The Florida Senate

Interim Project Summary 2001-002 *November 2000*

Committee on Banking and Insurance — Senator James A. Scott, Chairman

REVIEW OF ALTERNATIVES TO PROPERTY AND CASUALTY INSURANCE RATE REGULATION IN FLORIDA

SUMMARY

With the increasing globalization of financial services and intense competition from outside as well as inside the insurance community, state policymakers are being asked to deregulate or, at a minimum, streamline aspects of the rating system and to provide greater uniformity in rate regulation among the 50 states. Various issues related to the regulation of Florida's property and casualty insurance rates have been discussed, considered, or filed as legislation over the last several years. This report will analyze the state's property and casualty rating provisions under s. 627.062, F.S., and will consider the pros and cons of options or alternatives to the present rating provisions, rather than making recommendations. These alternatives include:

- ***Repealing Binding Arbitration***
- ***Repealing Binding Arbitration, but Provide for Administrative Law Judges to have Final Order Authority in Insurance Rate Filings***
- ***Creating an Insurance Rating Commission to Regulate Rates***
- ***Restricting the Use of Hurricane Loss Projection Models in Rate Filings***
- ***Shifting the Burden of Proof from Insurance Companies to the Department of Insurance***
- ***Providing that a Rate is Not Excessive if Competition Exists***
- ***Allowing "Use and File" Rate Filings to be made Without Requiring an Insurer to Refund that Portion Determined to be Excessive***
- ***Adopting a "Flex Band" Rating System***

BACKGROUND

History of Florida's Property and Casualty Insurance Rating Laws - The rates charged by insurers are subject to review by state insurance regulators with the type and scope of such review varying among jurisdictions. However, three principles guide every state's rate regulation system: that rates be *adequate* (to maintain solvency), but *not excessive* (not so high as to lead to exorbitant profits), *nor unfairly discriminatory* (price differences must reflect expected claim and expense differences). Given these guiding principles, states have various methods of regulating rates which fall generally into two categories: "prior approval" and "competitive." *Prior approval* systems require rate changes to be filed with the state's insurance commissioner prior to use. These filings are then reviewed and either approved for use or disapproved. *Competitive systems* may or may not require rates to be filed. However, under all competitive systems, new rates may be put into effect without the commissioner's prior approval.

Since 1959 in Florida, there have been three separate waves of insurance rate regulation legislation, starting in 1967, and following in 1986 and 1996. The Legislature in 1967 moved the state from its reliance on a prior approval rating scheme into a "competitive pricing" posture by adopting the "California Plan." Under that law, companies were free to set rates without interference by the Insurance Commissioner. In 1986, the Legislature substantially redrafted the rating law, deleted the "competition" provision, and established a "file and use" and "use and file" rate regulatory system which is used (with certain modifications) presently. Under the "file and use" provisions, insurers were required to file property and casualty rates for approval with the department 60 days before the proposed effective date and the time could be tolled (that is, suspended) if the department requested additional information. However, rates were deemed approved if the department did not issue a notice of its preliminary findings to the insurer within the 60-day period. Under the "use and file" provisions, filings must be made within 30 days after the effective date and the department could order the insurer to return to policyholders portions of rates found to be excessive. The law further required insurers to carry the burden of proof, by a

preponderance of the evidence, to show that a rate was not excessive, inadequate, or unfairly discriminatory.

In 1996, the Legislature again amended the rating law to lengthen the time period from 60 to 90 days for file and use filings, removed the tolling provision, and authorized the option of binding arbitration as to disputes between property and casualty insurance companies and the Department of Insurance over an insurer's rate filing.

