PML by February 1, 2015 by 50 percent or risk having the area eligible in the HRA reduced to an area set in the statute is also repealed by the bill.[50]

Assessments Levied by Citizens
In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute.[51] The three Citizens' accounts calculate deficits and resulting assessment needs independently.

Citizens Policyholder Surcharges:[52] If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15% of premium per account in deficit for a maximum total of 45%. This surcharge is collected over twelve months and is collected at the time a new Citizens' policy is written or at renewal of an existing Citizens' policy. Thus, a policyholder that is insured by Citizens would be subject to the Citizens Policyholder Surcharge only if the policyholder renewed with Citizens during the 12 month collection period.

Regular Assessments:[53] Upon the exhaustion of the Citizens Policyholder Surcharge for a particular account, Citizens may levy a regular assessment of up to 6% of premium or 6% of the deficit per account, for a maximum total of 18%. The regular assessment is levied on virtually all property and casualty policies in the state but is not levied on Citizens' policies.[54] Mechanically, property casualty insurers with policies subject to the regular assessment "front" the assessment to Citizens and recover it from their policyholders at the issuance of a new policy or at renewal of existing policies. Thus, Citizens will collect funds raised by a regular assessment quickly after the assessment is levied, usually within 30 days after levy.

Emergency Assessments:[55] Upon the exhaustion of the Citizens Policyholder Surcharge and regular assessment for a particular account, Citizens may levy an emergency assessment of up to 10% of premium or 10% of the deficit per account, for a maximum total of 30%. This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies.[56] Mechanically, property and casualty insurers with policies subject to the emergency assessment collect the assessment from policyholders at the issuance of a new policy or at renewal of existing policies and then remit the assessments periodically to Citizens. Thus, Citizens will not collect funds raised by an

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[48] s. 627.351(6)(y), F.S. This law was enacted in 2002.
[49] Probable maximum loss is an estimate of maximum dollar value that can be lost under realistic situations.
[50] The area to be included the HRA set in statute if Citizen's PML is not sufficiently reduced by February 1, 2015 is any area seaward of a line 1,000 feet inland from the Intracoastal Waterway. This will lead to a much smaller area in the HRA.
[51] s. 627.351(6)(b)3.a.,d., and i ., F.S.
[52] s. 627.351(6)(b)3.i., F.S.
[53] s. 627.351(6)(b)3.a. and b., F.S.
[54] The assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.
[55] s. 627.352(6)(b)3.d., F.S.
[56] This assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

emergency assessment immediately after the assessment is levied but will collect funds intermittently throughout the collection period as policies are renewed and new policies written.

Proposed Changes Relating to Citizens Policyholder Surcharges

The bill requires insurance agents issuing property insurance in Citizens to obtain an acknowledgement signed by the applicant for insurance relating to the potential surcharges imposed on the policy by Citizens. The agent is also required to obtain the same acknowledgement form for existing Citizens policies before the policy renews with Citizens. Thus, potential and current policyholders of Citizens will be informed about the potential surcharges that can be imposed on their policy. The signed acknowledgement creates a conclusive presumption the potential or current policyholder understood and accepted the Citizens' surcharge liability. Citizens is required to keep a copy of the signed acknowledgement.

The bill makes policyholders insured by Citizens on the day a Citizens Policyholder Surcharge is levied or on the day of the event (e.g. hurricane) giving rise to the need for the surcharge responsible for paying the surcharge when their policy is renewed or cancelled or when they obtain a new policy with a different insurer.[57] Current law requires Citizens to collect the surcharge over 12 months, but does not specify Citizens' policyholders are responsible for paying the surcharge. In addition, under current law, policyholders who renew a Citizens' policy during the 12 month surcharge collection period and policyholders who obtain insurance in Citizens during the 12 month surcharge collection period are responsible for paying the Citizens Policyholder Surcharge.

Under current law, policyholders of Citizens can avoid paying a Citizens Policyholder Surcharge by nonrenewing their Citizens policy during the 12 month surcharge collection period and obtaining property insurance from an insurer in the voluntary market. The bill prevents the avoidance of surcharge payment in this manner by making Citizens' policyholders at the time the surcharge is levied or policyholders during the time needed to fully collect the surcharge responsible for payment of the surcharge. Citizens can collect the surcharge from unearned premium on the policy for policies that are cancelled by the policyholder before the expiration of the policy term so it is likely Citizens will be able to obtain payment of the surcharge under this circumstance.[58]

The bill maintains Citizens' ability to collect a Citizens Policyholder Surcharge from new Citizens' policyholders. Under the bill, policyholders who are not insured by Citizens on the day the surcharge is levied are still responsible for paying the surcharge if they acquire insurance with Citizens within one year of the Citizens' surcharge levy or within the time the surcharge is fully collected. Current law is similar in that it allows Citizens to charge new policyholders the surcharge but the time period for charging the new policyholders is different than under the bill. Currently, Citizens is required to collect the surcharge from new Citizens' policyholders for 12 months *after the surcharge begins to be collected*, whereas, the bill requires the surcharge collection for new policyholders for 12 months *after the surcharge is levied or for the period of time necessary to fully collect the surcharge levied.*[59]

Proposed Changes Relating to Regular Assessments

The bill also clarifies current law relating to the timing of Citizens' levy of regular assessments against insurance companies. The bill does not allow Citizens to levy regular assessments against insurance companies until Citizens levies a Citizens Policyholder Surcharge in the maximum statutorily allowed amount against Citizens' policyholders. According to a representative of Citizens, this is consistent with how Citizens currently levies regular assessments.[60]

Proposed Changes Relating to Citizens' Board of Governors

Citizens operates under the direction of an 8-member Board of Governors. The Governor, Chief Financial Officer, the Senate President, and the Speaker of the House of Representatives each appoint

[57] The date the surcharge is levied will not be the date the surcharge starts to be collected and will occur prior to the collection start.
[58] Unearned premium is the portion of a premium already received by the insurer under which protection has not yet been provided. The entire premium is not earned until the policy period expires, even though premiums are typically paid in advance. (http://www2.iii.org/glossary/)
[59] The surcharge levy date will always be earlier than the date in which the surcharges begin to be collected because surcharges have to be levied before they can be collected. Thus, the bill makes the surcharge collection period start earlier than under current law.
[60] Conversation with a representative of Citizens on March 9, 2010.

two members of the Board who serve for 3-year staggered terms.[61] At least one of the two appointees of each appointing officer must have demonstrated expertise in insurance.

