

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**BANKING AND INSURANCE**  
**Senator Simmons, Chair**  
**Senator Clemens, Vice Chair**

**MEETING DATE:** Tuesday, February 4, 2014  
**TIME:** 2:00 —4:00 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Simmons, Chair; Senator Clemens, Vice Chair; Senators Benacquisto, Detert, Diaz de la Portilla, Hays, Lee, Margolis, Montford, Negron, Richter, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 416</b> Simpson (Similar H 129)	Sinkhole Coverage; Requiring Citizens Property Insurance Corporation to submit a biannual report on the number of residential sinkhole policies requested, issued, and declined; establishing a Citizens Sinkhole Stabilization Repair Program for sinkhole claims; requiring policies to include specified deductible amounts for sinkhole loss coverage, etc.  BI      01/14/2014 Temporarily Postponed BI      02/04/2014 Fav/CS AGG AP	Fav/CS Yeas 11 Nays 1
2	<b>SB 496</b> Simpson (Similar H 291, Compare H 471, H 565)	Warranty Associations; Authorizing electronic transmission of service agreements and home warranties; providing requirements for electronic transmission; revising criteria authorizing premiums of certain service warranty associations to exceed their specified net assets limitations; revising requirements relating to contractual liability policies that insure warranty associations; providing requirements for the delivery of service warranty contracts, etc.  BI      02/04/2014 Favorable CM	Favorable Yeas 11 Nays 0
3	<b>SB 570</b> Galvano (Similar CS/H 321)	Title Insurance; Specifying that only a licensed and appointed agent or agency is authorized to sell title insurance; providing additional limitations on the name that a title insurance agent or agency may adopt; revising the application requirements for a title insurance agency license; limiting the remedies available for the breach of duty arising from a title insurance contract; revising terms relating to determination of insurability and preservation of evidence of title search and examination, etc.  BI      02/04/2014 Fav/CS JU	Fav/CS Yeas 12 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Tuesday, February 4, 2014, 2:00 —4:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 590</b> Richter (Similar H 623)	Check Cashing Services; Revising the elements of prohibited acts; authorizing the Office of Financial Regulation to summarily suspend a license if criminal charges are filed against certain persons or such persons are arrested for certain offenses; providing that a deferred presentment transaction conducted by an unlicensed person is void; requiring persons cashing payment instruments that have a lower aggregate face value to be licensed, etc.	Fav/CS Yeas 11 Nays 0
		BI 02/04/2014 Fav/CS CJ	
5	<b>Workshop</b> - Discussion and testimony only on the following (no vote to be taken):		
	Citizens Property Insurance Corporation		Discussed
	Other Related Meeting Documents		

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/14  
Meeting Date

Topic Sinkhole Managed Repair Bill Number 416  
(if applicable)

Name Christine Ashburn Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Vice President of Legislative Affairs

Address 2312 Killearn Center Blvd - A Phone 850-513-3746  
Street

Tallahassee FL 32309 E-mail christie.ashburn@  
City State Zip citizensfla.com

Speaking:  For  Against  Information

Representing Citizens Property Ins.

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2.4.14

Meeting Date

Topic SINKHOLZ BILL

Bill Number HR 416  
(if applicable)

Name TREY GOLDMAN

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title LEGISLATIVE COUNSEL

Address 200 SOUTH MONROE

Phone 850/224-1400

Street  
TALAHASSEE FL 32301  
City State Zip

E-mail treyg@floridarealtors.org

Speaking:  For  Against  Information

Representing FLORIDA REALTORS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
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2-4-14

Meeting Date

Topic

REPAIR PROGRAM

Bill Number

416

(if applicable)

Name

JOHN THOMPSON

Amendment Barcode

(if applicable)

Job Title

Address

PO Box 12249

Phone

352-345-5488

Street

BROOKSVILLE FL 34604

E-mail

Speaking:

For

Against

Information

Representing

SELF

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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S-001 (10/20/11)

2/4/14

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic SB 416 - Sinkholes

Bill Number 416  
*(if applicable)*

Name Kristin Demers-Crowell, Esq.

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney

Address 117 S Willow Ave

Phone 813-223-2929

Street

Tampa, FL 33606

City

State

Zip

E-mail KDC@LigoriLaw.com

Speaking:  For  Against  Information

Representing Christopher Ligori & Associates (Law Firm)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
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2/4/14  
Meeting Date

Topic Sinkhole Managed Repair

Bill Number 416  
*(if applicable)*

Name ~~XXXXXXXXXX~~ Jay Adams

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Vice President of Claims

Address 2312 Killeam Center Blvd - A  
*Street*

Phone 850-513-3744

Tallahassee FL 32309  
*City State Zip*

E-mail james.adams1@citizensfla.com

Speaking:  For  Against  Information

Representing Citizens Property Ins. Corp

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/4/14

Meeting Date

Topic Sinkhole

Bill Number 416

Name Greg Armstrong

Amendment Barcode 300080  
(if applicable)

Job Title Real Estate Broker

(if applicable)

Address 6330 US Highway 19

Phone 727 495 2424

Street  
New Port Richey FL 34652  
City State Zip

E-mail greg@figrey.com

Speaking:  For  Against  Information

Representing Florida Realtors

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

at request of sponsor

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**APPEARANCE RECORD**

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2/4/14

Meeting Date

Topic \_\_\_\_\_

Bill Number 416 (if applicable)

Name Gerald Wester

Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title \_\_\_\_\_

Address 101 E College  
Street

Phone 850 222 9079

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail Gwester@capacityconsult.com

Speaking:  For  Against  Information

Representing Associated Industries of FI (AIF)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/4/14

*Meeting Date*

Topic Sinkhole Coverage

Bill Number SB 416  
*(if applicable)*

Name Carolyn Johnson

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Policy Director

Address 136 S Bronough St

Phone 521-1235

*Street*

Tallahassee

FL

32311

E-mail cjohnson@flchamber.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing Florida Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/4/2014

Meeting Date

Topic Sinkhole Coverage

Bill Number 416  
*(if applicable)*

Name Wayne Bertsch

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 201 E, Park Ave

Phone \_\_\_\_\_

Street

TLH FL 32301

E-mail \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive in Support

Representing FL Home Builders Assn

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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Meeting Date \_\_\_\_\_

Topic SB 416 Subrules

Bill Number SB 416  
*(if applicable)*

Name Christopher Ligori

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney

Address 117 S. Willow Ave

Phone 813-223-2929

*Street*

Tampa Fla 33606  
*City State Zip*

E-mail C.Ligori@LigoriLaw.com

Speaking:  For  Against  Information

Representing Florida Justice Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
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2/4/14

Meeting Date

Topic Sicklele "Repair" Program

Bill Number 416  
(if applicable)

Name Reggie Garcia

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address PO Box 11069  
Street  
Tal. Fl. 32302  
City State Zip

Phone 933-7150

E-mail reggiegarcialaw@icloud.com

Speaking:  For  Against  Information

Representing Fla. Justice Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 416

INTRODUCER: Banking and Insurance Committee and Senator Simpson

SUBJECT: Sinkhole Coverage

DATE: February 5, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	Fav/CS
2.			AGG	
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 416 directs Citizens to establish and manage the Citizens Sinkhole Stabilization Repair Program (Program). The bill states that the program is being created because the public interest is served by the performance of sinkhole repairs. All covered sinkhole loss claims made on a Citizens policy will be governed by the Program as of March 31, 2015.

Under the Program, stabilization repair contractors are approved by Citizens to participate in the program if they meet statutory requirements.

Each covered sinkhole loss claim is submitted to the approved stabilization contractors who have the opportunity to submit itemized offers to Citizens to perform the stabilization repairs recommended in the engineering report. Citizens provides a list of all contractors who offered to perform the repair to the policyholder. The policyholder has 30 days to select a listed contractor. If the policyholder does not make a selection within 30 days, Citizens shall select the contractor based on quality, cost-effectiveness, and other criteria. The stabilization repair contractor must provide a warranty of at least 5 years on repairs. Citizens must also provide a warranty of at least 5 years that is effective if the stabilization repair contractor cannot provide a remedy required under its warranty.

The policyholder's sole remedy is the specific performance of sinkhole stabilization repairs in a dispute with Citizens over the method or extent of stabilization repairs. Citizens' liabilities under the Program are limited to the policyholder's policy limits.

The bill directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review the Program and submit a report to the President of the Senate, Speaker of the House of Representatives, and the Governor by January 1, 2017.

## II. Present Situation:

### Sinkhole Insurance

Insurers offering property insurance must make available to policyholders, for an appropriate additional premium, sinkhole coverage for losses on any structure, including personal property contents.<sup>1</sup> Sinkhole coverage includes repairing the home, stabilizing the underlying land, and foundation repairs.<sup>2</sup> Insurance companies must also provide coverage for catastrophic ground cover collapse.<sup>3</sup> Insurers may restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building as defined in the insurance policy.<sup>4</sup> An insurer may require a property inspection prior to issuing sinkhole loss coverage.<sup>5</sup> Residential property insurance policies may include deductibles applicable to sinkhole losses of 1 percent, 2, percent, 5 percent, or 10 percent of the policy dwelling limits and must provide a corresponding premium discount with each deductible amount.<sup>6</sup> All Citizens sinkhole loss policies, however, have a 10 percent deductible.<sup>7</sup>

Sinkhole coverage is payable when a “sinkhole loss” occurs.<sup>8</sup> A sinkhole loss is defined in statute as structural damage to the covered building, including the foundation, caused by sinkhole activity.<sup>9</sup> Five distinct types of damage constitute structural damage, and each type of damage is tied to standards contained in the Florida Building Code or used in the construction industry.<sup>10</sup> “Sinkhole activity” is the settlement or systematic weakening of the earth supporting the covered building that results from contemporaneous movement or raveling of soils, sediments, or rock into subterranean voids created by the effect of water on a limestone or similar rock formation.<sup>11</sup> Accordingly, in order for the policyholder to obtain policy benefits for sinkhole loss, the insured structure must sustain structural damage that is caused by sinkhole activity.

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<sup>1</sup> s. 627.706(1)(b), F.S.

<sup>2</sup> See s. 627.706(5), F.S. Contents coverage is also available and, if included, paid in accordance with policy terms

<sup>3</sup> s. 627.706(1)(a), F.S. Catastrophic ground cover collapse refers to extreme damage in which a property is essentially destroyed and uninhabitable. A catastrophic ground cover collapse occurs when geological activity causes the abrupt collapse of the ground cover, a depression in the ground cover clearly visible to the naked eye, structural damage to the covered building and its foundation, and the insured structure being condemned and ordered to be vacated by the governmental entity authorized to give such an order.

<sup>4</sup> s. 627.706(1)(c), F.S.

<sup>5</sup> s. 627.706(a)(b), F.S.

<sup>6</sup> See *id.*

<sup>7</sup> Citizens Property Insurance Corporation, *Sinkhole Loss Coverage Frequently Asked Questions for Policyholders*, pg. 5. [https://www.citizensfla.com/shared/faqs/SinkholeFAQs\\_for\\_Consumers.pdf](https://www.citizensfla.com/shared/faqs/SinkholeFAQs_for_Consumers.pdf) (Last accessed by Banking and Insurance Staff on January 13, 2014).

<sup>8</sup> See s. 627.707(5), F.S.

<sup>9</sup> s. 627.706(2)(j), F.S.

<sup>10</sup> s. 627.706(2)(k), F.S.

<sup>11</sup> s. 627.706(2)(i), F.S.

Sinkhole insurance claims increased substantially both in number and cost over the past 2 decades and most dramatically from 2009 to 2011.<sup>12</sup> According to data submitted in 2011 by 211 property insurers to the Office of Insurance Regulation (OIR), the insurers' total reported claims increased from 2,360 in 2006 to 6,694 in 2010, totaling 24,671 claims throughout that period.<sup>13</sup> Total sinkhole claim costs for these insurers amounted to approximately \$1.4 billion for the same period.<sup>14</sup>

The 2011 Legislature enacted legislation in (CS/CS/CS/SB 408) to address the large increases in sinkhole policyholder premiums and losses.<sup>15</sup> The 2011 reform bill changed the definition of structural damage that is used to determine if a sinkhole loss occurred, revised the process for investigating sinkhole losses, and enacted a number of reforms aimed at reducing fraud and unnecessary costs related to sinkhole loss coverage.

### **Investigation of Sinkhole Claims**

The 2011 legislative sinkhole reforms substantially revised the statutory process for investigating sinkhole claims in s. 627.707, Florida Statutes.<sup>16</sup> The process requires the insurer to determine whether the building has incurred structural damage that has been caused by sinkhole activity.<sup>17</sup> Coverage for sinkhole loss is not available if structural damage is not present or sinkhole activity is not the cause of structural damage. The new process is as follows:

*Initial Inspection & Structural Damage Determination:* Upon receipt of a claim for sinkhole loss, the insurer must inspect the policyholder's premises to determine if there has been structural damage which may be the result of sinkhole activity.<sup>18</sup> This inspection will often require the insurer to retain a professional engineer to evaluate whether the insured building has incurred structural damage as defined by statute.

*Sinkhole Testing:* The insurer is required to engage a professional engineer or professional geologist to conduct sinkhole testing pursuant to s. 627.7072, F.S., if the insurer confirms that structural damage exists and is either unable to identify a valid cause of the structural damage or discovers that the structural damage is consistent with sinkhole loss.<sup>19</sup> If coverage is excluded under the policy even if sinkhole loss is confirmed, then the insurer is not required to conduct sinkhole testing.<sup>20</sup>

*Notice to the Policyholder:* The insurer must provide written notice to the policyholder detailing what the insurer has determined to be the cause of damage (if the determination has been made)

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<sup>12</sup> See Office of Insurance Regulation, *Report on Review of the 2010 Sinkhole Data Call*, (Nov. 8, 2010).

[http://www.flair.com/siteDocuments/Sinkholes/2010\\_Sinkhole\\_Data\\_Call\\_Report.pdf](http://www.flair.com/siteDocuments/Sinkholes/2010_Sinkhole_Data_Call_Report.pdf) (Last accessed by Banking and Insurance Staff on January 13, 2014).

<sup>13</sup> See *id.* at pg. 5.

<sup>14</sup> See *id.*

<sup>15</sup> Ch. 2001-39, L.O.F.

<sup>16</sup> See fn. 15.

<sup>17</sup> s. 627.707(1), F.S.

<sup>18</sup> See *id.*

<sup>19</sup> s. 627.707(2), F.S.