Florida's Current Rate Regulation Provisions

Rating Law - All property and casualty insurers authorized to do business in the state are required to file rates for approval with the Department of Insurance either 90 days before the proposed effective date ("file and use") or 30 days after the rate filing is implemented ("use and file"). Under the file and use option, the department may finalize its review by issuing a notice of intent to approve or disapprove within 90 days after receipt of the filing. These notices are "agency action" for purposes of the Administrative Procedures Act (APA), and give the insurer the right to choose an administrative hearing or binding arbitration. Prior to approving or disapproving a rate filing, the department may request additional supporting information for the filing from the insurer, but such a request does not toll the 90-day review period. If the department fails to issue a notice of intent to approve or disapprove within the 90-day review period, the filing is deemed approved. Under the use and file option, an insurance company may be ordered by the department to refund a portion of the rate to the policyholder in the form of a credit or refund if it is found to be excessive.

Standards for Disapproval - The department may disapprove a rate filing if it determines such rates to be "excessive, inadequate, or unfairly discriminatory." In making its rating decision, the department must consider, in accordance with generally accepted and reasonable actuarial techniques, various enumerated factors which affect the insurer's rate filing.

METHODOLOGY

Florida's property and casualty insurance rating laws and previous legislative reports on this topic were reviewed. Staff researched other state rating provisions and examined the property and casualty model rating laws from the National Association of Insurance Commissioners (NAIC) and the National Conference of Insurance Legislators (NCOIL)

Various insurance company rate filings and arbitration decisions were analyzed and information was reviewed concerning insurance rating provisions from national and state research institutions, associations, insurance companies, and government regulators. Interviews were also conducted with representatives from these groups.

FINDINGS

Efforts to Streamline Florida's Rate Filing Process - Over the past several years the Department of Insurance has greatly simplified its internal rate, rule, and form filing review procedures in an effort to process filings in a more timely and efficient manner. Among the changes the department adopted are the following:

- An expedited review procedure was implemented by the department so that rate filing reviews could be completed within 60 days.
- Computer systems were set up to capture information pertaining to an insurer's rate filing. Also, electronic worksheets are now provided to insurers filing residential property filings for the collection and evaluation of certain data.
- Administrative rules were rewritten to clearly delineate the requirements for making a rate filing.
- The department is redesigning its web site (to be implemented this month) so that insurers can download relevant reporting forms and rate information.
- The department is in the process of developing a system, in conjunction with the NAIC, to allow insurers to make their entire rate and form filing electronically. Companies will make only one filing to the NAIC which will in turn electronically transmit the filing to the state.
- The NAIC has proposed a "Speed to Market Initiative" which would create a national centralized clearinghouse for insurance companies to make their rate, form, and advertising filings.

As a direct result of these reforms, the amount of time the Department of Insurance has spent to review filings has been greatly reduced. For example, the average number of days to review and close out a rate filing has been reduced by 23 percent for homeowners and commercial rate filings, 26 percent for workers' compensation rate filings, 48 percent for private passenger automobile rate filings, and 33 percent for form filings.

How Florida's Rate Provisions Compare with the National Model Laws and other States' Laws

Deregulation of Commercial Property and Casualty Rates - In March of this year, the NAIC issued its draft model property and casualty rating law and made two conclusions: that competition could be an effective

regulator of property and casualty insurance rates and that commercial insurance consumers are better served by a greater reliance on competition. A year earlier, NCOIL had reached a similar conclusion when it published its model law proposing the deregulation of large commercial risks.

The movement to ease the regulatory environment as to property and casualty insurance rates, particularly applying to commercial insureds, has not only been developing on a national level with the model laws, but has been gaining momentum among the various states for several years. In the last two years, 20 state legislatures or insurance departments have instituted some form of commercial lines rate and form filing deregulation and 5 other jurisdictions are considering such legislation. In general, these deregulation provisions provide that commercial entities must meet at least two of a list of criteria that establish their size and sophistication as insurance buyers, but the range and size varies from state to state.