The bill provides the board members with insurance expertise fall within the exemption in s. 112.313(7)(b), F.S. This statute provides an exemption from the conflicting employment or contractual relationship statute for public officers or agency employees practicing in a profession or occupation when the practice is required or permitted by law. The conflicting employment or contractual relationship statute prohibits public officers or employees from having or holding an employment or contractual relationship with business entities or agencies regulated by or doing business with the agency the public officer or agency employee is affiliated with. The statute also prohibits public officers or agency employees from having or holding employment or contractual relationships creating a continuing or frequently recurring conflict between the officer or employee's private interests and the performance of the officer's or employee's public duties or that impede the discharge of the public duties.

The bill also prohibits Citizens' board members from voting on any measure before the Board that would inure to the member's private gain or loss, to the gain or loss of any principal retaining the board member, to the gain or loss of a parent or subsidiary organization of the principal retaining the board member, or to the gain or loss of a relative or business associate of the board member. When the board member abstains from voting, the member must state the nature of the interest in the matter which the member is abstaining from and disclosure the nature of the interest in a memorandum filed with the person responsible for recording the Citizens' board meeting minutes.

<u>Nonrenewal Notice For Property Insurance</u>

Under current law,[62] 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 1st and November 30th.

The bill provides, notwithstanding any other provisions of law, that if the OIR determines 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, rather than the 100 or 180 day notice required under current law. The OIR must approve the insurer's plan for early cancellation or nonrenewal in order for the 45 day notice to apply. The OIR may base its finding on the insurer's financial condition, reinsurance inadequacy, or other relevant factor. The OIR's finding may be conditioned on the insurer's consent to be placed in administrative supervision or its consent to the appointment of a receiver.

The bill also requires Citizens to give a 45-day written notice of nonrenewal, cancellation, or termination, rather than the 100-day or 180-day notice provided in current law, for property insurance policies assumed by a private insurance company from Citizens (i.e. policies taken out of Citizens through depopulation).

<u>Payment of Property Insurance Claims</u>

With limited exceptions, s. 627.70131(5), F.S., requires insurance companies to pay or deny property insurance claims or portions of claims within 90 days of receipt of a notice of the claim from the policyholder. Insurance companies are excused from the 90-day claims payment requirement if factors beyond the control of the insurance company reasonably prevent payment within the 90-day period.

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[61] s. 627.351 (6)(c)(4), F.S.
[62] s. 627.4133(2), F.S.

The bill clarifies that the 90-day claims payment or denial requirement in current law applies to initial[63] or supplemental property insurance claims. Current law does not specify whether the payment or denial provision applies to only initial claims, only supplemental claims, or to both types of claims.

Payment of Replacement Costs In Property Insurance Claims

Property insurance claims are adjusted on the basis of replacement costs or actual cash value, whichever method is provided in the property insurance policy. Property insurers must offer policyholders an option for replacement cost coverage.[64]

If a claim is adjusted by the actual cash value method, the policyholder is paid the depreciated value of the property damaged or lost that is being replaced or repaired. If a claim is adjusted by the replacement cost method, the policyholder is paid the actual cost to replace the property damaged or lost without reservation or holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling or property.[65] Requiring insurers to pay the full replacement cost under replacement cost policies, without holding back depreciated value until the property is replaced or repaired, benefits policyholders who can collect such payments and then decide whether to actually replace or repair the property. But, this also likely increases loss payments by insurers and could cause an increase in fraudulent claims, both of which may increase premiums. Paying replacement costs whether the dwelling or property is replaced may also result in damaged property not being repaired, which could negatively impact financial institutions that hold mortgages and the secondary mortgage market.

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.

The bill changes current law relating to the payment of replacement costs. For dwelling losses, if the policyholder enters into a contract for repair of the dwelling, the insurer must initially pay at least the actual cash value less any insurance deductible. The remaining amount owed (i.e. the difference between the initial amount paid and the replacement cost) is paid by the insurer periodically as the repair work is done and expenses are incurred by the policyholder. The bill prohibits an insurer, contractor, or subcontractor from requiring the policyholder to make advance payment for dwelling repairs. However, a policyholder will be responsible for payment of incidental expenses to mitigate further damage to the dwelling. An insurer has the option to waive the requirement a policyholder enter into a repair contract before payment of actual cash value is initially made on the claim.

Payment of claims for personal property losses is paid differently by insurers than payment for dwelling losses under the bill. Insurance companies must initially pay 50 percent of the replacement cost, less any deductible, for claims for personal property insured for replacement costs. The policyholder may be required by the insurance company to provide receipts documenting the policyholder replaced the property paid for by the initial 50 percent payment by the company. Payment of the remaining 50 percent of replacement costs is made to the policyholder by the insurance company if the policyholder provides receipts to the company evidencing the property was replaced. If the claim is for a total loss,

[63] Though not defined in law, initial claims are the first claim filed for a loss. Supplemental claims are claims derived from the same loss but that are filed after the initial claim.
[64] s. 627.7011, F.S.
[65] s. 627.7011(3), F.S. The current law relating to replacement costs was enacted in 2005 as a result of numerous property insurance claims resulting from the 2004 and 2005 hurricanes. Prior to 2005, the law relating to replacement costs required the insurance company to initially pay the homeowner the actual cash value of the damaged property with the difference between the actual cash value and the replacement costs paid after the homeowner repaired or replaced the damaged property. Following the 2004 and 2005 hurricane season, insurance regulators and policymakers received multiple complaints from homeowners who did not have sufficient funds to pay the difference between the actual cash value and replacement costs of the damaged property and thus could not repair or replace the damaged property. In these cases, the homeowner was only paid actual cash value for the damaged property even though the property insurance policy required the insurance company to pay replacement cost for the damaged property.

the insurance company must pay the entire replacement cost initially, rather than 50 percent. Insurance companies cannot require policyholders to advance payment for replacing personal property.