<sup>20</sup> See *id.*

and a statement of the circumstances under which the insurer must conduct sinkhole testing.<sup>21</sup> The policyholder must also be notified of his or her right to demand sinkhole testing and the circumstances under which the policyholder may incur costs associated with testing.<sup>22</sup>

*Authorization to Deny Sinkhole Claim:* An insurer may deny a claim upon a determination that there is no sinkhole loss.<sup>23</sup>

*Policyholder Demand for Sinkhole Testing:* The policyholder may demand sinkhole testing in writing within 60 days after receiving a claim denial if the insurer denied the claim without performing sinkhole testing and coverage would be available<sup>24</sup> if a sinkhole loss is confirmed).<sup>25</sup> However, a policyholder requesting such testing must pay the insurer 50 percent of the sinkhole testing costs up to \$2,500.<sup>26</sup> If the requested testing confirms a sinkhole loss the insurer must reimburse the testing costs to the policyholder.<sup>27</sup>

### **Payment of Sinkhole Claims**

If a covered building suffers a sinkhole loss or catastrophic ground cover collapse, the insured must repair such damage in accordance with the insurer's professional engineer's recommended repairs.<sup>28</sup> However, if repairs cannot be completed within policy limits, the insurer has the option to either pay to complete the recommended repairs or tender policy limits without a reduction for any repair expenses already incurred.<sup>29</sup> The insurer may limit payment to the actual cash value of the sinkhole loss not including below-ground repair techniques until the policyholder enters into a contract for the performance of building stabilization repairs.<sup>30</sup>

The contract for below-ground repairs must be made in accordance with the recommendations set forth in the insurer's sinkhole report issued pursuant to s. 627.7073, F.S., and must be entered into within 90 days after the policyholder receives notice that the insurer has confirmed coverage for sinkhole loss.<sup>31</sup> The time period is tolled if either party invokes neutral evaluation. Stabilization and all other repairs to the structure and contents must be completed within 12 months after the policyholder enters into the contract for repairs unless the insurer and policyholder mutually agree otherwise, the claim is in litigation, or the claim is in neutral evaluation, appraisal or mediation.<sup>32</sup>

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<sup>21</sup> s. 627.707(3), F.S.

<sup>22</sup> See *id.*

<sup>23</sup> s. 627.707(4)(a), F.S.

<sup>24</sup> The claim denial was not issued due to policy conditions or exclusions of coverage and instead was based the failure of the loss to meet the definition of sinkhole loss.

<sup>25</sup> s. 627.707(4)(b), F.S.

<sup>26</sup> s. 627.707(4)(b)2., F.S.

<sup>27</sup> s. 627.707(4)(b)3., F.S.

<sup>28</sup> s. 627.707(5), F.S.

<sup>29</sup> See *id.*

<sup>30</sup> s. 627.707(5)(a), F.S.

<sup>31</sup> See s. 627.707(5)(b), F.S.

<sup>32</sup> See *id.*, and s. 627.707(5)(d), F.S.

The two most commonly recommended stabilization techniques are grouting and underpinning.<sup>33</sup> Under the grouting procedure, a grout mixture (either cement-based or a chemical resin that expands into foam) is injected into the ground to stabilize the subsurface soils to minimize further subsidence damage by increasing the density of the soils beneath the building as well as sealing the top of the limestone surface to minimize future raveling.<sup>34</sup> Underpinning consists of steel piers drilled or pushed into the ground to stabilize the building's foundation.<sup>35</sup> One end of the steel pipe connects to the foundation of the structure with the other end resting on solid limestone. Underpinning repairs, when performed, are usually combined with grouting.

### **Sinkhole Claims – Citizens Property Insurance Corporation**

The number of Citizens Property Insurance Corporation (Citizens) sinkhole claims is dropping in the aftermath of the 2011 sinkhole reforms. Citizens' sinkhole claim activity had increased from 1,590 claims in 2009 to 4,605 in 2011.<sup>36</sup> After the legislative reforms, new Citizens sinkhole claims dropped to 2,386 in 2012 and a projected 900 claims in 2013, an estimated 80 percent drop in claims from 2011.<sup>37</sup>

Citizens' sinkhole claim activity from 2009 to 2013 is concentrated in Hernando, Hillsborough, Pasco, and Pinellas counties.<sup>38</sup> Miami-Dade, Broward, and Palm Beach counties also produced a significant number of sinkhole claims and had generally higher percentages of claims filed on sinkhole policies.<sup>39</sup> Approximately 90 percent of sinkhole claim litigation is from claims on properties located in Hernando, Pasco, and Hillsborough counties. A sample of 204 sinkhole claims in litigation by Citizens on August 31, 2013, indicated that over 56 percent of such claims are in litigation over issues related to Citizens efforts to repair the damaged property.

Though the costs associated with Citizens sinkhole loss claims has decreased, such claims continue to negatively affect the financial stability of Citizens and private market insurers.<sup>40</sup> Increased sinkhole claim losses has often made residential property insurance increasingly unaffordable or unavailable for consumers.

<sup>33</sup> Citizens Property Insurance Corporation, Sinkhole Repairs: Underpinning and Grouting, (Oct. 30, 2012). <https://www.citizensfla.com/shared/sinkhole/documents/GroutVersusUnderpinning.pdf> (Last accessed by Banking and Insurance Staff on January 13, 2014).

<sup>34</sup> See *id.*

<sup>35</sup> See *id.*

<sup>36</sup> Citizens Property Insurance Corporation, *Litigation Analysis*, pg. 8. (October 2013). <http://miamiherald.typepad.com/files/corrected-citizens-litigation-analysis---final---oct-11-2013.pdf> (Last accessed by Banking and Insurance Staff on January 13, 2014).

<sup>37</sup> See *id.*

<sup>38</sup> The total number of sinkhole claims in these counties from January 1, 2009 to August 31, 2013 are: Hernando County (4,947), Pasco County (2,817), Hillsborough (2,180), Pinellas (1,039). The percentage of sinkhole policies in each county that experienced a claim during this period is 3 percent in Hernando County, 6 percent in Pasco County, 5 percent in Hillsborough County, and 10 percent in Pinellas County.

<sup>39</sup> Miami-Dade had 419 sinkhole claims, but 19 percent of sinkhole policies in that county had a sinkhole claim from January 1, 2009 to August 31, 2013. Broward County had 291 claims on 14 percent of sinkhole policies and Palm Beach County had 114 claims on 10% of sinkhole policies.

<sup>40</sup> Citizens, in its 2014 Rate Filing Kit, detailed that the indicated rate change for sinkhole coverage was for an increase of 451 percent in Hernando County, 177 percent in Pasco County, and 235 percent in Hillsborough County. [http://static-lobbytools.s3.amazonaws.com/press/59997\\_citizens\\_2014\\_rate\\_kit.pdf](http://static-lobbytools.s3.amazonaws.com/press/59997_citizens_2014_rate_kit.pdf) (Last accessed by Banking and Insurance Staff on January 13, 2014).

The Citizens Board of Governors considered the creation of a sinkhole stabilization managed repair program at its December 12, 2013 meeting.<sup>41</sup> The program would be similar to the program that would be created if the bill becomes law, with the primary difference being that Citizens policyholders would not be required to participate. Citizens solicited sinkhole repair contractors who would participate in the managed repair program through an initial Invitation to Bid (ITB No. 13-0020) and subsequently issued an additional Invitation to Bid (ITB No. 13-0028) for additional vendors dated January 8, 2014. Citizens' staff recommended that the Citizens' Claims Committee approve and recommend to the Board of Governors that Citizens' staff pursue contracts with vendors that would allow the implementation of a sinkhole stabilization managed repair program.<sup>42</sup> Such contracts would not exceed \$50 million. Citizens' staff noted that the vendor contracts would not cause additional expenses because vendors will be paid through the claims indemnity process.<sup>43</sup>

In an effort to settle sinkhole claim disputes over the method of sinkhole repairs, Citizens began in December 2013 sending letters to hundreds of its policyholders who are disputing the repair recommendations on their sinkhole claims.<sup>44</sup> The letters are targeted to policyholders who have a confirmed sinkhole loss for which the professional engineer who verified a sinkhole loss has recommended grouting repairs but not underpinning. The letters encourage policyholders to have the necessary repair work completed in accordance with the engineer's recommendations. Citizens is also encouraging policyholders to resolve differing engineering opinions through the neutral evaluation process in s. 627.7074, F.S. Citizens estimates that of its 2,100 disputed sinkhole claims, 1,329 deal with disagreements over repair methods.<sup>45</sup>

### Neutral Evaluation

Neutral evaluation is an alternative procedure in s. 627.7074, F.S., for the resolution of disputed sinkhole insurance claims for which a sinkhole testing report<sup>46</sup> has been issued. The neutral evaluator must have sufficient professional training and credentials to render opinions as to causation, and if applicable, the recommended method of repair and the estimated cost of such repairs.<sup>47</sup> Neutral evaluation is nonbinding, but the insurer and policyholder must participate if either party requests it.<sup>48</sup> At a minimum, neutral evaluation must determine the cause of the loss, all methods of stabilization and repair both above and below ground, the costs for stabilization

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<sup>41</sup> Citizens Property Insurance Corporation, Action Item Summary: Sinkhole Stabilization Managed Repair Program (Dec. 13, 2013). [https://www.citizensfla.com/bnc\\_meet/docs/500/05Ab\\_AI\\_Sinkhole\\_MRP\\_12\\_13\\_13.pdf](https://www.citizensfla.com/bnc_meet/docs/500/05Ab_AI_Sinkhole_MRP_12_13_13.pdf) (Last accessed by Banking and Insurance Staff on January 13, 2014).

<sup>42</sup> See *id.*

<sup>43</sup> See *id.*

<sup>44</sup> Citizens Property Insurance Corporation, *Citizens Chairman: Settlement Proposal Benefits Consumers*, (Press Release Dated Dec. 12, 2013). <https://www.citizensfla.com/shared/press/articles/135/12.12.2013.pdf> (Last accessed by Banking and Insurance Staff on January 13, 2014).

<sup>45</sup> See *id.*

<sup>46</sup> Section 627.7073, F.S., contains the statutory standards for a sinkhole report. A sinkhole report must be based on tests performed by a professional engineer and professional geologist that, as required by s. 627.7072, F.S., are sufficient to determine the presence or absence of sinkhole loss and allow the professional engineer to make recommendations regarding necessary building stabilization and foundation repair. The sinkhole report must contain the opinion of the professional engineer or professional as to whether a sinkhole loss is present, and if so, the recommendation of the professional engineer of methods for stabilizing the land and repairing the foundation.

<sup>47</sup> See s. 627.7074(1)(a), F.S., and s. 627.7074(11), F.S.

<sup>48</sup> Section 627.7074(4), F.S.

and all repairs, and the information necessary to issue a report of the neutral evaluator's findings and recommendations.<sup>49</sup>

Neutral evaluation is an informal process in which formal rules of evidence and procedure need not be observed.<sup>50</sup> The insurer or the policyholder request neutral evaluation by sending written notice to the Department of Financial Services (DFS).<sup>51</sup> The DFS then provides a list of certified neutral evaluators to the parties who have 14 days to select a neutral evaluator.<sup>52</sup> If the parties cannot agree to a neutral evaluator, the Department makes the selection. Once a neutral evaluator is selected, within 14 days he or she must notify the policyholder and the insurer of the date, time, and place of the neutral evaluation conference.<sup>53</sup>

Once a neutral evaluator has been selected by the parties or appointed by the DFS, the insurer submits the sinkhole testing report to the neutral evaluator and the policyholder submits all reports initiated by the policyholder or an agent of the policyholder that either confirm sinkhole loss or dispute the results of another report.<sup>54</sup> The neutral evaluator must be allowed reasonable access to the interior and exterior of the insured structures to be evaluated.<sup>55</sup> At the conclusion of neutral evaluation, the neutral evaluator must prepare a report describing all matters that are the subject of neutral evaluation, including whether a sinkhole loss has occurred, and, if so, the estimated costs of stabilizing the land and any covered building and other appropriate repairs.<sup>56</sup> The recommendation of the neutral evaluator and his or her testimony must be admitted in any litigation relating to the insurance claim.<sup>57</sup> If the insurer timely complies with the recommendation of the neutral evaluator, the insurer is not liable for extra-contractual damages related to issues determined under neutral evaluation.<sup>58</sup>

### III. Effect of Proposed Changes:

#### **Citizens Sinkhole Stabilization Repair Program [s. 627.351(6)(ff), F.S.]**

**Section 1** directs Citizens to establish the Citizens Sinkhole Stabilization Repair Program (Program). The bill states that creating the Program safeguards the public's health, safety, and welfare and that it is in the public interest that sinkhole loss claims be resolved through the performance of sinkhole repairs. All covered sinkhole loss claims made on a Citizens policy will be governed by the Program as of March 31, 2015. The Program must be managed by Citizens.

Under the Program, stabilization repair contractors are approved by Citizens to participate in the program if they meet statutory requirements. Approved stabilization repair contractors must contract with Citizens to perform stabilization repairs based on line-item prices developed by Citizens that reflect market prices for sinkhole stabilization activities.

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<sup>49</sup> s. 627.7074(2), F.S.

<sup>50</sup> s. 627.7074(5), F.S.

<sup>51</sup> s. 627.7074(4), F.S.

<sup>52</sup> s. 627.7074(7), F.S.

<sup>53</sup> See *id.*

<sup>54</sup> See s. 627.7074(2) and (5), F.S.

<sup>55</sup> s. 627.7074(5), F.S.

<sup>56</sup> s. 627.7074(12), F.S.

<sup>57</sup> s. 627.7074(13), F.S.

<sup>58</sup> s. 627.7074(15), F.S.

Each covered sinkhole loss claim is submitted to the approved stabilization contractors who have the opportunity to submit itemized offers to Citizens to the stabilization repairs recommended in the engineering report. Citizens then provides a list of all contractors that submitted a bid to the policyholder. The policyholder has 30 days to select a listed contractor. If the policyholder does not make a selection within 30 days, Citizens shall select the contractor based on quality, cost-effectiveness, and other criteria. If an approved stabilization repair contractor does not offer to perform repairs within policy limits, Citizens may resubmit the loss to the program two additional times or pay up to the policy limits to the policyholder.

Repairs must be warranted by the stabilization repair contractor for at least 5 years. Citizens must also provide a warranty for repairs that is effective if the contractor is unable to honor its warranty.

The policyholder's sole remedy is the specific performance of sinkhole stabilization repairs in a dispute with Citizens over the method or extent of stabilization repairs. Citizens' liabilities under the Program are limited to the policyholder's policy limits.

Citizens must pay for repairs to the structure and contents not governed by the Program (repairs other than sinkhole stabilization repairs such as grouting or underpinning) in accordance with the terms of the insurance policy

The following provides a detailed explanation of the provisions of the Program:

**Prohibition against Requiring Citizens Policyholders to Advance Sinkhole Repair Costs [s. 627.351(6)(ff)2.a., F.S.]**

Citizens is prohibited from requiring a policyholder from advancing the cost of sinkhole repairs.