Recently, Florida's Department of Insurance promulgated its commercial lines deregulation rule which provides that if commercial risks meet any two or more conditions, such risks would be eligible for individual risk rating which means the insurer would not have to file rates, but be required to maintain certain documentation for 5 years. Florida's rule substantially tracks the criteria set forth in the NAIC model law. However, under the NCOIL model the criteria are not as restrictive.

Comparison of State Rating Provisions **-** Rating laws are at the core of state insurance codes. However, comparison of such laws among the states is generally oversimplified, and it is often difficult to categorize the appropriate language in a state's code. Given this caveat, staff reviewed the property and casualty rate filing laws of the other 49 states and the District of Columbia to generally identify the different approaches taken by these jurisdictions. Most state rating provisions fall into three broad categories: *prior approval* (rates must be filed with and approved by the state insurance department before they can be used, however, approval can be by means of a deemer provision if rates are not denied within a specified number of days); *file and use* (rates must be filed with the state insurance department prior to their use, and specific approval is not required but the department may retain the right of subsequent disapproval), and *use and file* (rates must be filed with the state insurance department within a specified period after they have been placed in use).

Staff found that approximately 23 states (and the District of Columbia), had some form of a prior approval provision, although more than half of those states (14) had a deemer clause which means the rates are deemed approved if the department does not act within a certain number of days. Of the 23 states, 5 had some form of either use and file or file and use provision which means that certain lines within property and casualty had different rate filing requirements. Twenty states, including Florida, had some form of file and use rate filing procedure, although 2 of the states, Florida and Kentucky, also had use and file provisions. In Florida, insurance companies may file their rates either 90 days before the effective date (file and use) or 30 days after the rate filing is implemented (use and file). However, Florida's file and use provisions are functionally equivalent to a prior approval with a deemer provision because if the insurance department does not act on the rate filing within 90 days, the rate is deemed approved. Six states utilized a use and file rating scheme, while one state, Illinois, has no rate filing requirements for certain property and casualty risks.

Alternatives to Florida's Rate Regulation

Repeal Binding Arbitration for Rate Filings Disapproved by the Department of Insurance **-** If the Department of Insurance disapproves a rate filing, the insurer may either request an administrative hearing under the Administrative Procedures Act (APA) or seek binding arbitration. Under the APA, a formal adversarial hearing is held before a State Administrative Law Judge (ALJ) of the Division of Administrative Hearings. Once the hearing is completed, the ALJ has 30 days to issue his or her decision, termed a Recommended Order, to the Insurance Commissioner for final review. The Recommended Order contains findings of fact and conclusions of law as found by the ALJ. In turn, the Commissioner has 90 days to issue a Final Order, and that order may adopt the ALJ's Recommended Order or may reject or modify the conclusions of law contained in the Recommended Order. However, the Commissioner, in the Final Order, may not substitute findings of facts contained in the Recommended Order which were supported by competent substantial evidence. A party may then appeal the Commissioner's Final Order to the First District Court of Appeal and that court may take upwards to a year or more to render its final decision.

Until 1996, the administrative process was the insurer's only legal remedy and the lengthy delay and perception that a court would be unlikely to reverse a Final Order of the department typically led to a consent agreement between the department and the insurer. In 1996, the law

was amended to allow insurers to request binding arbitration of a rate filing as an alternative to an administrative hearing. After the department issues a notice of intent to disapprove a rate filing, the insurer may request arbitration before a panel of three arbitrators. The panel is chosen as follows: one is selected by the insurer, one by the Department, and the third is chosen by the two other arbitrators. The decision of the panel, which must be made within 90 days, constitutes the final approval of a rate filing.

There is no appeal *per se* of the panel's decision to a higher court as there would be under the APA. However, either party to the arbitration proceeding may apply to the circuit court to vacate or modify the panel's decision under limited conditions. Since the inception of the arbitration provision, only nine insurance companies and the FWUA have requested arbitration. During this same period, very few insurers have litigated their rate filings under the APA because the majority of those insurers have either settled their rate disputes with the department or withdrawn their filing. The arbitration table on page 16 of the full report features the company, the requested rate change and the final decision by the arbitration panel.