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.[66]

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.[67]

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.[68]

Section 627.7065, F.S., enacted in 2005,[69] 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. The proposed rule required insurers to electronically submit sinkhole claims data for sinkhole claims from January 1, 2005 forward within 60 days of the sinkhole claim investigation or within 60 days from the effective date of the rule. The rule incorporated a form to be used to report sinkhole claims to the database and allows insurers to report sinkhole claims from January 2, 2005 to December 31, 2009 via a database upload. The rule required insurers to update the sinkhole claim information reported to DFS for the sinkhole database within 60 days of any change in the data required to be reported.

The proposed rule required the following data to be reported by insurers to DFS for the sinkhole database:

1. Name of the insurance company;
2. License number of the insurance company;

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[66] s. 377.075, F.S.

[67] Florida Geological Survey; Department of Environmental Protection; *Sinkholes: Frequently Asked Questions*, available at http://www.dep.state.fl.us/geology/feedback/faq.htm#9, viewed March 1, 2010.

[68] *Id*.

[69] Section 18, Ch. 2005-111, L.O.F.

3. Claim number;
4. Date the claim was reported;
5. Type of insurance policy;
6. Status of claim;
7. Whether a sinkhole or catastrophic ground cover collapse loss was confirmed;
8. Whether a sinkhole or catastrophic ground cover collapse finding was disputed;
9. Geotechnical methods used to confirm sinkhole event;
10. Whether the insured property was deemed a total loss for insurance purposes;
11. Florida county in which the claim occurred;
12. City in which the claim occurred;
13. Postal Zip-Code in which the claim occurred;
14. Property address at which the claim occurred;
15. Longitude at which the claim occurred;
16. Latitude at which the claim occurred;
17. Method by which latitude and longitude were determined (i.e., topographic map, survey, hand held GPS);
18. GPS datum type used;
19. Survey Township;
20. Survey Section;
21. Survey Range;
22. Elevation of land surface affected by collapse;
23. Measured depth of sinkhole;
24. Measured width of sinkhole (include minimum and maximum width);
25. Slope of the sinkhole walls (include minimum and maximum slope);
26. Whether water is visible in the sinkhole;
27. Whether limestone is visible in the sinkhole;
28. Whether a cave is visible in the sinkhole;
29. Estimated time period for formation of the sinkhole;
30. Any pre-collapse indicators;
31. Triggering mechanism most likely to have caused sinkhole;
32. Soil type at sinkhole location;
33. Land use of property involved in the sinkhole loss;
34. Structure affected by sinkhole (i.e., residence, road, retention pond, etc.);
35. Type of professional (Professional Geologist or Professional Engineer) who investigated sinkhole;
36. Whether the sinkhole was repaired as part of the claim.

This data is very similar to the data reported on the sinkhole report form used by the Survey and completed by observers when a sinkhole is located and reported to the Survey.

During the rule hearing, property insurance companies presented concerns about the rule to DFS. Concerns related to the type of data required to be collected and reported on sinkhole claims, the appropriate person to collect the sinkhole data, the time frame given in the rule for reporting data for sinkhole claims filed from January 1, 2005 to December 31, 2009, the impact on insurers writing property insurance in sinkhole-prome areas of readily available sinkhole related data on the internet via the database, the effect of changes to the definition of sinkhole from 2005 to present on the data required to be submitted, the accurateness of reporting sinkhole data due to the changing definition,

reporting sinkhole claim information during the pendency of a sinkhole claim rather than when the claim is closed, and the lack of confidentiality of the data that could be accessed by public adjusters and plaintiff attorneys to solicit business involving sinkhole claims. 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.

This bill repeals the sinkhole database statute. Accordingly, insurers will no longer have to report sinkhole information to the sinkhole database and information relating to sinkhole claims filed against property insurance policies will no longer be compiled and kept by the DFS.

Insurance Adjusting of 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. Prior to 2005, the law governing sinkhole claims was very general. The 2005 and 2006 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. 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 insurance company and policyholder verifying sinkhole loss or eliminating sinkhole activity as the cause of damage to the property. The statute provides specific contents of the sinkhole report. 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.

Proposed Changes Relating to Adjusting Sinkhole Claims

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 recommended by the sinkhole report, the insurer may:
    - Limit its initial payment to 10 percent of estimated costs to implement stabilization and foundation repairs
    - 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 and the lack of qualified persons to repair the property is due to factors outside the policyholder's control or if the policyholder is seeking to retain an engineer or geologist to do sinkhole testing. However, the 90-day time period is tolled if neutral evaluation is selected to help resolve the sinkhole claim.
- 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.
- The insurance company 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.
- The engineer or geologist doing the testing must issue the sinkhole report only to the insurance company, instead of to the insurance company and the policyholder. 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.
- Policyholders that disagree with the sinkhole findings, opinions, or recommendations of the engineer or geologist hired by the insurance company are given authority to hire an engineer or geologist to perform sinkhole testing and to render findings, opinions, and recommendations as to the cause of the property damage and the method of stabilization and repair. If the policyholder hires an engineer or geologist, the sinkhole report from the engineer or geologist must be completed pursuant to the requirements in current law and a copy of the sinkhole report must be given to the insurance company.
- The presumption of correctness of the sinkhole report under current law is amended by the bill. Current law provides the sinkhole report is presumed correct. This presumption was the subject of the recent case of Warfel v. Universal Insurance Company of North America, 2009 WL 4640882 (Fla. 2nd DCA 2009). 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 sinkhole 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 bill provides the sinkhole report prepared by the insurance company's geologist or engineer is presumed correct with the presumption shifting the burden of proof under s. 90.34, F.S., unless the policyholder hired his or her own geologist or engineer and the policyholder's geologist or engineer disagrees with the insurance company's geologist or engineer about the cause of distress to the property and the appropriate method of land and building stabilization and foundation repair.
- The report and certification of sinkhole loss filed with the county clerk of court must include the amount paid by the insurance company for the loss.
- If the policyholder had a sinkhole report prepared and that report indicates a sinkhole loss caused the sinkhole claim, the insurance company must also file a copy of this report with the county clerk of court as long as the report was provided to the company.
- 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.