**Stabilization Repair Contractor - Qualification Requirements [s. 627.351(6)(ff)2.b., F.S.]**

Each stabilization repair contractor approved by Citizens must be qualified based on the following criteria:

- *Experience* - Experience in stabilizing sinkhole activity pursuant to requirements established by Citizens;
- *Certification* - Certification as a contractor under s. 489.113(1), F.S.;
- *Bonding* - Demonstrating the capacity to be bonded and actually providing required performance, surety, or other bonds, which may be supplemented by additional requirements;
- *Insurance* - Demonstrating the ability to meet insurance coverage required by Citizens, including commercial general liability and workers' compensation insurance;
- *Drug-Free* - Maintaining a valid drug-free workplace program; and
- Other requirements established by Citizens.

**Performance of Repairs Under Contract; Contractor Responsibility [s. 627.351(6)(ff)2.c., F.S.]**

Stabilization contractors must conduct repairs under a contract with Citizens that is not subject to the procurement requirements of s. 287.057 and s. 627.351(6)(e), F.S. The contractor is solely responsible for the performance of all necessary stabilization repairs specified in the engineering report.

**Stabilization Repair Contract [s. 627.351(6)(ff)2.d., F.S.]**

Citizens must develop a standard stabilization repair contract that requires:

- *Payment Terms* - Payment of the stabilization repair contractor based on line-item prices developed by Citizens that reasonably reflect actual market prices for sinkhole stabilization activities.
- *Bonding Requirements* - The stabilization repair contractor to post a payment bond in favor of Citizens for each project assigned and to post a performance bond in favor of Citizens in the amount of the total cost of all fixed-price repairs annually awarded to the contractor.
- *Warranty Requirements* - The stabilization repair contractor must provide a warranty of at least 5 years to the policyholder. Citizens must also provide the policyholder a warranty that covers repairs provided by the stabilization repair contractor at least 5 years if the contractor is unable to provide a remedy required under the warranty it provided the policyholder.
- *Engineer Monitoring of Repairs* - The engineer must monitor the performance of stabilization repairs and confirm their completion and that no further repairs are required.
- *Performance of Additional Needed Repairs* - The stabilization repair contract must perform any additional repairs found necessary by the engineer. If repairs can be completed within policy limits, the contractor must complete the repairs and will be reimbursed pursuant to Citizens' line-item pricing.

**Process for Selection of Stabilization Repair Contractors [s. 627.351(c)(ff)2.e., F.S.]**

Citizens must establish a process for the selection of a stabilization repair contractor that includes:

- *Contractors Offers to Perform Repairs* - An opportunity for all stabilization repair contractors within the Citizens stabilization repair pool to submit an offer to perform the repairs recommended in the engineering report. The offer must include an itemized statement of work.
- *List of Contractors Offering to Repair* - Citizens must review the contractors' offers and provide the policyholder with a list of all stabilization repair contractors that submitted an offer. .
- *Selection of the Contractor* - The policyholder has 30 days to select a stabilization repair contractor. If the policyholder does not select a contractor within 30 days Citizens does based on quality, cost-effectiveness, and other criteria.
- *Resubmission of Property to Program* - If no contractors offer to perform stabilization repairs or all such offers exceed the policy limit, Citizens may resubmit the property to the repair process. If the property is entered into the selection process 3 times and no stabilization repair contractor submits an offer to repair within policy limits, Citizens must pay for repairs

that cost greater than the policy limit or may pay the policyholder an amount up to the policy limits on the structure.

**Citizens Liability under the Sinkhole Stabilization Repair Program [s. 627.351(6)(ff)3, 4, and 5., F.S.]**

The bill limits Citizens legal responsibilities under the Program. Citizens is not responsible for serving as a stabilization repair contractor. Citizens' obligations under the Program are not an election to repair by Citizens and do not create a new contractual relationship between a policyholder and Citizens.

Citizens is not obligated to the policyholder for more than the policy limits.

**Sinkhole Loss Repairs Other Than Stabilization Repairs [s. 627.351(6)(ff)5., F.S.]**

Citizens must pay for repairs other than stabilization repairs to the structure and contents in accordance with the terms of the insurance policy. All repairs other than stabilizing the land and structure and repairing the damaged structure will be governed by this provision.

**Sinkhole Stabilization Repairs in Excess of Policy Limits [s. 627.351(6)(ff)6., F.S.]**

If the professional engineer retained by Citizens determines that stabilization repairs cannot be conducted within policy limits, Citizens must either pay for such repairs or tender the policy limits to the policyholder.

**Specific Performance of Repairs Policyholder's Sole Remedy [s. 627.351(6)(ff)7., F.S.]**

If a dispute arises between a policyholder and Citizens regarding the type of stabilization repairs or their extent, the policyholder's sole remedy is the specific performance of repairs.

**Repairs Other Than Sinkhole Stabilization [s. 627.351(6)(ff)5. and 9., F.S.]**

Citizens must pay for repairs other than sinkhole stabilization to the structure and contents in accordance with the terms of the policyholder's insurance policy. The Program statute does not prohibit Citizens from establishing managed repair programs for other repairs to the structure in accordance with the terms of the insurance policy.

**The Program Supersedes the Statutory Process for the Investigation and Payment of Sinkhole Loss Claims [s. 627.351(6)(ff)11., F.S.]**

The Program statute supersedes the provisions of s. 627.707(5)(a)-(d), F.S., which contain the statutory criteria for the investigation and payment of sinkhole loss claims.

**Neutral Evaluation [s. 627.351(6)(ff)8. and 10., F.S.]**

The bill specifies that neutral evaluation is available under the program when Citizens denies a sinkhole loss claim. The scope of neutral evaluation under the program is limited, however, to whether sinkhole activity is present on the property and whether a sinkhole loss has occurred.

Under current law, the neutral evaluator is tasked with determining the cause of the loss as well as the proper method of repair and the costs for stabilization and all repairs.

As under current law, neutral evaluation is mandatory if requested by either party to the insurance contract, but the report of the neutral evaluator is not binding on the parties. The bill specifies that the neutral evaluator may not participate in the repairs related to the insurance claim and may not have a financial interest in the claim or in any business involved in repairs for the claim.

### **Citizens Reports on Residential Sinkhole Loss Coverage [s. 627.351(6)(ee), F.S.]**

Citizens must submit a report to the OIR detailing the requests it receives for residential sinkhole loss coverage. The report must be submitted at least once every 6 months. Citizens must report the number of requests for residential sinkhole loss coverage received, the number of sinkhole loss coverage requests accepted or declined, and Citizens' reasons for declining requests for residential sinkhole coverage.

### **OPPAGA Analysis of Program**

**Section 2** requires OPPAGA to review the Program and submit a report to the Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives. The report must:

- Analyze policyholder satisfaction with the Program and the sufficiency of consumer protections.
- Analyze the timeliness of stabilization repairs and compare Citizens' sinkhole-related loss costs under the program with loss costs prior to the Program.
- Evaluate whether disputes between stabilization repair contractors and policyholders are resolved in an effective and timely manner.
- Evaluate whether litigation of sinkhole claims and associated costs are increasing or decreasing, and the causes of such litigation.
- Evaluate the cost-effectiveness of allowing a third-party administrator to manage the program.

### **Effective Date**

**Section 3** provides an effective date of July 1, 2014.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Citizens policyholders only remedy under this bill will be limited to the specific performance of sinkhole repairs. Citizens' policyholders may benefit from the quick performance of repairs. If sinkhole loss costs are reduced by the program, premium increases for Citizens sinkhole insurance may be reduced.

**C. Government Sector Impact:**

Citizens' staff has recommended to the Citizens Board of Governors the pursuit of vendors to serve as sinkhole repair contractors for the purpose of establishing a sinkhole stabilization managed repair program. Vendors would be paid through the claim indemnity process (i.e. for repairs performed) and thus Citizens staff does not consider the vendor contracts an additional expense to Citizens.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following section of the Florida Statutes: 627.351

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 4, 2014:**

- Requires approved contractors to perform repairs based on line-item prices developed by Citizens that reasonably reflect market prices instead of on a fixed price bid submitted by the contractor.
- Requires Citizens to provide a 5 year warranty to the policyholder for stabilization repairs that is payable if the contractor is unable to honor its 5 year warranty to the policyholder.

- Requires Citizens to pay to perform necessary repairs that exceed policy limits or tender the policy limit without reduction for incomplete repairs that have already been performed.
- Allows the policyholder to select a contractor from among all qualified contractors that offer to perform the repair, rather than permitting Citizens to determine which bids are submitted to the policyholder.
- Specifies that neutral evaluation is available under the Program when Citizens denies a claim for sinkhole loss. Limits the issue to be determined under neutral evaluation to whether a sinkhole loss has occurred. Under current law, neutral evaluation is available to contest causation or the method of repair, and the neutral evaluator must make a recommendation as to the proper method of repair when a sinkhole loss is present.
- Requires OPPAGA to submit a report evaluating the Program to the Governor, Chief Financial Officer, President of the Senate, and Speaker of the House of Representatives by January 1, 2017.

B. Amendments:

None.

By Senator Simpson

18-00198C-14

2014416\_\_

1 A bill to be entitled  
 2 An act relating to sinkhole coverage; amending s.  
 3 627.351, F.S.; requiring Citizens Property Insurance  
 4 Corporation to submit a biannual report on the number  
 5 of residential sinkhole policies requested, issued,  
 6 and declined; providing legislative intent and  
 7 establishing a Citizens Sinkhole Stabilization Repair  
 8 Program for sinkhole claims; providing definitions;  
 9 prohibiting the corporation from requiring a  
 10 policyholder to advance payment for repairs provided  
 11 under the program; providing requirements and  
 12 procedures for contractors who conduct stabilization  
 13 repairs; providing requirements and terms for  
 14 contracts between the corporation and such  
 15 contractors; specifying additional parameters with  
 16 respect to the program; amending s. 627.706, F.S.;  
 17 requiring policies to include specified deductible  
 18 amounts for sinkhole loss coverage; providing an  
 19 effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23 Section 1. Paragraph (ee) of subsection (6) of section  
 24 627.351, Florida Statutes, is amended, present paragraphs (ff)  
 25 through (hh) of that subsection are redesignated as paragraphs  
 26 (gg) through (ii), respectively, and a new paragraph (ff) is  
 27 added to that subsection, to read:

28 627.351 Insurance risk apportionment plans.-  
 29 (6) CITIZENS PROPERTY INSURANCE CORPORATION.-

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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30 (ee) At least once every 6 months, the corporation shall  
 31 submit a report to the office disclosing:  
 32 1. The total number of requests received for residential  
 33 sinkhole loss coverage;  
 34 2. The total number of policies issued for residential  
 35 sinkhole loss coverage;  
 36 3. The total number of requests declined for residential  
 37 sinkhole loss coverage; and  
 38 4. The reasons for declining requests for residential  
 39 sinkhole loss coverage ~~The office may establish a pilot program~~  
 40 ~~to offer optional sinkhole coverage in one or more counties or~~  
 41 ~~other territories of the corporation for the purpose of~~  
 42 ~~implementing s. 627.706, as amended by s. 30, chapter 2007 1,~~  
 43 ~~Laws of Florida. Under the pilot program, the corporation is not~~  
 44 ~~required to issue a notice of nonrenewal to exclude sinkhole~~  
 45 ~~coverage upon the renewal of existing policies, but may exclude~~  
 46 ~~such coverage using a notice of coverage change.~~  
 47 (ff) The Legislature finds that it is in the public  
 48 interest that sinkhole loss claims be resolved by stabilizing  
 49 the land and structure and making repairs to the foundation of  
 50 the damaged structure. Therefore, the corporation shall  
 51 establish the Citizens Sinkhole Stabilization Repair Program for  
 52 the purpose of making stabilization repairs. By March 31, 2015,  
 53 any claim against a corporation policy that covers residential  
 54 sinkhole loss must be included in and governed by the repair  
 55 program.  
 56 1. As used in this paragraph, the term:  
 57 a. "Engineering report" means the report issued pursuant to  
 58 s. 627.7073(1).

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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59 b. "Recommendation of the engineer" means the  
60 recommendation of the engineer engaged by the corporation and  
61 issued pursuant to s. 627.7073(1)(a)5.

62 c. "Stabilization repairs" means stabilizing the land and  
63 structure and making repairs to the foundation of the damaged  
64 structure.

65 d. "Stabilization repair contractor" means a contractor who  
66 makes stabilization repairs.

67 2. The repair program shall be managed by the corporation  
68 or a third-party administrator and include the following  
69 components:

70 a. The policyholder may not be required to advance payment  
71 for repairs.

72 b. Stabilization repairs must be conducted by a  
73 stabilization repair contractor selected from an approved  
74 stabilization repair contractor pool procured by the corporation  
75 pursuant to an open and transparent process. Each contractor  
76 within the pool must be qualified and approved by the  
77 corporation based on criteria that include the following  
78 requirements:

79 (I) The stabilization repair contractor corporate entity  
80 must demonstrate experience in the stabilization of sinkhole  
81 activity pursuant to requirements established by the  
82 corporation.

83 (II) The stabilization repair contractor must be certified  
84 as a contractor pursuant to s. 489.113(1).

85 (III) The stabilization repair contractor must demonstrate  
86 capacity to be bonded and provide performance, surety, or other  
87 bonds as described in this section which may be supplemented by

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88 additional requirements as determined by the corporation.

89 (IV) The stabilization repair contractor must demonstrate  
90 that it meets insurance coverage requirements, including, but  
91 not limited to, commercial general liability and workers'  
92 compensation, established by the corporation.

93 (V) The stabilization repair contractor must maintain a  
94 valid drug-free workplace program.

95 (VI) Such other requirements as may be established by the  
96 corporation.

97 c. Pursuant to the stabilization repair program, qualified  
98 stabilization repair contractors shall be selected from the  
99 approved stabilization contractor pool to conduct stabilization  
100 repairs pursuant to a fixed-price contract between the  
101 contractor and the corporation. Such contracts are not subject  
102 to s. 627.351(6)(e) or s. 287.057. Pursuant to the terms of the  
103 contract, the selected contractor is solely responsible for the  
104 performance of all necessary stabilization repairs specified in  
105 the engineering report and the recommendations of the engineer.

106 d. The corporation shall develop a standard stabilization  
107 repair contract for the purpose of conducting stabilization  
108 repairs on all properties within the program. At a minimum, the  
109 contract must require:

110 (I) The assigned stabilization repair contractor to  
111 complete all stabilization repairs identified in the engineering  
112 report based on a fixed price.

113 (II) Each stabilization repair contractor to post a payment  
114 bond in favor of the corporation as obligee for each project  
115 assigned and to post a performance bond, secured by a third-  
116 party surety, in favor of the corporation as obligee, in a

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117 principal amount equal to the total cost of all fixed-price  
118 contracts annually awarded to that contractor.