A total of 458 homeowner and mobile homeowner filings with rate level impact have been made with the department since the inception of arbitration. Of that number, the department has issued 103 notices of intent to deny rate requests. In such cases, the insurers had the option of going to arbitration, an administrative hearing, or settling the rate dispute with the department through negotiations. Representatives with the department point out that even though only nine insurers (and the FWUA) have requested arbitration, those companies represent some of the largest insurers in terms of market share in the state.

Insurance companies often prefer arbitration over administrative hearings because it takes much less time for a rate decision to be rendered by the panel, and is more efficient and cost-effective. Industry representatives claim that with arbitration, they can expect a resolution of a rate dispute within 90 days, as opposed to 9 months to a year or more (if there is an appeal), in administrative litigation. Also, an insurer choosing arbitration has the opportunity to appoint an arbitrator familiar with ratemaking and the insurance industry generally. By contrast, administrative law judges hear a great variety of cases and often have no background in insurance. Finally, industry officials argue that the arbitration panel procedure takes ratemaking decisions out of the realm of politics, provides a level playing field for each side, and results in a fair decision.

Proponents who wish to repeal arbitration argue that the final rate decision should rest with the Insurance Commissioner. It's argued that from a public policy perspective, the elected Insurance Commissioner, and not an arbitration panel, should be the final rate-setting authority.

Repeal Arbitration, but Allow Administrative Law Judges (ALJ) to have Final Determination over Rate Decisions - Allowing an appointed ALJ to issue final orders and thus determine rate filings is similar to allowing an appointed arbitration panel to determine rates. However, a greater level of public accountability would be provided by having final decisions rendered by an ALJ, as opposed to a non-governmental arbitration panel, but it would still provide a balanced process designed to reach a fair result. The same arguments that are made against the current arbitration procedure can be made against this option, because this process would continue to prevent the Insurance Commissioner from making the final decision as to rate filings.

Create an Insurance Rating Commission to Regulate Rates Rather than the Department of Insurance - During the 2000 session, legislation was passed by the Senate creating an appointed Insurance Rating Commission (Commission) which would approve rates for insurance and have all the powers and duties relating to rates that are currently delegated to the Department of Insurance. The commission was included in a Cabinet reform bill that provided for regulation of banking and insurance under the Chief Financial Officer. Modeled after the Public Service Commission (PSC), the Rating Commission would be composed of 5 members appointed by the Governor and confirmed by the Senate.

Advocates of an appointed commission state that decisions of the Rating Commission would be less political than decisions made by an elected Insurance Commissioner, but would retain public accountability. The appointed PSC, upon which the Rating Commission was based, is generally viewed as working well and subject to less controversy than when the PSC was an elected body. However, opponents of such a commission assert that there would be administrative problems with the Rating Commission because it would be difficult to separate rate regulation from the other insurance functions, especially policy and form review and solvency issues, which would be under the Department of Insurance.

Restrict the Use of Hurricane Loss Projection Models in Rate Filings - Insurers and regulators have become increasingly dependent on hurricane loss projection models to estimate the expected losses from hurricanes, particularly after Hurricane Andrew. The premiums that insurers are required to pay for coverage from the Florida Hurricane Catastrophe Fund are based on models that have met the standards approved by the Florida Commission on Hurricane Loss Projection Methodology (Commission), which was created by act of the Legislature in 1995. Also, the Department of Insurance requires insurers to use hurricane models to determine the amount of surplus and reinsurance needed in order for the insurer to be approved for taking a block of policies out of the Residential Property and Casualty Joint Underwriting Association (RPCJUA) or Florida Windstorm Underwriting Association (FWUA). Yet, the department has also been critical of insurers' reliance on models in establishing premium rates.