Proposed Change Relating to Sinkhole Testing

The bill requires the engineer or geologist doing the sinkhole testing to perform the tests in accordance with Florida Geological Survey Publication 57.[70] This publication, published in 2005, is a consensus compilation from twenty six professionals who participated in Sinkhole Summit II, a meeting to discuss sinkhole issues initiated by the Florida Geological Survey. According to the publication's preface, the report should assist the insurance industry, geologic and geotechnical consultants, government agencies, property owners, and the public, in providing a template for sinkhole investigations protocols.

<u>Alternative Dispute Resolution Process for Sinkhole Claims</u>

Background on the Alternative Dispute Resolution Process

Section 627.7074, F.S., provides an alternative dispute resolution process for sinkhole claims. The process 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. The Department of Financial Services (DFS) 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 why 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.[71]

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.

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[70] This publication is available at http://www.dep.state.fl.us/geology/publications/ (last viewed on April 15, 2010.).

[71] Section 95.11, F.S., requires all suits filed for breach of contract to be filed within five years of the breach. Because insurance policies are contracts, a policyholder must file a lawsuit within five years of the insurance company's breach of the policy.

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. The neutral evaluator must notify the policyholder and insurer when and where the neutral evaluation conference will be conducted. The conference may be held by telephone. 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 and 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. 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 insurance company is not liable for extra contractual damages related to a claim for sinkhole loss related to the issued 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.

Proposed Changes Relating to the Alternative Dispute Resolution Process for Sinkhole Claims

The bill makes the alternative dispute resolution process for sinkhole claims available to either party if a sinkhole report is issued. The neutral evaluation must be held within 90 days, rather than 45 days, of the receipt of the request for neutral evaluation by the DFS. If the evaluation is not held within the 90 day time period, the neutral evaluator's fee is reduced by 10 percent unless factors beyond the control of the evaluator prevented compliance with the time period.

The bill also requires any court proceeding related to the sinkhole claim to 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. Additionally, under the bill, actions of the insurer during the neutral evaluation are not a confession of judgment or an admission of liability.

The bill also makes other changes to the neutral evaluation process as follows:

Selection of a Neutral Evaluator

The bill allows either the policyholder or the insurance company to request disqualification of neutral evaluators on the DFS evaluator list for cause and specifies what grounds constitute cause. Each party can also disqualify one neutral evaluator without cause. The bill requires the DFS to appoint a neutral evaluator from the DFS list of evaluators within 10 business days if the parties cannot agree to an evaluator from the list.

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 list as long as the evaluator to provide assistance has not been disqualified. The neutral evaluator can also use experts or professionals not on the list to help the evaluator address issues to complete the neutral evaluation.

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 neutral 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 loss caused any structural or cosmetic damage to the building and if so, the need for and estimated costs 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 insurance company agrees to comply with the report, the insurance policy's terms and conditions govern the company's payment for the needed land stabilization and repairs.

Effect of the Appraisal Clause In Sinkhole Claims

An appraisal clause is found in all insurance policies. The purpose of the appraisal clause is to establish a procedure to allow disputed amounts to be resolved by disinterested parties. The appraisal clause is used only to determining disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers cannot agree on the amount of damages, they together choose a mutually acceptable umpire.[72]
- Once the umpire has been chosen, the appraisers each present their loss assessment.
- The umpire will subsequently provide a written decision to both parties.
- If the two parties agree to the amount of the loss, that amount becomes the claim amount. However, if one of the parties does not agree, then the case can still be litigated in court.

Although the neutral evaluation used in sinkhole claims supersedes the mediation procedures for property insurance claims contained in s. 627.7015, F.S.,[73] the bill specifies the neutral evaluation will not supersede the appraisal clause in the property insurance policy.

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

[72] An umpire must also be a disinterested party, and must be impartial, of good moral character and possessing a good reputation. No umpire should be chosen that has any financial interest in the outcome of the appraisal. If the two appraisers cannot agree on the selection of an umpire, either side may appeal to the local court for the appointment of someone to serve in that capacity.

[73] This mediation procedure is run by the Department of Financial Services and is a nonbinding process for the insurance company and the policyholder to meet with an neutral third party (the mediator) to discuss their property insurance claim disputes. The mediation facilitates discussions and negotiations between the insurance company and the policyholder but does not render an opinion or determine a resolution of the issues in dispute.

the policyholder with a new policy that contains the changed policy term is not sufficient notice of the policy changes.

In response to the court's decision in this case, the bill allows insurance companies to change terms contained in a personal lines insurance policies or other kinds of insurance without nonrenewing the entire policy and thus having to send a notice of nonrenewal in accordance with current law. To effectuate a change in policy terms, the insurer must give the policyholder written Notice of Change in Policy Terms with the policy renewal notice and the policy renewal notice must be provided to the policyholder in accordance with current law. 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 via a form filing.[74]

Notification Required on Insurance Policies Relating to Assessments

Several provisions in current law require specific contents on a property insurance policy or renewal notice. Section 627.413, F.S., sets forth contents that must be contained in every insurance policy, regardless of the type of insurance the policy covers. Under this statute, insurance policies must contain: names of the parties to the insurance contract, subject of the insurance, risks insured against, the time the insurance is effective, the premium, the conditions pertaining to insurance, and the form numbers and edition dates of all endorsements to the policy.

Section 627.4143, F.S., requires every homeowner's, mobile home owner's, dwelling, or condominium unit owner's policy to contain a checklist of coverage and an outline of coverage. The checklist must contain a list of the standard provisions and elements that are typically included in policies with a notation whether the policy issued contains the standard provisions and elements listed. The outline of coverage must contain a description of the policy's benefits and coverage with the premium associated with the benefits and coverage, a summary of the policy's exclusions and limitations, a summary of renewal or cancellation provisions, a description of the credit or surcharge plan being applied, and a summary of coverage provided through riders or endorsements. Specific language identifying the outline of coverage as being provided for informational purposes must also be on the outline of coverage.

Section 627.7011(4), F.S., requires every homeowner's policy issued or renewed to contain a notification relating to law and ordinance coverage.