119 (III) The stabilization repair contractor to provide a  
120 warranty, secured by a third-party surety, to the policyholder  
121 which covers all repairs provided by the stabilization repair  
122 contractor for at least 5 years after completion of the  
123 stabilization repairs.

124 (IV) That, throughout the course of the stabilization  
125 repairs performed by the contractor, the engineer monitor the  
126 property and confirm that stabilization has been satisfactorily  
127 completed and that no further stabilization is necessary to  
128 remedy the damage identified in the engineering report and the  
129 recommendations of the engineer.

130 (V) That, if the engineer concludes that additional  
131 stabilization repairs are necessary to complete the repairs  
132 specified in the engineering report and the recommendations of  
133 the engineer, the stabilization repair contractor perform  
134 additional stabilization repairs at no cost to the corporation  
135 or the policyholder. The contract must also contain provisions  
136 specifying the remedy and sanctions for failing to perform the  
137 additional repairs.

138 e. The corporation shall enter into contracts with  
139 qualified stabilization repair contractors to perform repairs  
140 pursuant to a process that requires all of the following  
141 components:

142 (I) Within 30 days after the completion of the engineering  
143 report, the report must be identified on a list that is made  
144 available to all stabilization repair contractors within the  
145 pool.

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146 (II) The corporation shall select a stabilization repair  
147 contractor from the pool pursuant to a selection process  
148 established by the corporation for assigning a contractor to  
149 perform repairs for each property within the program. The  
150 selection process must include all of the following:

151 (A) All stabilization repair contractors within the pool  
152 are provided an opportunity to submit an offer to perform the  
153 stabilization repairs recommended in the engineering report.  
154 Such offer must include an itemized statement of work.

155 (B) The corporation shall review the offers and provide the  
156 policyholder with a list of stabilization repair contractors.  
157 The corporation may reserve the right to include any or all  
158 contractors on the list based upon quality, cost-effectiveness,  
159 and such other criteria as the corporation determines  
160 appropriate.

161 (C) The policyholder has up to 30 days to select a  
162 contractor from the list. If the policyholder fails to make a  
163 selection within 30 days, the corporation shall make the  
164 selection.

165 (D) If no stabilization repair contractor submits an offer  
166 to perform the stabilization repairs for a property within the  
167 program, or all offers are above the policyholder's policy  
168 limit, the corporation may enter the property into the selection  
169 process again or may pay the policyholder an amount up to the  
170 policy limits on the structure.

171 3. The corporation is not responsible for serving as a  
172 stabilization repair contractor. The corporation's obligations  
173 under the repair program are not an election to repair by the  
174 corporation and therefore do not imply or create a new

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175 contractual relationship with the policyholder.

176 4. The corporation's liability related to repair activity  
 177 pursuant to the sinkhole stabilization program and all other  
 178 repairs to the structure conducted in accordance with the terms  
 179 of the policy is no greater than the policy limits on the  
 180 structure.

181 5. This paragraph does not prohibit the corporation from  
 182 establishing a managed repair program for other repairs to the  
 183 structure in accordance with the terms of the policy.

184 6. If a dispute arises between the corporation and the  
 185 policyholder as to the nature or extent of stabilization repairs  
 186 to be conducted under the program, the sole remedy for resolving  
 187 such disputes is specific performance.

188 7. The corporation shall pay for other repairs to the  
 189 structure and contents in accordance with the terms of the  
 190 policy.

191 8. This paragraph supersedes s. 627.707(5)(a)-(d).

192 Section 2. Subsection (1) of section 627.706, Florida  
 193 Statutes, is amended to read:

194 627.706 Sinkhole insurance; catastrophic ground cover  
 195 collapse; definitions.—

196 (1) ~~(a)~~ An ~~Every~~ insurer authorized to transact property  
 197 insurance in this state must provide coverage for a catastrophic  
 198 ground cover collapse.

199 ~~(a)~~ (b) The insurer shall make available, for an appropriate  
 200 additional premium, coverage for sinkhole losses on any  
 201 structure, including the contents of personal property contained  
 202 therein, to the extent provided in the form to which the  
 203 coverage attaches. The insurer may require an inspection of the

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204 property before issuance of sinkhole loss coverage.

205 (b) A policy for residential property insurance ~~must~~ may  
 206 include a deductible ~~for amount applicable to~~ for sinkhole loss  
 207 ~~losses~~ equal to 1 percent, 2 percent, 5 percent, or 10 percent  
 208 of the policy dwelling limits, with appropriate premium  
 209 discounts offered with each deductible amount.

210 (c) The insurer may restrict catastrophic ground cover  
 211 collapse and sinkhole loss coverage to the principal building,  
 212 as defined in the applicable policy.

213 Section 3. This act shall take effect July 1, 2014.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2014	.	
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	.	
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The Committee on Banking and Insurance (Detert) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (ee) of subsection (6) of section  
627.351, Florida Statutes, is amended, present paragraphs (ff)  
through (hh) of that subsection are redesignated as paragraphs  
(gg) through (ii), respectively, and new paragraphs (ff) is  
added to that subsection, to read:

627.351 Insurance risk apportionment plans.-



300080

11 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

12 (ee) At least once every 6 months, the corporation shall  
13 submit a report to the office disclosing:

14 1. The total number of requests received for residential  
15 sinkhole loss coverage;

16 2. The total number of policies issued for residential  
17 sinkhole loss coverage;

18 3. The total number of requests declined for residential  
19 sinkhole loss coverage; and

20 4. The reasons for declining requests for residential  
21 sinkhole loss coverage ~~The office may establish a pilot program~~  
22 ~~to offer optional sinkhole coverage in one or more counties or~~  
23 ~~other territories of the corporation for the purpose of~~  
24 ~~implementing s. 627.706, as amended by s. 30, chapter 2007-1,~~  
25 ~~Laws of Florida. Under the pilot program, the corporation is not~~  
26 ~~required to issue a notice of nonrenewal to exclude sinkhole~~  
27 ~~coverage upon the renewal of existing policies, but may exclude~~  
28 ~~such coverage using a notice of coverage change.~~

29 (ff) The Legislature finds that providing a program to  
30 repair property damaged by sinkholes safeguards the public's  
31 health, safety, and welfare and that it is in the public's  
32 interest for sinkhole loss claims to be resolved by stabilizing  
33 the land and structure and repairing the foundation of the  
34 damaged structure. The Legislature further finds that, in the  
35 past, many homeowners who obtained payouts from the corporation  
36 for a sinkhole claim did not use the funds to repair or  
37 remediate the claimed damage, thereby harming the real estate  
38 marketability of their homes and the valuation of other homes in  
39 the area. Therefore, the corporation shall establish a Citizens



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40 Sinkhole Stabilization Repair Program to promote the repair and  
41 remediation of sinkhole damage to homes. By March 31, 2015, any  
42 claim against a corporation policy that covers residential  
43 sinkhole loss for which it is determined that a covered sinkhole  
44 loss has occurred must be included in and governed by the repair  
45 program for the purpose of making stabilization repairs. The  
46 determination of whether a policyholder has a covered sinkhole  
47 loss will be made by the corporation or through neutral  
48 evaluation, judicial decree, or final judgment.

49 1. As used in this paragraph, the term:

50 a. "Engineering report" means the report issued pursuant to  
51 s. 627.7073(1).

52 b. "Neutral evaluation" and "neutral evaluator" have the  
53 same meanings as provided in s. 627.706(2).

54 c. "Recommendation of the engineer" means the  
55 recommendation of the professional engineer engaged by the  
56 corporation and included in the report pursuant to s.  
57 627.7073(1)(a)5.

58 d. "Sinkhole loss" has the same meaning as provided in s.  
59 627.706(2).

60 e. "Stabilization repair" means stabilizing the land and  
61 structure caused by sinkhole activity and repairing the damaged  
62 structure.

63 f. "Stabilization repair contractor" means a contractor who  
64 makes stabilization repairs.

65 2. The repair program shall be managed by the corporation  
66 and must include the following components:

67 a. The policyholder may not be required to advance payment  
68 for stabilization repairs.



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69           b. Stabilization repairs must be conducted by a  
70 stabilization repair contractor selected from an approved  
71 stabilization repair contractor pool procured by the corporation  
72 pursuant to an open and transparent process. Each contractor  
73 within the pool must be qualified and approved by the  
74 corporation based on criteria that include the following  
75 requirements:

76           (I) The stabilization repair contractor corporate entity  
77 must demonstrate experience in the stabilization of sinkhole  
78 activity pursuant to requirements established by the  
79 corporation.

80           (II) The stabilization repair contractor must be certified  
81 as a contractor pursuant to s. 489.113(1).

82           (III) The stabilization repair contractor must demonstrate  
83 capacity to be bonded and provide performance, surety, or other  
84 bonds as described in this section, which may be supplemented by  
85 additional requirements as determined by the corporation.

86           (IV) The stabilization repair contractor must demonstrate  
87 that it meets insurance coverage requirements, including, but  
88 not limited to, commercial general liability and workers'  
89 compensation, established by the corporation.

90           (V) The stabilization repair contractor must maintain a  
91 valid drug-free workplace program.

92           (VI) Such other requirements as may be established by the  
93 corporation.

94           c. Stabilization repair contractors selected from the  
95 approved stabilization repair contractor pool shall conduct  
96 stabilization repairs pursuant to a contract between the  
97 contractor and the corporation. Such contract is not subject to



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98 paragraph (e) or s. 287.057. Pursuant to the terms of the  
99 contract, the selected contractor is solely responsible for the  
100 performance of all necessary stabilization repairs specified in  
101 the engineering report and the recommendations of the engineer.

102 d. The corporation shall develop a standard stabilization  
103 repair contract for the purpose of conducting stabilization  
104 repairs on all properties within the repair program. At a  
105 minimum, the contract must require:

106 (I) The assigned stabilization repair contractor to  
107 complete all stabilization repairs identified in the engineering  
108 report based on line-item prices developed by the corporation  
109 which reasonably reflect actual market prices for sinkhole  
110 stabilization activities.

111 (II) Each stabilization repair contractor to post a payment  
112 bond in favor of the corporation as obligee for each project  
113 assigned and to post a performance bond, secured by a third-  
114 party surety, in favor of the corporation as obligee, in a  
115 principal amount equal to the total cost of all contracts  
116 annually awarded to that contractor.

117 (III) The stabilization repair contractor to provide a  
118 warranty to the policyholder which covers all repairs provided  
119 by the stabilization repair contractor for at least 5 years  
120 after completion of the stabilization repairs. The corporation  
121 shall also provide a warranty to the policyholder which covers  
122 all repairs provided by the stabilization repair contractor for  
123 at least 5 years if the stabilization repair contractor is  
124 unable to provide a remedy required under the warranty it  
125 provided to the policyholder.

126 (IV) That, throughout the course of the stabilization



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127 repairs performed by the contractor, the engineer monitor the  
128 property and confirm that stabilization has been satisfactorily  
129 completed and that no further stabilization is necessary to  
130 remedy the damage identified in the engineering report and the  
131 recommendations of the engineer.

132 (V) That the stabilization repair contractor notify the  
133 corporation if the engineer concludes that additional  
134 stabilization repairs are necessary to complete the repairs  
135 specified in the engineering report and the recommendations of  
136 the engineer. If repairs can be completed within policy limits,  
137 the stabilization repair contractor shall complete the  
138 additional repairs based on the line-item prices developed by  
139 the corporation. The contract must also contain provisions  
140 specifying the remedy and sanctions for failing to perform the  
141 additional repairs.

142 e. The corporation shall enter into contracts with  
143 qualified stabilization repair contractors to perform repairs  
144 pursuant to a process that requires all of the following  
145 components:

146 (I) Within 30 days after the completion of the engineering  
147 report, the report must be posted on a list that is made  
148 available to all stabilization repair contractors within the  
149 pool.

150 (II) The corporation shall select a stabilization repair  
151 contractor from the pool pursuant to a selection process  
152 established by the corporation for assigning a stabilization  
153 repair contractor to perform stabilization repairs for each  
154 property within the program. The selection process must include  
155 all of the following:



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156       (A) All stabilization repair contractors within the pool  
157 are provided an opportunity to submit an offer to perform the  
158 stabilization repairs recommended in the engineering report.  
159 Such offer must include an itemized statement of work based on  
160 line-item prices developed by the corporation.

161       (B) The corporation shall review the offers and provide the  
162 policyholder with a list of all stabilization repair contractors  
163 that submit an offer under sub-sub-sub-subparagraph (A).

164       (C) The policyholder has up to 30 days to select a  
165 stabilization repair contractor from the list. If the  
166 policyholder fails to make a selection within 30 days, the  
167 corporation shall make the selection. The corporation may  
168 reserve the right to select a stabilization repair contractor on  
169 the list based upon quality, cost-effectiveness, and such other  
170 criteria as the corporation determines appropriate.

171       (D) If no stabilization repair contractor submits an offer  
172 to perform the stabilization repairs for a property within the  
173 program or if all offers are above the policyholder's policy  
174 limit, the corporation may enter the property into the selection  
175 process again or may pay the policyholder an amount up to the  
176 policy limits on the structure. If the property is entered into  
177 the selection process three times and no stabilization repair  
178 contractor submits an offer to repair the property or all offers  
179 are above the policyholder's policy limit, the corporation shall  
180 elect to pay for stabilization repairs above the policyholder's  
181 policy limit or pay the policyholder an amount up to the policy  
182 limits on the structure.

183       3. The corporation is not responsible for serving as a  
184 stabilization repair contractor. The corporation's obligations



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185 under the repair program are not an election to repair by the  
186 corporation and therefore do not imply or create a new  
187 contractual relationship with the policyholder.

188 4. The corporation's liability related to stabilization  
189 repair activity pursuant to the repair program and all other  
190 repairs to the structure conducted in accordance with the terms  
191 of the policy may not be greater than the policy limits on the  
192 structure.

193 5. The corporation shall pay for other repairs to the  
194 structure and contents in accordance with the terms of the  
195 policy.

196 6. If the professional engineer engaged by the corporation  
197 determines that the stabilization repair cannot be completed  
198 within policy limits, the corporation must pay to complete the  
199 stabilization repair recommended by the corporation's  
200 professional engineer or tender the policy limits to the  
201 policyholder.

202 7. If a dispute arises between the corporation and the  
203 policyholder under this paragraph, under the policy, or under s.  
204 627.707 relating to the nature or extent of stabilization  
205 repairs to be conducted under the repair program, the sole  
206 remedy for resolving such dispute shall be to proceed with the  
207 necessary stabilization repairs through the repair program  
208 established under this paragraph, regardless of whether the  
209 claim, judgment, or decree is for breach of contract,  
210 declaratory relief, or specific performance.

211 8. If the corporation denies a policyholder's claim for  
212 sinkhole loss, the corporation or the policyholder may invoke  
213 neutral evaluation by filing a request with the department



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214 pursuant to s. 627.7074(7). Neutral evaluation is mandatory if  
215 requested by the corporation or the policyholder.