The 1995 law creating the Commission provides legislative findings and intent that reliable projections of hurricane losses are necessary to assure that rates for residential property insurance are neither excessive nor inadequate and that the ability to make these projections has been greatly enhanced by the development of computer models.

The Commission has adopted standards and specifications of acceptable computer models and as of November 1999 has approved five different models as having met these standards. The original 1995 act provided that the findings of the Commission were binding on the department except in certain circumstances, but amendments in 1996 provided, instead, that the findings and models approved by the commission are admissible and relevant in the department's consideration of a rate filing or in any administrative or judicial review of the department's actions.

Critics of the models have argued for restricting or limiting the use of hurricane loss projection models in rate filings. One option is for the law to be silent as to the admissibility, relevancy, accuracy or reliability of hurricane models with respect to rate filings, thus leaving those determinations up to an arbitration panel, administrative law judge or the department, depending upon the hearing process. Another option is to provide that the results from a model are not admissible or relevant unless all of the assumptions used to develop the model are revealed to, or known by, the department.

Proponents advocating these alternatives argue that the modeling procedure is flawed because many of the actuarial and other assumptions used in the modeling process are not known to regulators due to the proprietary nature of certain information. Thus, regulators have no way to judge the accuracy or reliability of such models. Further, there are wide differences among the different models. Insurance companies advocate the use of catastrophe models because they are the best way to evaluate catastrophic loss costs, are more accurate than the old method, are generally accepted within the actuarial profession and are widely used in the insurance industry. In fact, computer modeling has exposed tremendous errors in ratemaking practices that had been accepted for decades.

The traditional actuarial method of basing insurance rates on past historical data has severe limitations when applied to hurricanes. In order to get a true picture of what the real loss potential is, a much longer period of experience is needed than for other property insurance risks. But, the older the data, the more it must be modified to reflect current population, property value, construction, building codes, and other factors, which make some type of modeling process necessary.

The use of modeling in setting rates is also argued to be a key to attracting the necessary capital to underwrite the hurricane risk. Insurers must maintain large catastrophe reserves or purchase reinsurance to cover hurricane claims that exceed premium income. Bonding provides part of this capital through state-created facilities supported by assessments. But the hurricane risk retained by the private sector must be underwritten by investors who voluntarily commit their capital. Catastrophe models are almost universally accepted by the capital markets and disallowing or limiting their use could severely restrict access to needed capital and cause greater problems of availability of coverage.

Those who argue that the current law should not be changed point out that it merely provides that models approved by the Commission are admissible and relevant and are not binding on the department as the law previously stated.

Shift the Burden of Proof as to Rate Filing Disputes from Insurance Companies to the Department of Insurance - Insurance representatives characterize the current law as creating a presumption that an insurer is guilty of excessive rates by mandating the insurer prove that its rates are not excessive. They assert that it requires companies to prove a negative which is very difficult to overcome. Advocates of the current law

assert that the insurer making a change in its rates should have the burden of demonstrating that the new rate is not excessive, inadequate, or unfairly discriminatory. The company is the only party that has the data necessary to demonstrate whether or not the rate increase is justified. If the insurer did not have the burden of proof, no evidence or data would need to be presented and the burden would fall on the department to obtain data from the insurer and develop its own "rate filing."

Provide that a Rate Filing is Not Excessive if Competition Exists - This option would allow insurers to demonstrate that their rates are not excessive if they can establish that similar insurance is available to persons of similar risk characteristics at lawful rates. Advocates of this approach believe that the current climate among many states is to let the insurance marketplace be the arena to regulate rates.

Opponents of this alternative argue that Florida has already exempted large commercial risks from rate and form filings (if such risks meet certain criteria). However, rate filings as to smaller commercial risks and personal lines still need to be reviewed to ensure adequate consumer protection.

