

The Florida Senate  
**HOUSE MESSAGE SUMMARY**

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

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BILL: CS/CS/CS/SB 408, 2<sup>nd</sup> Engrossed

INTRODUCER: Senator Richter and others (Rules Committee, Budget Subcommittee on General Government Appropriations, and Banking and Insurance Committee)

SUBJECT: Property and Casualty Insurance

DATE: May 5, 2011

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**I. Amendments Contained in Message:**

**House Amendment 1 – 844961 to CS/CS/CS/SB 408** (body with title)

**II. Summary of Amendments Contained in Message:**

**House Amendment 1** retains most of the provisions of CS/CS/CS/SB 408, but makes the following changes:

- Creates a 5-year statute of limitation for the breach of a property insurance claim that runs from the date of loss.
- Deletes Section 6 of the Senate Bill containing provisions related to crop insurance. (The deleted language was included in the veto override of HB 7103 (2010) passed by the Legislature on March 24, 2011)
- Deletes Section 7 of the Senate Bill containing provisions that would conform Florida law to National Association of Insurance Commissioner’s accreditation requirements for insurers retaining accountants. (Language in HB 1087 which passed the Legislature).
- Deletes Section 8 of the Senate Bill which removes an exemption from OIR examination for a managing general agency that solely represents a single Florida domestic insurer. Representatives from the Office state that the language is unnecessary and the Office currently examines such entities pursuant to other statutory authority.
- Deletes Section 9 of the Senate Bill which exempts from licensure non-resident public adjusters that provide claims adjusting services to mortgage services or guarantors.
- Deletes Section 12 of the Senate Bill, which revises public adjuster apprentice licensure requirements.
- Limits to property and casualty contracts the Senate version’s requirement to include specified information in the public adjuster contract and a requirement that the PA must provide the contract to the insurer.
- Retains current law that the Office of Insurance Regulation must issue a “notice of intent to approve” within 90 days of receiving a rate filing. The Senate Bill required an “approval,” but changing the language has little substantive effect.
- Limits to property and casualty policies a provision in the Senate Bill preventing the OIR from impeding insurer's right to obtain policyholders, advertise, or appoint agents.

- Expands the expedited rate filing in current law for replacing Cat Fund TICL coverage. Under the House amendment, the expedited rate filing may include all reinsurance costs and raises the maximum rate increase from 10% to 15%. However, rates will still be subject to an OIR finding that they are excessive, inadequate, or unfairly discriminatory.
- Deletes language in the Senate version that removes authority for the OIR to find a rate for sinkhole insurance excessive.
- Prohibits an insurer that implements an approved rate over multiple years from including expense and profit loads applicable to private market reinsurance if the reinsurance cost does not raise rates by more than 10%. The Senate version allows loading for profit or expense.
- Deletes the requirement that the Citizens logo include the phrase "A Taxpayer Funded Corporation."
- Removes a provision prohibiting a public adjuster from being retained on a Citizens claim until Citizens has made an offer on the claim.
- Removes a provision in requiring Citizens to offer sinkhole coverage. However, the House version requires all insurers to offer sinkhole coverage for an additional premium.
- Removes a provision requiring the entirety of a Citizens sinkhole claim payment to be used to make repairs.
- Requires Citizens to retain a consulting firm to examine outsourcing of policy issuance and service functions to private servicing carriers. Likely creates an indeterminate fiscal impact on Citizens. Provision is in SB 1714 by Senator Hays.
- Creates a Written Notice of Surcharge and Assessment liability that must be provided to all new and renewal Citizens policyholders. Provision is in SB 1714 by Sen. Hays.
- Reduces the notice of nonrenewal from 180 to 120 days for residential property insurance policyholders that have been with their company for 5+ years. Maintains current law otherwise requiring 100 days notice or notice by June 1 (or 100 days notice if that will be longer) during hurricane season. The Senate version creates a uniform 90 day notice of nonrenewal requirement for all such policyholders.
- Expands application of the Notice of Change in policy terms created in the Senate version to all property and casualty policies. The Senate version allows the Notice to only be used for personal lines property and casualty insurance policies. The Notice of Change allows insurers to give written notice of a change in policy terms rather than having to nonrenew the policy.
- Retains the Senate language revising payment of Replacement Cost value coverage to the dwelling, but deletes language in the Senate version requiring the policyholder to sign a contract for repairs and prohibiting the insurer or contractor from requiring the policyholder to advance payments.
- Maintains the Senate language requiring insurers to provide two replacement cost coverage options for payment of personal property insurance claims. First option is to pay full replacement cost without reservation. Second option is that the insurer pays depreciated value and holds back remainder of coverage until policyholder provides receipts. However, the House amendment requires notice of claim payment process on second option before the policy is bound. The House language also requires insurer to provide an actuarially reasonable premium discount for using second option.
- Requires private market insurers to provide sinkhole insurance coverage.

- Deletes Senate language applying the deductible to the insurer's sinkhole investigation expenses.
- Creates a definition of "structural damage" for sinkhole claims specifically using terms of the Florida Building Code. Structural damage must be present for sinkhole coverage to be available.
- Requires the policyholder to pay 50 percent of sinkhole testing costs up to \$2,500 if the policyholder requests testing after the insurer denies the claim. Insurer must reimburse costs if testing certifies a sinkhole loss. The Senate language requires the policyholder to pay a minimum of \$2,500 of the sinkhole testing costs up to 50 percent, but does not require the policyholder to pay for such testing up front.
- Requires the insurer to provide written notice to the policyholder of his or her right to request or demand sinkhole testing and specify circumstances when the policyholder may have to pay some of the testing costs.
- Does not apply to policyholders the 3<sup>rd</sup> degree felony for accepting a rebate for sinkhole repairs.
- Removes language in the Senate version that would clarify that the presumption of correctness for sinkhole testing reports applies to the insurer's sinkhole report and places the burden of proof on the policyholder at trial.
- Deletes language restricting the requirement that the insurer pay \$2,500 of the policyholder's attorney's fees incurred in neutral evaluation. Senate version required insurer to pay fees only if the insurer refuses to comply with the neutral evaluator's recommended repairs. House keeps current law requiring fees if the neutral evaluator's repair estimate is more than the insurer's claim offer.
- Deletes language specifying that amendments to sinkhole-related statutes affecting procedural rights do not apply to claims submitted before February 1, 2011. Amendments affecting substantive rights only apply to claims reported on or after July 1, 2011.
- Provides that the Florida Insurance Guaranty Association does not provide reimbursement related to sinkhole claims except for testing deemed appropriate by FIGA and payments to perform sinkhole repairs. FIGA does not pay for attorney's fees, public adjuster fees, or pay the policyholder.
- Adds a severability clause.
- Effective Date is upon becoming a law, rather than July 1, 2011.