216 a. The neutral evaluator may not directly or indirectly  
217 participate in the remediation, repair, or restoration of the  
218 damaged property that is the subject of the claim, have a  
219 financial interest in the remediation, repair, or restoration of  
220 the damaged property that is the subject of the claim, or have a  
221 financial interest in any business entity that is involved in  
222 the remediation, repair, or restoration of the damaged property  
223 that is the subject of the claim.

224 b. The only issues to be determined by the neutral  
225 evaluator, pursuant to state law and the applicable policy, are  
226 whether there is sinkhole activity present as determined by a  
227 qualified professional geologist and, if so, whether there is  
228 sinkhole loss as determined by a qualified professional  
229 engineer. The neutral evaluator's conclusion is binding on the  
230 corporation and the policyholder. If the neutral evaluator  
231 determines that sinkhole loss exists, the sinkhole damage shall  
232 be included in and governed by the repair program.

233 c. Filing a request for neutral evaluation tolls the  
234 applicable time requirements for filing suit for 60 days  
235 following the conclusion of the neutral evaluation process or  
236 the time prescribed in s. 95.11, whichever is later.

237 9. This paragraph does not prohibit the corporation from  
238 establishing a managed repair program for other repairs to the  
239 structure in accordance with the terms of the policy.

240 10. This paragraph supersedes s. 627.7074(4) and applies  
241 only to the corporation and its policyholders and does not apply  
242 to any other insurer.



243 11. This paragraph supersedes s. 627.707(5)(a)-(d).

244 Section 3. By January 1, 2017, the Office of Program Policy  
245 Analysis and Government Accountability shall review the Citizens  
246 Sinkhole Stabilization Repair Program and submit a report to the  
247 Governor, the Chief Financial Officer, the President of the  
248 Senate, and the Speaker of the House of Representatives. The  
249 report must:

250 (1) Analyze policyholder satisfaction with stabilization  
251 repairs received through the program and the sufficiency of  
252 consumer protections provided by the program.

253 (2) Analyze the timeliness of stabilization repairs, in  
254 comparison with industry averages and practices. The report  
255 shall evaluate the loss costs associated with sinkhole claims  
256 under the program, comparing them with corporation's loss costs  
257 before the program's creation.

258 (3) Evaluate whether disputes between stabilization repair  
259 contractors and policyholders are resolved in an effective and  
260 timely manner.

261 (4) Evaluate whether litigation of sinkhole claims and  
262 associated costs are increasing or decreasing under the program,  
263 and the causes of such litigation.

264 (5) Evaluate the cost-effectiveness of allowing the program  
265 to be managed by a third-party administrator.

266 Section 4. This act shall take effect July 1, 2014.

267  
268 ===== T I T L E A M E N D M E N T =====

269 And the title is amended as follows:

270 Delete everything before the enacting clause  
271 and insert:



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272                                   A bill to be entitled  
273           An act relating to sinkhole coverage; amending s.  
274           627.351, F.S.; requiring Citizens Property Insurance  
275           Corporation to submit a biannual report on the number  
276           of residential sinkhole policies requested, issued,  
277           and declined; providing legislative intent and  
278           establishing a Citizens Sinkhole Stabilization Repair  
279           Program for sinkhole claims; defining terms;  
280           prohibiting the corporation from requiring a  
281           policyholder to advance payment for stabilization  
282           repairs provided under the program; providing  
283           requirements and procedures for selecting  
284           stabilization repair contractors to conduct  
285           stabilization repairs; providing requirements and  
286           terms for contracts between the corporation and such  
287           contractors; specifying additional parameters with  
288           respect to the program, including provision for  
289           resolving disputes between the corporation and a  
290           policyholder; providing applicability; requiring the  
291           Office of Program Policy Analysis and Government  
292           Accountability to conduct a study of the program and  
293           submit a report to the Governor, the Chief Financial  
294           Officer, and the Legislature; providing an effective  
295           date.



821536

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2014	.	
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The Committee on Banking and Insurance (Simmons) recommended the following:

- 1       **Senate Amendment to Amendment (300080)**
- 2
- 3       Delete lines 229 - 230
- 4       and insert:
- 5       engineer. If the neutral evaluator

THE FLORIDA SENATE  
**APPEARANCE RECORD**

Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb 4/2014  
Meeting Date

Topic For Bill

Bill Number 496  
*(if applicable)*

Name Tim Meenan

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 204 S. Monroe St.  
*Street*

Phone \_\_\_\_\_

*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Service Agreement Association / Asurion

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SB 496

INTRODUCER: Senator Simpson

SUBJECT: Warranty Associations

DATE: January 27, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	_____	_____	<u>CM</u>	_____

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**I. Summary:**

SB 496 allows for the electronic delivery of warranty association contracts as defined in Chapter 634, Florida Statutes. The bill allows warranty associations an additional exemption with regards to writing ratio requirements. The bill eliminates a current prohibition that bans affiliations between contractual liability insurers and warranty associations. The bill deletes an exemption for writing ratio requirements that applies to nationally traded companies that sell warranties in other states besides Florida.

**II. Present Situation:**

Chapter 634, F.S., governs the regulation of warranty associations. Warranty associations include motor vehicle service agreement companies<sup>1</sup>, home warranty associations<sup>2</sup>, and service warranty associations<sup>3</sup>. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulations (OIR). The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. The OIR is not, however, required to approve rates for such warranties.

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<sup>1</sup> s. 634.011, F.S.

<sup>2</sup> s. 634.301, F.S.

<sup>3</sup> s. 634.401, F.S.

## **Electronic Delivery of Service Agreements and Warranties**

Section 634.121(6), F.S., requires every motor vehicle service agreement to be mailed or delivered to the purchaser within 45 days after the purchase of the agreement.

Section 634.312(2), F.S., requires every home warranty to be mailed or delivered to the purchaser within 45 days after the purchase of the warranty. The delivery required by current law is typically sent via US mail or hand delivered. Service warranties currently do not have any delivery requirements in law.

## **Applicability of Federal and State Law Relating to Electronic Transactions**

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.<sup>4</sup> E-SIGN provides that a contract formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. E-SIGN requires consumer disclosure and consent to electronic records in certain instances, however, before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

E-SIGN allows state law to preempt the E-SIGN law in certain circumstances. State law addressing electronic transmission can preempt E-SIGN if the state law is an enactment of the Uniform Electronic Transactions Act (UETA) as adopted by the National Conference of Commissioners on Uniform State Laws. Alternatively, a state law that is not an enactment of UETA, but is not inconsistent with E-SIGN, and does not give greater legal status or effect to a specific form of technology or signature can preempt E-SIGN.<sup>5</sup> Florida adopted the substantive provisions of UETA in 2000 and has not substantively changed the provisions since they were adopted.<sup>6</sup> Thus, the Florida adoption of UETA should preempt E-SIGN. Section 668.50, F.S., Florida's Uniform Electronic Transaction Act (FUETA), is Florida's adoption of UETA. FUETA applies to electronic records and electronic signatures relating to a transaction and has limited exceptions.<sup>7</sup>

Although UETA and E-SIGN overlap in some areas, they differ on some consumer protection issues. E-SIGN focuses on regulating the manner of consent to deal electronically, while UETA

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<sup>4</sup> Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.

<sup>5</sup> 15 USC 7002.

<sup>6</sup> [http://www.uniformlaws.org/Act.aspx?title=Electronic Transactions Act](http://www.uniformlaws.org/Act.aspx?title=Electronic%20Transactions%20Act) (last viewed January 27, 2014), <http://www.ncsl.org/issues-research/telecom/uniform-electronic-transactions-acts.aspx> (last viewed January 27, 2014), and Final Staff Analysis for CS/CS/SB 1334 prepared by the House of Representatives Committee on Utilities & Communications, available at [http://archive.flsenate.gov/session/index.cfm?BI\\_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334](http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334) (last viewed January 27, 2014) indicating on page 10 that "the bill is identical to the act recommended by the National Commissioners for Uniform State Laws except for provisions that were added to conform to Florida law and provisions added to subsection (11) requiring a first time notary to complete certain training requirements." Although Florida's adoption of the UETA has been amended five times since adoption in 2000, none of the amendments were substantive.

<sup>7</sup> s. 668.50(3), F.S.

focuses on how the parties are to comply with state consumer protections laws.<sup>8</sup> By adopting the official version of UETA, states can modify, limit, or supersede some E-SIGN provisions, including its consumer protection issues, which includes E-SIGN's requirement of consumer disclosure and affirmative consent for electronic records.<sup>9</sup>

### **Financial Requirements for Service Warranty Associations**

Section 634.406, F.S., establishes the financial requirements, ratios, and limitations on service warranty associations. The law requires a 7-to-1 gross written premium to net assets ratio be maintained by warrantors and warranty sellers whom make up an association. Warrantor means any person engaged in the sale of service warranties and deriving not more than 50 percent of its gross income from the sale of service warranties.<sup>10</sup> Warranty seller means any person engaged in the sale of service warranties and deriving more than 50 percent of its gross income from the sale of service warranties.<sup>11</sup>

A warrantor who is also licensed under part I (Motor Vehicle Service Agreement) of ch. 634, F.S., can exceed the required ratio of gross written premium to net assets limitation only if they meet all of the following:

- Maintains net assets of at least \$2,500,000.
- Utilizes a contractual liability insurance policy approved by the office which:
  - Reimburses the service warranty association for 100 percent of its claims liability.
- The insurer issuing the contractual liability insurance policy must:
  - Maintain a policyholder surplus of at least \$100 million.
  - Be rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the OIR.
  - Not be affiliated with the warranty association.

Section 634.406(5), F.S., states no warranty seller may allow its gross written premiums in force to exceed a 7-to-1 ratio to net assets. However, s. 634.406(5), F.S., allows any warranty association not licensed under any other part of ch. 634, F.S., can exceed the required ratio of gross written premium to net assets limitation only if the association meets all of the following:

- Maintains net assets of at least \$750,000.
- Utilizes a contractual liability insurance policy approved by the OIR which:
  - Reimburses the service warranty association for 100 percent of its claims liability.
- The insurer issuing the contractual liability insurance policy must:
  - Maintain a policyholder surplus of at least \$100 million.
  - Be rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the OIR.
  - Not be affiliated with the warranty association.

<sup>8</sup> Fry, Patricia Bumfield, *A Preliminary Analysis of Federal and State Electronic Commerce Laws*, available at <http://uniformlaws.org/Narrative.aspx?title=UETA%20and%20Preemption%20Article> (last viewed January 27, 2014).

<sup>9</sup> <http://www.ncsl.org/issues-research/telecom/uniform-electronic-transactions-acts.aspx> (last viewed January 27, 2014).

<sup>10</sup> s. 634.401(15), F.S.

<sup>11</sup> s. 634.401(16), F.S.

- Provide a statement certifying the gross written premiums are covered under the contractual liability policy, whether or not it has been reported.

### **III. Effect of Proposed Changes:**

#### **Electronic Delivery of Service Agreements and Warranties**

The bill allows the electronic delivery of motor vehicle service agreements and home warranties. The bill adds delivery requirements to service warranty agreements that are the same requirements, including US mail, for motor vehicle service agreements and home warranties. Current law does not require any method of delivery for a service warranty agreement. Under the bill, the parameters for delivery of motor vehicle service agreements, home warranties, and service warranties are consistent and the same. The bill specifies electronic transmission of motor vehicle service agreements, home warranty agreements, and service warranty agreements constitutes delivery of the agreement to the purchaser. All electronic transmissions of agreements must include a notice to the purchaser indicating the purchaser's right to receive a paper copy of the agreement. If the purchaser notifies the company that he or she does not agree to an electronic transmission of the agreement, a paper copy must be sent via US mail to the purchaser. Although service warranties do not have a delivery requirement in current law, one is provided in the bill. Providing service warranties electronically without consent of the purchaser could be permitted under FUETA using the same analysis that applies to motor vehicle service agreements and home warranties.

#### **Financial Requirements for Service Warranty Associations**

The bill allows service warranty associations an additional exemption from the required 7-to-1 ratio of gross written premium to net assets. Under the bill, a service warranty association licensed in any other part of ch. 634, F.S., can be exempt for the 7-to-1 premium to assets ratio for the service warranty premium written under part III, if the association has an insurance policy covering all claims after the point of the association's insolvency under s. 634.406(3), F.S. The insurer issuing the policy must maintain a minimum capital surplus of \$200 million and an "A" or higher A.M. Best rating. The bill eliminates a current prohibition in s. 634.406(6)(c)3., F.S., that bans affiliations between contractual liability insurers and warranty associations. Additionally, the bill removes s. 634.406(7), F.S., which provides an exemption for writing ratio requirements that applies to nationally traded companies issuing in other states besides Florida. The OIR indicates a majority of these national companies choose to receive their exemption though s. 634.406(6), F.S., and those effected by the change in the bill will be able to do the same.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Warranty associations will save on printing and mailing costs for each service warranty that is delivered electronically. Insurers issuing contractual liability insurance policies will be allowed to hold affiliations with the warranty associations they insure.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 634.121, 634.312, 634.406, and 634.414.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Simpson

18-00658A-14

2014496\_\_

A bill to be entitled

An act relating to warranty associations; amending ss. 634.121 and 634.312, F.S.; authorizing electronic transmission of service agreements and home warranties; providing requirements for electronic transmission; providing notice requirements; amending s. 634.406, F.S.; revising criteria authorizing premiums of certain service warranty associations to exceed their specified net assets limitations; revising requirements relating to contractual liability policies that insure warranty associations; amending s. 634.414, F.S.; providing requirements for the delivery of service warranty contracts; providing notice requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 634.121, Florida Statutes, is amended to read:

634.121 Forms, required procedures, provisions.—

(6) ~~A~~ Each service agreement ~~that, which~~ includes a copy of the application form, ~~must be mailed, or delivered, or~~ electronically transmitted to the agreement holder within 45 days after the date of purchase. Electronic transmission of a service agreement constitutes delivery to the agreement holder. The electronic transmission must notify the agreement holder of his or her right to receive a paper copy of the service agreement via United States mail rather than electronic transmission. If the agreement holder communicates to the

Page 1 of 6

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

18-00658A-14

2014496\_\_

service agreement company electronically or in writing that he or she does not consent to receipt by electronic transmission, a paper copy of the service agreement shall be provided to the agreement holder.

Section 2. Subsection (2) of section 634.312, Florida Statutes, is amended to read:

634.312 Forms; required provisions and procedures.—

(2) Subject to the insurer's or home warranty association's requirement as to payment of premium, a every home warranty must shall be mailed, or delivered, or electronically transmitted to the warranty holder within not later than 45 days after the effectuation of coverage, and the application is part of the warranty contract document. Electronic transmission of a home warranty constitutes delivery to the warranty holder. The electronic transmission must notify the warranty holder of his or her right to receive a paper copy of the warranty via United States mail rather than electronic transmission. If the warranty holder communicates to the home warranty association electronically or in writing that he or she does not consent to receipt by electronic transmission, a paper copy of the home warranty shall be provided to the warranty holder.