Allow Use and File Rate Filings to be Made Without Requiring an Insurer to Refund the Amount Determined to be Excessive - This proposal would allow insurance companies to implement rate changes without the fear of reimbursements by allowing a company to retain the amount of the rate increase deemed excessive. Insurance companies complain that, unlike Florida, the vast majority of states do not require companies to refund policyholders for that portion of their rate found to be excessive. Additionally, it is expensive and an administrative burden for companies to keep track of which policyholder is entitled to a refund and the refund amount when the final rate determination may not be made for many months.

Opponents of this option assert that the current use and file provision is working well and serves as a deterrent to insurers who implement rates that are subjective or unsupported.

Adopt a Flex Band Rating System - One option would be to allow insurers to increase rates up to a certain percentage or range, such as 10 or 15 percent, without approval by the department. Another option would be that an insurer would not have to refund excess premium if the percentage of the rate requested is within a certain range of their previously filed rates. An alternative option would allow an insurer to refund premium only if the amount determined to be excessive is above or below a certain percentage.

Proponents of these alternatives argue that any of these proposals would encourage insurance company's to take necessary increases in smaller amounts thereby minimizing the "affordability shock" which comes with larger rate hikes. By implementing a flex band rating provision, insurers could avoid the administrative and financial burden necessitated by refunds.

Opponents counter that insurers are already mandated to adjust base rates annually (under s. 627.0645, F.S.) to ensure that rates are adequate, thus avoiding large rate increases.

RECOMMENDATIONS

Options That May Be Considered

Repeal Binding Arbitration -
Arguments For: Proponents assert that from a public policy perspective, the elected Insurance Commissioner, and not an appointed arbitration panel, should be the final rate-setting authority. Further, consumers expect their elected insurance representative to advocate their interests, as opposed to the interests of insurance companies, when insurers seek rate increases.

Arguments Against: Insurance companies prefer arbitration over administrative hearings because it takes much less time for a rate decision to be rendered by the panel, and it is also more efficient and cost-effective. With arbitration, insurers can expect a resolution of a rate dispute within 90 days, as opposed to 9 months to a year or more (if there is an appeal) in administrative litigation. Also, an insurer choosing arbitration has the opportunity to appoint an arbitrator familiar with ratemaking and the insurance industry generally. By contrast, administrative law judges hear a great variety of cases and often have no background in insurance. Finally, industry officials argue that the arbitration panel procedure takes ratemaking decisions out of the realm of politics.

Repeal Binding Arbitration, but Provide that Administrative Law Judges (ALJ) have Final Order Authority in Insurance Rate Filings –
Arguments For: Allowing an appointed ALJ to issue final orders and thus determine rate filings is similar to allowing an appointed arbitration panel to determine rates. However, a greater level of public accountability would be provided by having final decisions rendered by an ALJ, as opposed to a non-governmental arbitration

panel, but it would still provide a balanced process designed to reach a fair result. Formal procedures are clearly established for administrative hearings and decisions are likely to be more consistent and thorough than arbitration panel decisions.

Arguments Against: The same arguments that are made against the current arbitration procedure can be made against this option, because this process would continue to prevent the Insurance Commissioner from making the final rate decision.

Create an Insurance Rating Commission to Regulate Rates –
Arguments For: Proponents of an appointed commission assert that decisions of the commission would be less political than decisions made by an elected Insurance Commissioner, but would retain public accountability.

Arguments Against: Opponents of the rating commission point out that there would be administrative problems with such a commission because it would be difficult to separate rate regulation from the other insurance functions, especially policy and form review and solvency issues, which would be under the Department of Insurance.

Restrict the Use of Hurricane Loss Projection Models in Rate Filings – One option is for the law to be silent as to the admissibility, relevancy, accuracy or reliability of hurricane models with respect to rate filings, thus leaving those determinations up to an arbitration panel, administrative law judge or the department, depending upon the hearing process. Another option is to provide that the results from a model are not admissible or relevant unless all of the assumptions used to develop the model are revealed to, or known by, the department.