The bill requires another notification to be contained on insurance policies subject to assessments by Citizens, the Florida Insurance Guaranty Association (FIGA), or the Florida Hurricane Catastrophe Fund (Catastrophe Fund). This includes most types of property and casualty insurance.[75] The notification required by the bill indicates the policy premium may not be the full cost of the insurance policy because if a hurricane strikes the state causing deficits in Citizens, FIGA, or the Catastrophe Fund, the policyholder may be forced to pay additional moneys to offset the deficits of these entities.

Managing General Agents

A managing general agent is defined in s.626.015(14), F.S., as "any person managing all or part of the insurance business of an insurer . . . and acting as an agent for that insurer . . . who, with or without authority, separately or together with affiliates, produces directly to indirectly, or underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus . . . and also does one or more of the following: 1. Adjusts or pays claims. 2. Negotiates reinsurance on behalf of the insurer." Exceptions to the definition of "managing general agent" are also contained in s. 626.015(14), F.S.

[74] With limited exceptions, s. 627.410, F.S., requires every insurance policy, application, endorsement, or rider to be filed with and approved by the OIR prior to use by the insurance company.

[75] Workers' compensation, medical malpractice, accident and health, federal flood and crop insurance are excluded from Citizens' assessments. Workers' compensation, medical malpractice (until May 31, 2010), accident and health, and federal flood insurance are excluded from Florida Hurricane Catastrophe Fund assessments. The exclusions from FIGA assessments are provided in s. 631.52, F.S.

Current law relating to examination of a managing general agent by the OIR allows the managing general agent to be examined by the OIR as if it were the insurer unless the managing general agent solely represents a single domestic insurer. The bill removes this exception to current law relating to examination of a managing general agent by the OIR and thus allows the OIR to examine managing general agents that only represent a single domestic insurer.

B. SECTION DIRECTORY:

Section 1: Amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund.

Section 2: Amends s. 624.407, F.S., relating to capital funds required of new insurers.

Section 3: Amends s. 624.408, F.S., relating to surplus as to policyholders required of new and existing insurers.

Section 4: Amends s. 626.7452, F.S., relating examination authority relating to managing general agents.

Section 5: Amends s. 627.0613, F.S., relating to the Insurance Consumer Advocate.

Section 6: Amends s. 627.062, F.S., relating to rate standards.

Section 7: Amends s. 627.0621, F.S., relating to transparency in rate regulation.

Section 8: Amends s. 627.0629, F.S., relating to residential property insurance rate filings.

Section 9: Amends s. 627.351, F.S., relating to Citizens Property Insurance Corporation.

Section 10: Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

Section 11: Creates s. 627.41341, F.S., relating to notice of change in policy terms.

Section 12: Amends s. 627.7011, F.S., relating to offer of replacement cost coverage and law and ordinance coverage in homeowners' policies.

Section 13: Amends s. 627.70131, F.S., relating to the insurer's duty to acknowledge communications regarding claims and investigation of claims.

Section 14: Creates s. 627.7031, F.S., relating to residential property insurance option.

Section 15: Amends s. 627.707, F.S., relating to standards for investigation of sinkhole claims by insurers and nonrenewals and is effective June 1, 2010 and applies only to insurance claims made on or after June 1, 2010.

Section 16: Amends s. 627.7072, F.S., relating to testing standards for sinkholes and is effective June 1, 2010 and applies only to insurance claims made on or after June 1, 2010.

Section 17: Amends s. 627.7073, F.S., relating to sinkhole reports and is effective June 1, 2010 and applies only to insurance claims made on or after June 1, 2010.

Section 18: Amends s. 627.7074, F.S., relating to alternative procedure for resolution of disputed sinkhole insurance claims and is effective June 1, 2010 and applies only to insurance claims made on or after June 1, 2010.

Section 19: Amends s. 627.711, F.S., relating to the uniform mitigation verification form.

Section 20: Creates an unnumbered section of law relating to notification required on insurance policies relating to assessments.

Section 21: Repeals s. 627.7065, F.S., relating to the sinkhole database.

Section 22: Provides an effective date of July 1, 2010, unless otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Impact of Eligible Insurers Using A Property Insurance Rate Different Than The Filed Rate

   The OIR submitted the following comments regarding the fiscal impact of the originally filed version of the bill on the agency[76]:

   HB 447 is proposing to allow, with certain restrictions, an insurer to use a rate for residential property insurance different from an otherwise applicable filed rate. The rate that an insurer used shall be filed with the Office as a separate filing. The Office is given the authority to disapprove a rate for being inadequate or for charging any insured or applicant a higher premium solely because of the race, color, creed, marital status, sex or national origin of the insured or applicant. The Office would not have the authority to disapprove the rate for being excessive or unfairly discriminatory or for violations of other provisions of Florida Statutes, such as the Unfair Insurance Trade Practices Act (other than as stated above). In addition, an insurer would not be subject to the limitations imposed on excess rating by s. 627.171(2) and if an insurer chooses to rate insureds under this new limited-regulation option, they would not qualify to purchase coverage from the Florida Hurricane Catastrophe Fund under the temporary increase in coverage limit option.

   The proposed s. 627.062(2)(1)1. states that an insurer may use a rate "different from the otherwise applicable filed rate". This implies that the insurer would have to have a filed and approved rating plan (under full rate regulation) in place from which they would be deviating. When they wish to deviate, they would also have to file the new rates to the Office for a "less regulated" review. This may result in an increased workload rather than decreasing the workload of the Office since both the full rate regulation rates and limited regulation rates would have to be filed for each insurer.

   With companies responding to recent legislative changes and to the ever-evolving marketplace, we have seen an unprecedented increase in the number of filings made by insurance companies. In 2008, PCPR[77] received 84% more rate filings than were received in 2004, as shown in the chart below.

[76] The committee substitute version of the bill should not change the OIR's fiscal comments as the provisions in the bill giving rise to the comments are not changed in the committee substitute.
[77] PCPR refers to the Property and Casualty Product Review Unit of the OIR. (footnote added by staff of the Insurance, Business & Financial Affairs Policy Committee)

Year	Rate Filings
2009*	6,132
2008	7,332
2007	7,522
2006	5,635
2005	4,236
2004	3,974
2003	4,431
2002	3,854

*2009 values estimated based on filing counts as of September 3, 2009.