Section 3. Subsections (6) and (7) of section 634.406, Florida Statutes, are amended to read:

634.406 Financial requirements.—

(6) An association ~~that which~~ holds a license under this part ~~and which does not hold any other license under this chapter~~ may allow its premiums for service warranties written under this part to exceed the ratio to net assets limitations of this section if the association meets all of the following:

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18-00658A-14

2014496\_\_

- 59 (a) Maintains net assets of at least \$750,000.
- 60 (b) ~~Uses~~ Utilizes a contractual liability insurance policy
- 61 approved by the office ~~that; which~~
- 62 1. Reimburses the service warranty association for 100
- 63 percent of its claims liability and is issued by an insurer that
- 64 maintains a policyholder surplus of at least \$100 million; or
- 65 2. Complies with subsection (3) and is issued by an insurer
- 66 that maintains a policyholder surplus of at least \$200 million.
- 67 (c) The insurer issuing the contractual liability insurance
- 68 policy:
- 69 ~~1. Maintains a policyholder surplus of at least \$100~~
- 70 ~~million.~~
- 71 ~~1.2.~~ Is rated "A" or higher by A.M. Best Company or an
- 72 equivalent rating by another national rating service acceptable
- 73 to the office; ~~and-~~
- 74 ~~3. Is in no way affiliated with the warranty association.~~
- 75 ~~2.4.~~ In conjunction with the warranty association's filing
- 76 of the quarterly and annual reports, provides, on a form
- 77 prescribed by the commission, a statement certifying the gross
- 78 written premiums in force reported by the warranty association
- 79 and a statement that all of the warranty association's gross
- 80 written premium in force is covered under the contractual
- 81 liability policy, regardless of whether ~~or not~~ it has been
- 82 reported.
- 83 ~~(7) A contractual liability policy must insure 100 percent~~
- 84 ~~of an association's claims exposure under all of the~~
- 85 ~~association's service warranty contracts, wherever written,~~
- 86 ~~unless all of the following are satisfied:~~
- 87 ~~(a) The contractual liability policy contains a clause that~~

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- 88 ~~specifically names the service warranty contract holders as sole~~
- 89 ~~beneficiaries of the contractual liability policy and claims are~~
- 90 ~~paid directly to the person making a claim under the contract;~~
- 91 ~~(b) The contractual liability policy meets all other~~
- 92 ~~requirements of this part, including subsection (3) of this~~
- 93 ~~section, which are not inconsistent with this subsection;~~
- 94 ~~(c) The association has been in existence for at least 5~~
- 95 ~~years or the association is a wholly owned subsidiary of a~~
- 96 ~~corporation that has been in existence and has been licensed as~~
- 97 ~~a service warranty association in the state for at least 5~~
- 98 ~~years, and:~~
- 99 1. Is listed and traded on a recognized stock exchange; is
- 100 listed in NASDAQ (National Association of Security Dealers
- 101 Automated Quotation system) and publicly traded in the over-the-
- 102 counter securities market; is required to file either of Form
- 103 10-K, Form 100, or Form 20-C with the United States Securities
- 104 and Exchange Commission; or has American Depository Receipts
- 105 listed on a recognized stock exchange and publicly traded or is
- 106 the wholly owned subsidiary of a corporation that is listed and
- 107 traded on a recognized stock exchange; is listed in NASDAQ
- 108 (National Association of Security Dealers Automated Quotation
- 109 system) and publicly traded in the over-the-counter securities
- 110 market; is required to file Form 10-K, Form 100, or Form 20-C
- 111 with the United States Securities and Exchange Commission; or
- 112 has American Depository Receipts listed on a recognized stock
- 113 exchange and is publicly traded;
- 114 2. Maintains outstanding debt obligations, if any, rated in
- 115 the top four rating categories by a recognized rating service;
- 116 3. Has and maintains at all times a minimum net worth of

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117 ~~not less than \$10 million as evidenced by audited financial~~  
 118 ~~statements prepared by an independent certified public~~  
 119 ~~accountant in accordance with generally accepted accounting~~  
 120 ~~principles and submitted to the office annually; and~~  
 121 ~~4. Is authorized to do business in this state; and~~  
 122 ~~(d) The insurer issuing the contractual liability policy;~~  
 123 ~~1. Maintains and has maintained for the preceding 5 years,~~  
 124 ~~policyholder surplus of at least \$100 million and is rated "A"~~  
 125 ~~or higher by A.M. Best Company or has an equivalent rating by~~  
 126 ~~another rating company acceptable to the office;~~  
 127 ~~2. Holds a certificate of authority to do business in this~~  
 128 ~~state and is approved to write this type of coverage; and~~  
 129 ~~3. Acknowledges to the office quarterly that it insures all~~  
 130 ~~of the association's claims exposure under contracts delivered~~  
 131 ~~in this state.~~  
 132  
 133 ~~If all the preceding conditions are satisfied, then the scope of~~  
 134 ~~coverage under a contractual liability policy shall not be~~  
 135 ~~required to exceed an association's claims exposure under~~  
 136 ~~service warranty contracts delivered in this state.~~  
 137 Section 4. Subsection (4) is added to section 634.414,  
 138 Florida Statutes, to read:  
 139 634.414 Forms; required provisions.—  
 140 (4) A service warranty contract must be mailed, delivered,  
 141 or electronically transmitted to the warranty holder within 45  
 142 days after the date of purchase. Electronic transmission of a  
 143 contract constitutes delivery to the warranty holder. The  
 144 electronic transmission must notify the warranty holder of his  
 145 or her right to receive a paper copy of the contract via United

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146 States mail rather than electronic transmission. If the warranty  
 147 holder communicates to the service warranty company  
 148 electronically or in writing that he or she does not consent to  
 149 receipt by electronic transmission, a paper copy of the contract  
 150 shall be provided to the warranty holder.  
 151 Section 5. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.4.14  
Meeting Date

Topic the insurance

Bill Number 570  
*(if applicable)*

Name Ashley Mayer

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title lobbyist

Address 101 E College Ave Shflow

Phone 222.9075

Tallahassee FL  
Street City State Zip

E-mail amayera

Speaking:  For  Against  Information

report@consult.com

Representing AIF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-4-2014

Meeting Date

Topic Title Insurance

Bill Number SB 570  
(if applicable)

Name TED Conner

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title General Counsel

Address 6545 Corporate Center Blvd.

Phone 407 240-3863

Orlando FL 32822  
Street City State Zip

E-mail TConner@TheFund.com

Speaking:  For  Against  Information

Representing Attorneys' Title Fund Services, LLC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

---

BILL: CS/SB 570

INTRODUCER: Banking and Insurance Committee and Senator Galvano

SUBJECT: Title Insurance

DATE: February 5, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			JU	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 570 responds to a recent Florida Supreme Court decision by providing that only contract remedies are available for the breach of a duty that arises solely from the terms of a contract of title insurance or other instruments issued and approved by the Office of Insurance Regulation.

This bill provides that title insurance agency and agent applications created by the Department of Financial Services need not be on a printed form. This would allow the use of online applications. Current law allows an applicant for licensure as a title insurance agent to substitute work experience in the title insurance business for classroom instruction. This bill provides that the work experience must be under the supervision of a licensed title insurance agent, a title insurer, or an attorney.

This bill applies the same naming requirements applicable to title insurance agents to title insurance agencies. This bill provides that the naming requirements do not apply to a title insurer acting as an agent for another title insurer if both insurers hold active certificates of authority to transact title insurance and both are acting under the names designated on such certificates. The changes to the naming requirements are effective October 1, 2014.

This bill removes the requirement that a title insurance agency deposit securities with the Department of Financial Services having a market value of \$35,000 or a bond in the same amount at the time of application for licensure. This requirement is no longer necessary because a title insurance agency must obtain a surety bond of at least \$35,000 payable to the title insurer.

This bill provides that a title insurance agent must be licensed and appointed in order to sell title insurance.

This bill changes from March 31 to May 31, the date which title insurers and agencies must report information required by the Office of Insurance Regulation for the analysis of title insurance premium rates.

This bill is effective July 1, 2014.

## II. Present Situation:

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.<sup>1</sup> Title insurance serves to indemnify the insured against financial loss caused by defects in title arising out of events that occurred before the date of the policy.<sup>2</sup>

Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (“Department”) while title insurance companies are licensed and regulated by the Office of Insurance Regulation.

### Title Insurance and the Economic Loss Rule

The economic loss rule is a “judicially created doctrine that sets forth circumstances under which a tort action is prohibited if the only damages suffered are economic losses.”<sup>3</sup> Parties to a contract are generally prohibited from recovering damages in tort for matters arising from the contract.<sup>4</sup> The Florida Supreme Court has explained:

Underlying [the economic loss] rule is the assumption that the parties to a contract have allocated the economic risks of nonperformance through the bargaining process. A party to a contract who attempts to circumvent the contractual agreement by making a claim for economic loss in tort is, in effect, seeking to obtain a better bargain than originally made. Thus, when the parties are in privity, contract principles are generally more appropriate for determining remedies for consequential damages that the parties have, or could have, addressed through their contractual agreement. Accordingly, courts have held that a tort action is barred where a defendant has not committed a breach of duty apart from a breach of contract.<sup>5</sup>

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<sup>1</sup> See s. 624.608, F.S.

<sup>2</sup> See *Lawyers Title Insurance Co. v. Novastar Mortgage, Inc.*, 862 So.2d 793,797 (Fla. 4th DCA 2004).

<sup>3</sup> *Tiara Condominium Association v. Marsh & McClennan*, 110 So.3d 399, 401 (Fla. 2013).

<sup>4</sup> *Id.* at 402.

<sup>5</sup> *Indemnity Ins. Co. of North America v. American Aviation, Inc.*, 891 So.2d 532, 536-537 (Fla.,2004)(internal citations omitted).

In *Tiara Condominium Association v. Marsh & McClelland*, the Florida Supreme Court held that the economic loss rule does not bar an insured's suit against an insurance broker where the parties are in contractual privity and the damages are solely economic.<sup>6</sup> The court further held that the economic loss rule is limited to products liability cases.<sup>7</sup> In limiting the economic loss rule to product liability cases, the court explained that it had long "expressed its desire" to return the economic loss rule to its intended purpose of limiting actions in product liability cases.<sup>8</sup>

### **Licensing and Appointment of Title Insurance Agents**

A person may not act as a title insurance agent until the person is licensed by the Department.<sup>9</sup> Once a person obtains a license, the person must be authorized or appointed by a title insurer to transact insurance on behalf of the insurer.<sup>10</sup> In order to obtain a license, an applicant must complete a 40-hour classroom course in title insurance or have had 12 months of experience in responsible title insurance duties while working as a substantially full time employee of a title agency, title agent, title insurer, or an attorney who conducts real estate closings and issues title insurance policies but is exempt from licensure.<sup>12</sup> An applicant must also qualify to take and must pass a required examination.<sup>13</sup>

### **Naming of Title Insurance Agencies**

Florida law generally prohibits an insurance agency name from being deceptive or misleading. Section 626.8413, F.S., provides that a title insurance agent shall not adopt a name which contains the words "title insurance," "title guaranty," or "title guarantee" unless such words are followed by the word "agent" or "agency." The restrictions on names make clear to a purchaser that title insurance is being purchased from an agent or agency rather than directly from a title insurer. The naming requirements in s. 626.8413, F.S., do not apply to a title insurer acting as an agent for another title insurer.

### **Bond Requirement**

Section 626.8418(2), F.S., requires an applicant for licensure as a title insurance agency to deposit security with the Department of at least \$35,000 or post a surety bond payable to the Department of at least \$35,000 for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with the appointing insurer. Section 626.8419(1)(c), F.S., requires a title insurance agency to obtain a surety bond of at least \$35,000 payable to the title insurer appointing the agency. The bond must be for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with the appointing insurer.

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<sup>6</sup> *Tiara Condominium Association*, 399 So.3d at 402.

<sup>7</sup> *Tiara Condominium Association*, 399 So.3d at 402.

<sup>8</sup> *Tiara Condominium Association*, 399 So.3d at 407.

<sup>9</sup> See s. 626.8417, F.S.

<sup>10</sup> Title insurers and attorneys admitted to practice law in Florida and in good standing with the Florida Bar are exempt from the licensing and appointment requirements. See s. 626.8417(4)(a), F.S.

<sup>11</sup> See s. 626.841(1), Florida Statutes, defining "title insurance agent" as one appointed by a title insurer to issue policies on its behalf.

<sup>12</sup> See 626.8417(3)(a), F.S.

<sup>13</sup> See 626.8417(3)(b), F.S.

## **Reports to the Office of Insurance Regulation**

Title insurance agencies and title insurers are required to submit information including revenue, loss, and expense data to the Office of Insurance Regulation on March 31 of the year after the reporting year.<sup>14</sup> The Office of Insurance Regulation uses the information to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry.<sup>15</sup>

### **III. Effect of Proposed Changes:**

#### **The Economic Loss Rule (Section 7)**

This bill responds to the court's decision in *Tiara Condominium Association* by providing that only contract remedies are available for breach of a duty which arises solely from the terms of a contract of title insurance or an instrument, such as closing protection letter, issued pursuant to s. 627.786(3), F.S.

#### **Licensing and Appointment of Title Insurance Agents (Sections 1 and 3)**

This bill amends s. 626.8412, F.S., to provide that a title insurance agent must be licensed and appointed in order to sell title insurance.

This bill provides that the Department's license application need not be on a printed form. This would allow the Department to use online applications. This bill specifies that the 12 months of experience in responsible title insurance duties required as an alternative to classroom instruction must be under the supervision of a licensed title insurance agent, a title insurer, or an attorney.

#### **Naming of Title Insurance Agencies (Section 2)**

This bill applies the same naming requirements applicable to title insurance agents to title insurance agencies. It provides that a title insurance agent or agency may not adopt a name which contains the words "title insurance," "title company," "title guaranty," or "title guarantee" unless such words are followed by the word "agent" or "agency." This bill provides that the naming restrictions do not apply to a title insurer acting as an agent for another title insurer if both insurers hold active certificates of authority to transact title insurance and both are acting under the names designated on such certificates. The changes to the naming requirements are effective October 1, 2014.

#### **Bond Requirement**

Sections 4 and 5 of this bill remove the requirement that a title insurance agency deposit with the Department securities having a market value of \$35,000 or a bond in the same amount at the time of application for licensure for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with an appointing insurer. This requirement is no

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<sup>14</sup> See s. 627.782(8), F.S.