Arguments For: Proponents advocating these alternatives argue that the modeling procedure is flawed because many of the actuarial and other assumptions used in the modeling process are not known to regulators due to the proprietary nature of certain information. Thus, regulators have no way to judge the accuracy or reliability of such models. Further, there are wide differences or discrepancies among the different models which have been found to be reliable by the Commission.

Arguments Against: Insurance companies believe that catastrophe models are the best way to evaluate catastrophic loss costs, are more accurate than the old method, are generally accepted within the actuarial profession, and are widely used in the insurance industry. In fact, computer modeling has exposed tremendous errors in ratemaking practices that had been accepted for decades. The Legislature emphasized these concepts in finding that the "ability to accurately project hurricane losses has been enhanced greatly in recent years through the use of computer modeling…" Company representatives argue that the current law should not be changed because it merely provides that models approved by the Commission are admissible and relevant and are not binding on the department. It is asserted that certain modeling information is proprietary because companies have spent millions of dollars in developing the models and thus have required outside parties to examine the models and agree not to divulge their trade secrets to competitors. Thus, regulators can review the proprietary information so long as they agree not to divulge the trade secrets.

Shift the Burden of Proof from Insurance Companies to the Department of Insurance –
Arguments For: Insurance representatives have characterized the current law as creating a presumption that an insurer is guilty of excessive rates by mandating the insurer prove that its rates are not excessive. They assert that companies must prove a negative, that their rates are not excessive, which is very difficult to overcome.

Arguments Against: Advocates of the current law argue that the insurance company that is making a change in its rates should have the burden of demonstrating that the new rate is not excessive, inadequate, or unfairly discriminatory. The company is the only party that has the data necessary to demonstrate whether or not the rate increase is justified. If the insurer did not have the burden of proof, no evidence or data would need to be presented and the burden would fall on the department to obtain data from the insurer and develop its own "rate filing."

Provide that a Rate is Not Excessive if Competition Exists –
Arguments For: Advocates of this approach believe that the current climate among many states is to let the insurance marketplace be the arena to regulate rates. They argue that the Florida Department of Insurance could develop relevant tests to determine whether a reasonable degree of competition exists which pertain to market structure, market performance, and market conduct, as provided in the current NAIC model draft.

Arguments Against: Opponents of this alternative argue that Florida already exempts large commercial risks from rate and form filings (if such risks met certain criteria). However, rate filings as to smaller commercial risks and personal lines risks still need to be reviewed to ensure adequate consumer protection.

Allow "Use and File" Rate Filings to be Made Without Requiring an Insurer to Refund that Portion Determined to be Excessive –

Arguments For: Insurance companies complain that, unlike Florida, the vast majority of states do not require companies to refund policyholders for that portion of their rate found to be excessive. Additionally, it is expensive and an administrative burden for companies to keep track of which policyholder is entitled to a refund.

Arguments Against: Opponents of this option assert that the current use and file provision is working well and serves as a deterrent to insurers who implement rates that are subjective or unsupported.

Adopt a "Flex Band" Rating System – Under this option insurers would be permitted to increase rates up to a certain percentage or range, such as 10 or 15 percent, without approval by the department. Another option is that an insurer would not have to refund excess premium if the percentage of the rate requested is within a certain range of their previously filed rates. An alternative option would allow an insurer to refund premium only if the amount determined to be excessive is above or below a certain percentage.

Arguments For: Proponents argue that these options would encourage insurance company's to take necessary increases in smaller amounts thereby minimizing the "affordability shock" which comes with larger rate hikes.

Arguments Against: Opponents counter that insurers are already mandated to adjust base rates annually to ensure that rates are adequate, thus avoiding large rate increases.

COMMITTEE(S) INVOLVED IN REPORT ***(Contact first committee for more information.)***
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MEMBER OVERSIGHT
Senators Holzendorf and Latvala