Every year since 2004, PCPR has viewed this increasing workload as a temporary phenomenon. We have recruited employees with other core responsibilities to lend a hand and have postponed carrying out some of our other responsibilities within OIR in order to handle the filing workload. However, although we initially viewed it as temporary, the filing counts continue to increase, indicating that this is not a temporary phenomenon.

Currently PCPR has 24 positions directly responsible for reviewing rate filings, including seven actuaries. Rate analysts reviewed on average 172 filings per year during 2002-2005. During 2006-2008, each rate analyst reviewed 285 filings on average per year. If each analyst handled the same number of filings on average in 2006-2008 as they did in 2002-2005, PCPR would need sixteen additional rate analysts to handle the extra workload.

It is not anticipated that this bill would result in a fiscal impact. Should HB 447 be enacted, there might be a slight reduction in the number of residential property filings subject to full rate regulation but there is also a possibility of an increased workload. Even if the bill were to result in a slightly decreased workload, this would only provide relief for the additional requirements placed on PCPR by the increases in filing counts and may allow PCPR to resume its other responsibilities within OIR, including working with Legal Services (analyzing data and filings to ensure compliance with applicable statutes and rules), Property and Casualty Financial Oversight (collecting and analyzing data to support solvency regulation), Market Investigations and Examinations (reporting suspected issues that arise during filing review for follow-up), and Market Research (providing data to stakeholders and interested parties), as well as providing risk management and insurance services to other government entities as outlined in law.

Impact of A Program to Allow Homeowners To Compare Property Insurance
Initially, representatives with the OIR provided the following estimate to implement the bill's provision creating a website for consumers to access insurer information for comparison of insurer prices, complaints, financial strength, underwriting and other data. The agency would issue a competitive procurement for this program and estimated the costs as follows:

For FY 2010-2011:

a. Website technology infrastructure and development: $500,000
b. Vendor staff for maintenance and information technology: $208,000
c. Marketing expense: $100,000
d. 1 FTE (actuary) salaries/benefits: $151,800
e. 1 FTE (research assistant) salaries/benefits: $ 40,500

TOTAL: $1,000,300

For FY 2011-2012 and beyond:
2 FTEs (actuary/research assist.) and vendor staff: $400,300

After providing the initial estimate, representatives from the OIR further consulted with the Department of Financial Services Division of Information Systems (DIS) which provides information technology (IT) services to the OIR. The DIS estimated one new FTE was needed for ongoing support of the website. In addition, the DIS estimated .5 existing FTE could be allocated for ongoing support of the website. Upgrades to the current IT system would cost $50,000 according to the estimate provided by DIS.

The DIS estimates, however, do not include funding to develop the website. This would likely be done by a third party vendor. In 2008, the OIR implemented a website for price comparison of Medicare Supplemental insurance policies. This website is similar in nature to the one proposed by the bill, but is on a much smaller scale and is less comprehensive than the one the OIR believes it would have to implement under the bill. The initial development costs for the Medicare Supplemental price comparison website was $456,000. The OIR also consulted with a vendor who was involved in the development of OIR's current homeowners' insurance price comparison website (www.shopandcomparerates.com) and who is familiar with the OIR's current IT systems to arrive at a cost estimate for the initial development of a website for comparison of homeowners' insurance required by the bill. Based on the information the OIR obtained on website development costs, the OIR estimates development of the website for comparison of price, complaint, financial strength, underwriting, and other data for homeowners' insurance required by the bill would cost $500,000.

The bill makes the implementation of the homeowners' insurance comparison website contingent upon a specific appropriation. No appropriation is contained in the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Impact of Eligible Insurers Using A Property Insurance Rate Different Than The Filed Rate

Property policies with rates different than the insurer's filed rates are likely to have higher premiums than those property policies with rates that are fully regulated by the OIR, but some homeowners may be willing to pay the higher premium in exchange for obtaining a policy from a particular insurer.

The number of policies in Citizens may increase as a result of this bill. If property insurance premiums increase as insurer's offer policies with rates different than their filed rates and if the premium increases make the premium for a policy from the insurance company in the voluntary market over 15 percent higher than a comparable policy from Citizens, then some policyholders of insurers in the voluntary market may opt to cancel their existing property insurance policy and obtain a policy from Citizens due to the premium difference in the policies. The actual number of policies that may move from the voluntary market to Citizens cannot be calculated as that number is dependent on the premium increases made by voluntary market insurers and the resulting behavior of their policyholders. Policyholders who buy property insurance based solely on price are more likely to move their policy to Citizens under this scenario. However, policyholders who base their property insurance purchase on loyalty to an insurer or being insured by a particular insurer may opt to stay with their insurer in the private market even if that company increases the rate on the policy as allowed by the bill and regardless of the price difference between that policy and a Citizens policy.

The bill may incent insurance companies in the private market to write multi-peril policies[78] currently written by Citizens. If the private market insurer determines it is advantageous for the company to write these policies at rates different than their filed rates, then private market insurers will write multi-peril policies currently written by Citizens. However, the policyholder would have to choose to move from Citizens to the private market insurer. As stated previously, policyholders who buy property insurance based solely on price may choose not move their policy to the private market insurer if that insurer charges more than Citizens does. However, policyholders who base their property insurance purchase on being insured by an insurer in the private market may opt to move to the private market insurer for the multi-peril policy currently written by Citizen even if that company charges more for the policy than the price of the Citizens' policy.

The bill may also incent insurance companies in the private market to assume the wind coverage on wind-only policies[79] currently written by Citizens. In this case, the private market insurer will write a multi-peril policy. If the bill's allowance for private market insurers to charge rates different than their filed rates results in insurers in the private market determining it is advantageous for the company to write the wind portion of policies currently in Citizens as wind-only policies, then some of the wind-only policies currently written by Citizens could be written by the private market. However, the policyholder would have to choose to move from Citizens to the private market insurer. As stated previously, policyholders who buy property insurance based solely on price may not move their policy to the private market insurer if that insurer charges more than they currently pay for a policy with non-wind coverage from the insurer plus a policy with wind only coverage from Citizens. However, policyholders who base their property insurance purchase on being insured by a particular insurer or that want one property insurance policy may opt to move to the private market insurer for a property insurance policy with wind and non-wind coverage even if that company charges more for the policy than the price of the Citizens wind-only policy added to the price of the private insurer's non-wind coverage.