<sup>15</sup> *Id.*

longer necessary because s. 626.8419(1)(c), F.S., requires a title insurance agency to obtain a surety bond of at least \$35,000 payable to the title insurer.

Sections 6 and 9 of this bill removes obsolete language relating to binders and guarantees of title. Those terms are no longer used.

Section 8 changes the date which title insurers and title insurance agencies must report required revenue, loss, and expense data to the Office of the Insurance Regulation from March 31 to May 31.

#### **Effective Date**

Section 10 of this bill provides an effective date of July 1, 2014.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Limiting liability to contract remedies could benefit insurers by making remedies for breach of contract more predictable.

C. Government Sector Impact:

None.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 626.8412, 626.8413, 626.8417, 626.8418, 626.8419, 626.8437, 627.778, 627.782, and 627.7845.

**IX. Additional Information:**

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

**CS by Banking and Insurance on February 4, 2014:**

The CS provides that only contract remedies are available for a breach of duty arising from the terms of an instrument issued pursuant to s. 627.786(3), F.S., and changes the date which title insurers and title insurance agencies must report information to the Office of Insurance Regulation from March 31 to May 31.

- B. **Amendments:**

None.

By Senator Galvano

26-00588B-14

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1 A bill to be entitled  
 2 An act relating to title insurance; amending s.  
 3 626.8412, F.S.; specifying that only a licensed and  
 4 appointed agent or agency is authorized to sell title  
 5 insurance; amending s. 626.8413, F.S.; providing  
 6 additional limitations on the name that a title  
 7 insurance agent or agency may adopt; providing  
 8 applicability; amending s. 626.8417, F.S.; conforming  
 9 provisions to changes made by the act; amending s.  
 10 626.8418, F.S.; revising the application requirements  
 11 for a title insurance agency license; deleting certain  
 12 bonding requirements and procedures; amending s.  
 13 626.8419, F.S.; conforming provisions to changes made  
 14 by the act; amending s. 626.8437, F.S.; revising terms  
 15 relating to grounds for actions against a licensee or  
 16 appointee; amending s. 627.778, F.S.; limiting the  
 17 remedies available for the breach of duty arising from  
 18 a title insurance contract; amending s. 627.7845,  
 19 F.S.; revising terms relating to determination of  
 20 insurability and preservation of evidence of title  
 21 search and examination; providing effective dates.

22 Be It Enacted by the Legislature of the State of Florida:

23 Section 1. Paragraph (a) of subsection (1) of section  
 24 626.8412, Florida Statutes, is amended to read:

25 626.8412 License and appointments required.-

26 (1) Except as otherwise provided in this part:

27 (a) Title insurance may be sold only by a licensed and  
 28  
 29

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30 appointed title insurance agent employed by a licensed and  
 31 appointed title insurance agency or employed by a title insurer.  
 32 Section 2. Effective October 1, 2014, section 626.8413,  
 33 Florida Statutes, is amended to read:  
 34 626.8413 Title insurance agents; certain names prohibited.-  
 35 After October 1, ~~2014~~ 1985, a title insurance agent or title  
 36 insurance agency may as defined in s. 626.841 shall not adopt a  
 37 name ~~that which~~ contains the words "title insurance," "title  
 38 company," "title guaranty," or "title guarantee," unless such  
 39 words are followed by the word "agent" or "agency" in the same  
 40 size and type as the words preceding it them. This section does  
 41 not apply to a title insurer acting as an agent for another  
 42 title insurer if both insurers hold active certificates of  
 43 authority to transact title insurance business in this state and  
 44 if both insurers are acting under the names designated on such  
 45 certificates.  
 46 Section 3. Section 626.8417, Florida Statutes, is amended  
 47 to read:  
 48 626.8417 Title insurance agent licensure; exemptions.-  
 49 (1) A person may not act as a title insurance agent ~~as~~  
 50 ~~defined in s. 626.841~~ until a valid title insurance agent's  
 51 license has been issued to that person by the department.  
 52 (2) An application for license as a title insurance agent  
 53 shall be filed with the department on ~~printed~~ forms furnished by  
 54 the department.  
 55 (3) The department ~~may shall~~ not grant or issue a license  
 56 as a title insurance agent to an any individual who is found by  
 57 the department ~~it~~ to be untrustworthy or incompetent, who does  
 58 not meet the qualifications for examination specified in s.

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59 626.8414, or who does not meet the following qualifications:

60 (a) Within the 4 years immediately preceding the date of  
61 the application for license, the applicant must have completed a  
62 40-hour classroom course in title insurance, 3 hours of which  
63 ~~are shall be~~ on the subject matter of ethics, as approved by the  
64 department, or must have had at least 12 months of experience in  
65 responsible title insurance duties under the supervision of a  
66 licensed title insurance agent, title insurer, or attorney while  
67 working in the title insurance business as a substantially full-  
68 time, bona fide employee of a title insurance agency, title  
69 insurance agent, title insurer, or attorney who conducts real  
70 estate closing transactions and issues title insurance policies  
71 but who is exempt from licensure under subsection (4) pursuant  
72 to paragraph (4)(a). If an applicant's qualifications are based  
73 upon the periods of employment at responsible title insurance  
74 duties, the applicant must submit, with the license application  
75 ~~for license on a form prescribed by the department, an the~~  
76 affidavit of the applicant and of the employer affirming setting  
77 ~~forth~~ the period of such employment, that the employment was  
78 substantially full time, and giving a brief abstract of the  
79 nature of the duties performed by the applicant.

80 (b) The applicant must have passed any examination for  
81 licensure required under s. 626.221.

82 (4)(a) Title insurers or attorneys duly admitted to  
83 practice law in this state and in good standing with The Florida  
84 Bar are exempt from the provisions of this chapter relating with  
85 ~~regard~~ to title insurance licensing and appointment  
86 requirements.

87 (5)(b) An insurer may designate a corporate officer of the

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88 insurer to occasionally issue and countersign binders,  
89 commitments, and policies of title insurance ~~policies, or~~  
90 ~~guarantees of title~~. The A designated officer is exempt from the  
91 provisions of this chapter relating with ~~regard~~ to title  
92 insurance licensing and appointment requirements while the  
93 officer is acting within the scope of the designation.

94 (6)(c) If an attorney owns or attorneys own a corporation  
95 or other legal entity that which is doing business as a title  
96 insurance agency, other than an entity engaged in the active  
97 practice of law, the agency must be licensed and appointed as a  
98 title insurance agent.

99 Section 4. Section 626.8418, Florida Statutes, is amended  
100 to read:

101 626.8418 Application for title insurance agency license.—  
102 Before ~~Prior to~~ doing business in this state as a title  
103 insurance agency, a title insurance agency must meet all of the  
104 following requirements:

105 (1) ~~(a)~~ the applicant must file with the department an  
106 application for a license as a title insurance agency, on  
107 ~~printed~~ forms furnished by the department, which that includes  
108 all of the following:

109 (1)(a) The name of each majority owner, partner, officer,  
110 and director of the title insurance agency.

111 (2)(b) The residence address of each person required to be  
112 listed under subsection (1) paragraph (a).

113 (3)(c) The name of the title insurance agency and its  
114 principal business address.

115 (4)(d) The location of each title insurance agency office  
116 and the name under which each agency office conducts or will

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117 conduct business.

118 (5)(e) The name of each title insurance agent to be in  
119 full-time charge of a title insurance an agency office and  
120 specification of which office.

121 ~~(6)(f)~~ Such additional information as the department  
122 requires by rule to ascertain the trustworthiness and competence  
123 of persons required to be listed on the application and to  
124 ascertain that such persons meet the requirements of this code.

125 ~~(2) The applicant must have deposited with the department~~  
126 ~~securities of the type eligible for deposit under s. 625.52 and~~  
127 ~~having at all times a market value of not less than \$35,000. In~~  
128 ~~place of such deposit, the title insurance agency may post a~~  
129 ~~surety bond of like amount payable to the department for the~~  
130 ~~benefit of any appointing insurer damaged by a violation by the~~  
131 ~~title insurance agency of its contract with the appointing~~  
132 ~~insurer. If a properly documented claim is timely filed with the~~  
133 ~~department by a damaged title insurer, the department may remit~~  
134 ~~an appropriate amount of the deposit or the proceeds that are~~  
135 ~~received from the surety in payment of the claim. The required~~  
136 ~~deposit or bond must be made by the title insurance agency, and~~  
137 ~~a title insurer may not provide the deposit or bond directly or~~  
138 ~~indirectly on behalf of the title insurance agency. The deposit~~  
139 ~~or bond must secure the performance by the title insurance~~  
140 ~~agency of its duties and responsibilities under the issuing~~  
141 ~~agency contracts with each title insurer for which it is~~  
142 ~~appointed. The agency may exchange or substitute other~~  
143 ~~securities of like quality and value for securities on deposit,~~  
144 ~~may receive the interest and other income accruing on such~~  
145 ~~securities, and may inspect the deposit at all reasonable times.~~

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146 ~~Such deposit or bond must remain unimpaired as long as the title~~  
147 ~~insurance agency continues in business in this state and until 1~~  
148 ~~year after termination of all title insurance agency~~  
149 ~~appointments held by the title insurance agency. The title~~  
150 ~~insurance agency is entitled to the return of the deposit or~~  
151 ~~bond together with accrued interest after such year has passed,~~  
152 ~~if no claim has been made against the deposit or bond. If a~~  
153 ~~surety bond is unavailable generally, the department may adopt~~  
154 ~~rules for alternative methods to comply with this subsection.~~  
155 ~~With respect to such alternative methods for compliance, the~~  
156 ~~department must be guided by the past business performance and~~  
157 ~~good reputation and character of the proposed title insurance~~  
158 ~~agency. A surety bond is deemed to be unavailable generally if~~  
159 ~~the prevailing annual premium exceeds 25 percent of the~~  
160 ~~principal amount of the bond.~~

161 Section 5. Paragraphs (a) through (c) of subsection (1) of  
162 section 626.8419, Florida Statutes, are amended to read:

163 626.8419 Appointment of title insurance agency.-

164 (1) The title insurer engaging or employing the title  
165 insurance agency must file with the department, on forms  
166 furnished by the department, an application certifying that the  
167 proposed title insurance agency meets all of the following  
168 requirements:

169 (a) The title insurance agency ~~has~~ must have obtained a  
170 fidelity bond in an amount of at least, ~~not less than~~ \$50,000,  
171 acceptable to the insurer appointing the agency. If a fidelity  
172 bond is unavailable generally, the department shall ~~must~~ adopt  
173 rules for alternative methods to comply with this paragraph.

174 (b) The title insurance agency must have obtained errors

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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175 and omissions insurance in an amount acceptable to the insurer  
 176 appointing the agency. The amount of the coverage must be at  
 177 least ~~may not be less than~~ \$250,000 per claim and an aggregate  
 178 limit with a deductible no greater than \$10,000. If errors and  
 179 omissions insurance is unavailable generally, the department  
 180 shall ~~must~~ adopt rules for alternative methods that ~~to~~ comply  
 181 with this paragraph.

182 (c) ~~Notwithstanding s. 626.8418(2),~~ The title insurance  
 183 agency must have obtained a surety bond in an amount of at least  
 184 ~~not less than~~ \$35,000 made payable to the title insurer or title  
 185 insurers appointing the agency. The surety bond must be for the  
 186 benefit of any appointing title insurer damaged by a violation  
 187 by the title insurance agency of its contract with the  
 188 appointing title insurer. If the surety bond is payable to  
 189 multiple title insurers, the surety bond must provide that each  
 190 title insurer is to be notified if in the event a claim is made  
 191 upon the surety bond or the bond is terminated.

192 Section 6. Subsections (3) and (4) of section 626.8437,  
 193 Florida Statutes, are amended to read:

194 626.8437 Grounds for denial, suspension, revocation, or  
 195 refusal to renew license or appointment.—The department shall  
 196 deny, suspend, revoke, or refuse to renew or continue the  
 197 license or appointment of any title insurance agent or agency,  
 198 and it shall suspend or revoke the eligibility to hold a license  
 199 or appointment of such person, if it finds that as to the  
 200 applicant, licensee, appointee, or any principal thereof, any  
 201 one or more of the following grounds exist:

202 (3) Willful misrepresentation of any title insurance  
 203 policy, ~~guarantee of title, binder,~~ or commitment, or willful

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204 deception with regard to ~~any~~ such policy, ~~guarantee, binder,~~ or  
 205 commitment, done ~~either~~ in person or by any form of  
 206 dissemination of information or advertising.

207 (4) Demonstrated lack of fitness or trustworthiness to  
 208 represent a title insurer in the issuance of its commitments or  
 209 ~~binders,~~ policies of title insurance, ~~or guarantees of title.~~

210 Section 7. Subsection (3) is added to section 627.778,  
 211 Florida Statutes, to read:

212 627.778 Limit of risk.—

213 (3) Only contract remedies are available for the breach of  
 214 a duty which arises solely from the terms of a contract of title  
 215 insurance.

216 Section 8. Subsection (2) of section 627.7845, Florida  
 217 Statutes, is amended to read:

218 627.7845 Determination of insurability required;  
 219 preservation of evidence of title search and examination.—

220 (2) The title insurer shall cause the evidence of the  
 221 determination of insurability and the reasonable title search or  
 222 search of the records of a Uniform Commercial Code filing office  
 223 to be preserved and retained in its files or in the files of its  
 224 title insurance agent or agency for at least a period of not  
 225 ~~less than~~ 7 years after the title insurance commitment or, title  
 226 insurance policy, ~~or guarantee of title~~ was issued. The title  
 227 insurer or its agent or agency must produce the evidence  
 228 required to be maintained under ~~by~~ this subsection at its  
 229 offices upon the demand of the office. Instead of retaining the  
 230 original evidence, the title insurer or its ~~the title insurance~~  
 231 agent or agency may, in the regular course of business,  
 232 establish a system under which all or part of the evidence is

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233 recorded, copied, or reproduced by any photographic,  
234 photostatic, microfilm, microcard, miniature photographic, or  
235 other process that ~~which~~ accurately reproduces or forms a  
236 durable medium for reproducing the original.

237 Section 9. Except as otherwise expressly provided in this  
238 act, this act shall take effect July 1, 2014.



464906

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2014	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 215

and insert:

insurance or an instrument issued pursuant to s. 627.786(3).

Section 8. Subsection (8) of section 627.782, Florida Statutes, is amended to read:

627.782 Adoption of rates.—

(8) Each title insurance agency and insurer licensed to do business in this state and each insurer's direct or retail



464906

11 business in this state shall maintain and submit information,  
12 including revenue, loss, and expense data, as the office  
13 determines necessary to assist in the analysis of title  
14 insurance premium rates, title search costs, and the condition  
15 of the title insurance industry in this state. Such ~~This~~  
16 information shall ~~must~~ be transmitted to the office annually by  
17 May ~~March~~ 31 of the year after the reporting year. The  
18 commission shall adopt rules relating to ~~regarding~~ the  
19 collection and analysis of the data from the title insurance  
20 industry.