Impact of Use of Windstorm Mitigation Debits

The use of mitigation debits or surcharges instead of just mitigation credits/discounts may require homeowners with unmitigated homes to pay a mitigation surcharge on their property insurance premium, increasing the property insurance premium paid by the homeowner. Additionally, homeowners who currently receive a mitigation discount may obtain a smaller discount which would increase the property insurance premium paid by the homeowner.

Impact of Change In Insurer's Base Rates To Account For Mitigation Discounts

Insurers that present evidence to the OIR that the company's revenue reduction due to the application of mitigation discounts to property insurance policies exceeds the company's aggregate loss resulting from the installation of mitigation features by homeowners in the company's book of business, will be able to increase the base rates for property insurance written by the company. An increase in base rates translates to increased premiums paid by homeowners.

Impact of Increased Surplus To Obtain And Keep A Certificate of Authority

Certain insurance companies will need more funds to start an insurance company. Likewise, certain licensed insurance companies will need more funds to maintain their licensure.

Impact of Extension of the Medical Malpractice Insurance Exemption from the Assessment Base of the Florida Hurricane Catastrophe Fund

Medical malpractice premiums will continue to be exempt from assessments by the Florida Hurricane Catastrophe Fund. Thus, physicians will not have these assessments added to their malpractice insurance premium. However, policyholders of property and casualty insurance subject to the Fund's

[78] A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy, that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (http://www2.iii.org/glossary/) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

[79] A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability is available in a separate policy.

assessments will pay more for assessments due to the continued exemption of medical malpractice premiums from the assessments.

Impact of Revisions to Procedure and Payment of Replacement Costs

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.

If the revisions to the procedure and payment of replacement costs reduce the amount of losses paid by insurers on property claims, rates should correspondingly decrease given the loss reduction.

Impact of Allowing Insurers To Pay Acquisition Costs Without OIR Interference

Insurance agents should benefit under the bill 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.

If the OIR has questioned the amount an insurer is paying in acquisition costs and pressured insurers to cut these costs, as representatives of insurance agents allege, and OIR's questioning has resulted in smaller costs, then prohibiting OIR from interfering with the payment of these costs may result in larger costs which are included in an insurer's rate filing and correspondingly lead to increased insurance rates.

Impact of A Program to Allow Homeowners To Compare Property Insurance

Consumers should benefit by using the comprehensive website to obtain information necessary to purchase homeowners' insurance.

Impact of Repeal of the Sinkhole Database

The repeal of the sinkhole database will prevent insurance companies from having to expend funds to collect and report the required sinkhole claim information to the database.

Impact of Notification Required on Insurance Policies Relating to Assessments

Insurers will incur costs associated with including this notification on insurance policies subject to the assessment. The costs incurred may include computer program changes so that the notification is printed on the policies.

D. FISCAL COMMENTS:

Impact of Extension of the Medical Malpractice Exemption from the Assessment Base of the Florida Hurricane Catastrophe Fund

Medical malpractice premiums in 2008 totaled approximately $597 million, about 1.7 percent of the Florida Hurricane Catastrophe 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. According to a representative of the Fund, a report from Moody's issued in February 2010 on the Fund's bond rating noted the bond rating (currently a rating of Aa3) could be downgraded if the Fund's assessment base experienced a decline or flattening.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

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 payment of acquisition costs, change of policy terms in insurance policies, and venue and jurisdiction in rehabilitation and liquidation apply to property insurance only. These three provisions, however, have broad application to kinds and lines of insurance other than property insurance.

Payment of Acquisition Costs by Insurance Companies

The payment of acquisition costs provision is inserted into s. 627.062(2), F.S. This provision sets for the rating law that applies all classes of insurance to which the provisions of part I of chapter 627, F.S., apply to (s. 627.062(1), F.S). Section 627.021, F.S., provides the scope of part I of chapter 627, F.S. This provision states "[t]his part of this chapter applies only to property, casualty, and surety insurance . . ." There are exceptions to this scope found in s. 627.021(2), F.S., none of which are applicable. Furthermore, s. 627.062(2), F.S., specifically provides at the end of the subsection that "[t]he provisions of this subsection shall not apply to workers' compensation and employer's liability insurance and to motor vehicle insurance." These three lines of insurance are casualty kinds of insurance which are included in the scope of part I of chapter 627, but are specifically exempt from the rating law relating to property, casualty, and surety insurance because other provisions in the statute address the rating law for these three lines of insurance.[80]

Because the bill's provision relating to payment of acquisition costs by insurance companies are included in s. 627.062(2), F.S., the provision applies to the kinds of insurance s. 627.062, F.S. applies to. As noted above, this statute applies to property, casualty, and surety insurance except for workers' compensation, employer's liability, and motor vehicle. Thus, this provision applies to kinds of insurance other than property insurance which is the sole kind of insurance the bill applies to according to the bill's title.

Change of Policy Terms in Insurance Policies

The change of policy terms in insurance policies provision in the bill is contained in section 10. "Policy" is defined by the bill as "a written contract of personal lines insurance or a written agreement for or effecting insurance, or the certificate of such insurance, by whatever name called . . ." This definition is broad and is not limited to only property insurance. It would include all types of

[80] Sections 624.6011 and 624.0612, F.S. address the various kinds and types of insurance with further detail on each kind of insurance provided in ss. 624.602-624.6085, F.S.

insurance that are personal lines (commercial insurance is thus excluded). Thus, this provision applies to kinds of insurance other than property insurance which is the sole kind of insurance the bill applies to according to the bill's title.

Managing General Agents
The examination of managing general agents provision in the bill is not limited to managing general agents for property insurance companies. Thus, this provision applies to kinds of insurance other than property insurance which is the sole kind of insurance the bill applies to according to the bill's title.

Because it appears at least three provisions in the bill apply to kinds of insurance other than property insurance, the sponsor may wish to narrow the scope of these provisions to only apply to property insurance or change the title of the bill to broaden its application.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The OIR submitted the following comments in their agency bill analysis on the originally filed version of the bill:[81]

The Office is opposed to this proposal.

Reinsurance:
While this legislation does not permit insurers using the rate deregulation provision to purchase coverage under the TICL reinsurance option of the FHCF, the legislation does not prohibit the purchase of FHCF coverage in its entirety.

An insurer exempt from rate regulation and review will benefit from lower cost reinsurance from the FHCF, thus increasing the insurer's profit margin. The purpose of the FHCF is to provide low cost reinsurance to insurers doing business in Florida, thus lowering the premium paid by consumers. To allow insurers to benefit from this reinsurance program and not pass through that savings to policyholders is antithetical to the purpose of this program.

Insurers filing under this provision should be prohibited from purchasing reinsurance from the FHCF to reinsure these policies.

Impact on Property Insurance Rates:
The Office is concerned that this change will yield dramatic rate increases for consumers – a concern bolstered by previous experience in Florida when motor vehicle insurance rates were "deregulated" in the 1960's and again when the change to consent to rate laws led to dramatic increases in condominium association rates in the early years of this decade.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the Insurance, Business & Financial Affairs Policy Committee heard the bill, adopted a strike-all amendment and three amendments to the strike-all amendment, and reported the bill favorably with a committee substitute. The strike-all amendment added new provisions to the bill on the following issues:

[81] The committee substitute version of the bill should not change the OIR's comments as the only provision in the bill giving rise to the comments that is changed in the committee substitute is the implementation of rate increases allowed by the bill on a more gradual basis.

- Extension of the medical malpractice insurance exemption from the assessment base of the Florida Hurricane Catastrophe Fund.
- Increased surplus required for certain property insurance companies to obtain a certificate of insurance to transact insurance.
- Increased surplus required for certain property insurance companies to keep a certificate of insurance to transact insurance.
- Publication date of and contents of insurance company report cards prepared by the Insurance Consumer Advocate.
- Payment of acquisition costs by insurance companies.
- Effect of additional information provided by an insurance company on the required CEO/actuary certification required for rate filings.
- Repeal of specified information on the website of residential property insurance rate filings maintained by the Office of Insurance Regulation.
- Allowance for insurance companies' base rates to account for the impact of mitigation discounts on reductions in revenue of insurance companies.
- Allowance for use of mitigation debits.
- Repeal of the correlation of mitigation discounts to the uniform home grading scale.
- Implementation of a program allowing consumers to compare homeowners' insurance, contingent on an appropriation.
- Reduction of the wind-only zones in Citizens Property Insurance Corporation (Citizens) due to the insufficient reduction in Citizens' probable maximum loss.
- Reduced policyholder notice of nonrenewal for nonrenewals due to an insurance company's problematic financial condition.
- Procedure and payment timing related to payment of replacement costs to policyholders.
- Venue for collateral actions of delinquency proceedings.
- Repeal of the sinkhole database.

The originally filed version of HB 447 was also included in the strike-all amendment but with the following major change:

- Rates used by insurance companies that are different from the company's filed rates are limited to a 5% statewide average increase over the filed rate for the first year the different rate is used, are limited to a 10% statewide average increase the second year, and a 15% statewide average increase the third year.

The three amendments to the strike-all amendment did the following:

- Amended several statutory provisions relating to sinkholes claims. Changes related to the time frame for policyholders to enter into contracts to repair sinkhole damage, presumption of correctness that applies to sinkhole reports, filing of the sinkhole report and certification with the clerk of court, disclosure of sinkhole claims by property sellers, availability of the sinkhole neutral evaluation process, interaction of the sinkhole neutral evaluation process and the appraisal clause, disqualification of neutral evaluators for cause, use of an additional neutral evaluator, ability of the neutral evaluator to order additional sinkhole testing, contents of the neutral evaluator's report, insurer action required if the insurer agrees with the neutral evaluation report, and insurer's responsibility for attorney's fees.
- Added a provision allowing insurance companies to change the terms of an insurance policy at renewal if specified conditions are met.
- Required a notification to be put on the declarations page or on the renewal notice of every insurance policy that is subject to assessments by Citizens Property Insurance Corporation (Citizens) or the Florida Hurricane Catastrophe Fund (FHCF). The notification relates to the potential assessments that can be charged the policyholder to offset the deficits of Citizens or the FHCF.

The staff analysis was updated to reflect the committee substitute.

On April 14, 2010, the General Government Policy Council considered the bill, adopted a strike all amendment and five amendments to the strike all amendment, and reported the bill favorably with a

council substitute. The strike all amendment and amendments to the strike all amendment made the following changes to the bill:

- Removed the bill's provisions addressing the court venue in delinquency proceedings,
- Added a provision relating to examination of managing general agents,
- Allowed additional reinsurance costs and an inflation trend factor to be included in an expedited rate filing,
- Amended current law relating to when an actuary certification is required for rate filings,
- Amended the bill's provisions relating to replacement cost coverage,
- Added a provision requiring insurers to pay or deny initial or supplemental property insurance claims within 90 days,
- Added a provision relating to payment of sinkhole insurance claims,
- Amended the bill's provision relating to the time a policyholder has to enter into a contract to repair sinkhole damage,
- Specified what sinkhole testing a professional engineer and geologist must do in sinkhole claims,
- Amended the bill's provision relating to the presumption for sinkhole reports,
- Amended the bill's provision relating to filing the sinkhole report with the clerk of court,
- Amended the bill's provision relating to grounds for disqualification of a neutral evaluator for cause,
- Amended the bill's provisions relating to selection of a neutral evaluator,
- Required the neutral evaluation to be held within 90 days, rather than 45 days, of the request for the evaluation,
- Added repercussions for the neutral evaluator if the evaluator does not hold the neutral evaluation within the statutory time period required,
- Amended the bill's provisions relating to use of another professional to aid the neutral evaluator,
- Added provisions relating to the mitigation inspection form,
- Added a provision requiring Citizens to give a 45-day notice of nonrenewal to Citizens' policyholders for policies depopulated from Citizens by a private insurer,
- Added a provision requiring insurance policies subject to assessments by the Florida Insurance Guaranty Association to disclose the assessment possibility, and
- Added provisions relating to ethical considerations in voting for members of the Board of Governors of Citizens Property Insurance Corporation.

The staff analysis was updated to reflect the council substitute.