21  
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete line 18

25 and insert:

26 a title insurance contract; amending s. 627.782, F.S.;  
27 revising the date that certain information relating to  
28 title insurance rates must be submitted to the Office  
29 of Insurance Regulation by title insurance agencies  
30 and insurers; amending s. 627.7845,

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4

Meeting Date

Topic Check Cashing

Bill Number 590  
*(if applicable)*

Name Jim Daughton

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Metz, Husband + Daughton

Address 215 S. Menrol St

Phone 205-9000

Street Tallahassee State FL Zip 32301

E-mail Jim.Daughton@metzlaw.com

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/2014

Meeting Date

Topic SB 590 - check cashing

Bill Number SB 590  
*(if applicable)*

Name Jo Morris

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Affairs Director

Address 200 E. Gainer St.

Phone 850-410-9544

Street

Tallahassee FL 32399

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Office of Financial Regulation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 590

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Check Cashing Services

DATE: February 5, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CJ</u>	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 590 revises provisions relating to the regulation of money services businesses by the Office of Financial Regulation (OFR). Money services businesses (MSBs) offer financial services such as check cashing, money transmittals (wire transfers), sales of monetary instruments and currency exchange, and deferred presentment transactions (“payday loans”) outside the traditional banking environment. The bill provides the following changes:

- Allows the OFR to suspend the license of a MSB immediately pursuant to s. 120.60(6), Florida Statutes, if specified criminal charges are filed against a natural person listed on the application or if such person is arrested for specified crimes.
- Expands prohibited acts to include a violation under s. 560.310(2)(d), F.S., relating to the OFR database reporting requirements applicable to check cashers. A person who knowingly and willfully violates this provision commits a third-degree felony.
- Provides that a deferred presentment transaction is void if the person conducting the transaction is not authorized pursuant to ch. 560, F.S., and such person has no right to collect funds relating to such a transaction.
- Updates outdated cross references to federal regulations.

## II. Present Situation:

### Regulation of Money Services Businesses

The Office of Financial Regulation (OFR) is responsible for safeguarding the financial interests of the public by licensing, examining, and regulating depository institutions and other entities, such as money service businesses, which are subject to the provisions of ch. 560, F.S. Money service businesses (MSB) are regulated under two license categories.<sup>1</sup> Money transmitters and payment instrument issuers are regulated under part II of ch. 560, F.S., while check cashers and foreign currency exchangers are regulated under part III. To qualify for licensure as a MSB under ch. 560, F.S., an applicant must meet the following requirements:

- Demonstrate to the OFR the character and general fitness necessary to command the confidence of the public and warrant the belief that the money services business or deferred presentment provider will operate lawfully.
- Be legally authorized to do business in Florida.
- Be registered as a money services business with the federal Financial Crimes Enforcement Network (FinCEN) as required by 31 C.F.R. s. 103.41, if applicable.
- Have an anti-money laundering program in place that meets the requirements of 31 C.F.R. s. 103.125.
- Provide the OFR with information required under ch. 560, F.S., and related rules.<sup>2</sup>

The Federal Bank Secrecy Act of 1970 (BSA) established the regulatory framework to prevent and detect money laundering. The BSA<sup>3</sup> requires certain MSBs to register with FinCEN, if they conduct more than \$1,000 in business (with one person in one or more transactions on the same day) in one or more of the following services: money orders, traveler's checks, check cashing, currency dealing or exchange. However, if a business provides money transfer services in any amount, registration is required. A business that meets the definition of a MSB must comply with both the general obligations that apply to all financial institutions and the specific obligations that apply to MSBs.

The U.S. Department of Treasury has adopted regulations to implement the provisions of the Bank Secrecy Act under 31 C.F.R. s. 103. These regulations require MSBs to maintain certain records and report certain currency transactions and suspicious activities. The MSBs are required to establish an anti-money laundering program (AML), to obtain and verify customer identity, and to document certain information concerning the transactions.

Section 560.111, F.S., specifies prohibited acts under ch. 560, F.S., and provides penalties for noncompliance. Section 560.114, F.S., authorizes the OFR to take disciplinary actions if a MSB violates provisions of ch. 560, F.S., and 31 C.F.R. Pursuant to s. 560.114, F.S., the OFR may immediately suspend the license of a MSB that fails to provide the office specified records or

---

<sup>1</sup> Section 560.104, F.S., provides that banks, credit unions, trust companies, offices of an international banking corporation, or other financial depository institutions organized under the laws of any state of the United States are exempt from the provisions of ch. 560, F.S.

<sup>2</sup> Section 560.1401, F.S.

<sup>3</sup> The Bank Secrecy Act (BSA) is the name commonly given to a federal statute codified at Title 31, U.S. Code, sections 5311-5330.

fails to maintain a federally insured depository account. For purposes of s. 120.60(6), F.S., the failure to provide such records or maintain the account constitutes immediate and serious danger to the public health, safety, and welfare. Section 120.60(6), F.S., provides:

- (6) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if:
  - (a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
  - (b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and
  - (c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57, F.S., shall also be promptly instituted and acted upon.

### ***Licensure of Check Cashers***

Generally, a person may not engage in the business of cashing payment instruments without obtaining a license from the OFR.<sup>4</sup> However, current law provides that the requirement for licensure as a check casher does not apply to a person cashing payment instruments that have an aggregate face value of less than \$2,000 per person, per day and that are incidental to the retail sale of goods or services, within certain parameters.<sup>5</sup>

Licensed check cashers are required to comply with federal MSB requirements, if applicable, and state requirements, such as maintaining specified records and reporting information to the OFR. Section 560.310, F.S., requires licensed check cashers to maintain copies of cashed checks, and for checks exceeding \$1,000, the check casher must submit certain transactional data to an electronic log or check-cashing database.<sup>6</sup>

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<sup>4</sup> Section 560.303, F.S.

<sup>5</sup> Section 560.304, F.S.

<sup>6</sup> Last year, legislation was enacted Chapter (2013-139, L.O.F.) that provides for the establishment of a check-cashing database within the OFR. Regulators and law enforcement agencies will use the database to target and identify persons involved in workers' compensation insurance premium fraud and other criminal activities. The act authorized the OFR to issue a competitive solicitation for a statewide, real time, online check cashing database. After completion of the competitive solicitation for the database, the OFR may include a request for funding in their FY 2014-2015 Legislative Budget Request. After the implementation of the new database, licensed check cashers will be required to enter specified transactional information into the database. Currently, for checks exceeding \$1,000, licensed check cashers are required to record certain data in an electronic log.

### ***Deferred Presentment Providers***

A deferred presentment provider (DPP) must be licensed under part II or part III, ch. 560, F.S., file a declaration of intent with the OFR, and meet other requirements. Part IV of ch. 560, F.S., regulates DPPs and deferred presentment transactions. A deferred presentment transaction means providing currency or a payment instrument in exchange for a person's check and agreeing to hold the person's check for a period prior to presentment, deposit, or redemption.<sup>7</sup> The face amount of a check taken for a deferred presentment may not exceed \$500.<sup>8</sup> A DPP may charge a maximum fee of 10 percent of the currency or payment instrument provided (exclusive of the verification fee). Section 560.404(19), F.S., prohibits a DPP from entering into a deferred presentment agreement with a customer if the customer has an outstanding deferred presentment agreement with any DPP, or terminated an agreement within the previous 24 hours.

### **III. Effect of Proposed Changes:**

#### **Authority to Suspend License of a Money Services Business**

The bill revises the Office of Financial Regulation's (OFR's) authority to suspend the license of a money services business (MSB) if the OFR has reason to believe that a licensee poses an immediate, serious danger to the public health, safety, and welfare pursuant to s. 120.60(6), F.S. The bill authorizes the OFR to suspend the license of a MSB immediately if a natural person required to be listed on the application pursuant to s. 560.141(1)(a)3., F.S.,<sup>9</sup> is criminally charged with, or arrested for a crime described in s. 560.114(1)(o),<sup>10</sup> s. 560.114(1)(p),<sup>11</sup> or s. 560.114(1)(q).<sup>12</sup> Under current law and for purposes of s. 120.60(6), F.S., the OFR is authorized to suspend the license of a MSB immediately if the MSB fails to provide to the OFR specified records required under s. 560.123, s. 560.1235, s. 560.211, or s. 560.310, F.S., or fails to maintain a federally insured depository account as required by s. 560.309, F.S. The bill requires the commissioner of the OFR, or his or her designee, to conduct such a proceeding and issue the final order. Currently, s. 20.121(3)(c), F.S., designates the director (commissioner) as the agency head for purposes of final agency action under ch. 120, F.S.

#### **Prohibited Acts/Check Cashers**

The bill creates an additional prohibited act and a new criminal violation. Any licensed check casher who willfully and knowingly violates the check casher database or electronic log reporting requirements of s. 560.310(2)(d), F.S., commits a felony of the third degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.0784, F.S. Current law authorizes the

<sup>7</sup> Section 560.402(3), F.S.

<sup>8</sup> Section 560.404(5), F.S.

<sup>9</sup> These persons include each officer, director, responsible person, compliance officer, controlling shareholder, and any other person who has a controlling interest in the MSB as provided in section 560.127, F.S.

<sup>10</sup> Having been convicted of, or entered a plea of guilty or nolo contendere to, any felony or crime punishable by imprisonment of 1 year or more under the law of any state or the United States, which involves fraud, moral turpitude, or dishonest dealing, regardless of adjudication.

<sup>11</sup> Having been convicted of, or entered a plea of guilty or nolo contendere to, a crime under 18 U.S.C. s. 1956 or 31 U.S.C. s. 5324, regardless of adjudication.

<sup>12</sup> Having been convicted of, or entered a plea of guilty or nolo contendere to, misappropriation, conversion, or unlawful withholding of moneys belonging to others, regardless of adjudication.

OFR to take certain disciplinary actions, such as denying, suspending, or revoking a license, if a check casher fails to maintain and provide specified records.<sup>13</sup> The OFR is also authorized to impose a fine of at least \$1,000 but not more than \$10,000 for each violation of ch. 560, F.S.<sup>14</sup> Section 560.1105, F.S., relating to retention of records, provides that any person who willfully fails to comply with s. 560.1105, F.S. or ss. 560.211, F.S.,<sup>15</sup> and 560.310, F.S. commits a felony of the third degree.

### **Deferred Presentment Providers**

The bill provides that a deferred presentment transaction conducted by a person not authorized under ch. 560, F.S., to conduct such transaction as a DPP is void, and the unauthorized person has no right to collect, receive, or retain any principal, interest, or charges relating to such transactions.

### **Code of Federal Regulations Updates**

The bill updates cross references to the Code of Federal Regulations to incorporate updates by FinCEN.<sup>16</sup> On March 1, 2011, FinCEN transferred its regulations from 31 CFR Part 103 to 31 CFR Chapter X.

### **Effective Date**

The bill takes effect July 1, 2014.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

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<sup>13</sup> Section 560.114(2)(a), F.S.

<sup>14</sup> Section 560.114(&), F.S.

<sup>15</sup> Section 560.211, F.S., specifies recordkeeping and document retention requirements applicable to money transmitters and payment instrument issuers.

<sup>16</sup> FinCEN is the Financial Crimes Enforcement Network.

**B. Private Sector Impact:**

Any deferred presentment transaction conducted by a person who is not authorized by the Office of Financial Regulation pursuant to ch. 560, F.S., to engage in such transactions is void and such person has no right to collect, receive, or retain any funds relating to such transaction. Consumers who have entered into such agreements would benefit.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 560.111, 560.114, 560.1235, 560.125, 560.1401, 560.141, and 560.309.

**IX. Additional Information:**

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

**CS by Banking and Insurance on February 4, 2014:**

The CS provides the following changes:

- Expands prohibited acts to include violations under s. 560.310(2)(d), F.S., relating to the database/electronic log reporting requirements applicable to check cashers. A person who knowingly and willfully violates this provision commits a third-degree felony.
- Reinstates current law that provides if a MSB willfully violates s. 560. 114(5), F.S., relating to certain ch. 560, F.S., requirements,<sup>17</sup> the MSB commits a third-degree felony.
- Reinstates current law relating to exemptions from licensure for check cashers, which provides that licensure as a check casher does not apply to a person cashing payment instruments that have an aggregate face value of less than \$2,000 per person, per day

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<sup>17</sup> Section 560.403, F.S., requires that persons engaging in deferred presentment transactions must be licensed under part II or III, ch. 560.403, F.S., and file a declaration of intent with the OFR and meet other requirements. Section 560.404, F.S., specifies disclosures for DPP written agreements, terms and conditions of such transactions, and prohibitions relating to such transactions. Section 560.405, F.S., specifies requirements and prohibitions relating to the deposit and redemption of a deferred presentment transaction.

and that are incidental to the retail sale of goods or services, within certain parameters.

- Provides technical changes to correct cross references.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---

By Senator Richter

23-00721B-14

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1 A bill to be entitled  
 2 An act relating to check cashing services; amending s.  
 3 560.111, F.S.; revising the elements of prohibited  
 4 acts; updating cross-references; reenacting and  
 5 amending s. 560.114, F.S.; updating cross-references;  
 6 authorizing the Office of Financial Regulation to  
 7 summarily suspend a license if criminal charges are  
 8 filed against certain persons or such persons are  
 9 arrested for certain offenses; amending s. 560.1235,  
 10 F.S.; updating cross-references; amending s. 560.125,  
 11 F.S.; providing that a deferred presentment  
 12 transaction conducted by an unlicensed person is void;  
 13 amending ss. 560.1401 and 560.141, F.S.; updating  
 14 cross-references; amending s. 560.304, F.S.; requiring  
 15 persons cashing payment instruments that have a lower  
 16 aggregate face value to be licensed; amending s.  
 17 560.309, F.S.; updating a cross-reference; providing  
 18 an effective date.

19  
 20 Be It Enacted by the Legislature of the State of Florida:

21  
 22 Section 1. Subsection (5) of section 560.111, Florida  
 23 Statutes, is amended to read:

24 560.111 Prohibited acts.—

25 (5) A ~~Any~~ person who knowingly and willfully violates any  
 26 provision of s. 560.310, s. 560.403, s. 560.404, or s. 560.405  
 27 commits a felony of the third degree, punishable as provided in  
 28 s. 775.082, s. 775.083, or s. 775.084.

29 Section 2. Paragraphs (e) and (y) of subsection (1) and

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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30 subsection (2) of section 560.114, Florida Statutes, are  
 31 amended, and paragraph (h) of subsection (1) of that section is  
 32 reenacted, to read:

33 560.114 Disciplinary actions; penalties.—

34 (1) The following actions by a money services business,  
 35 authorized vendor, or affiliated party constitute grounds for  
 36 the issuance of a cease and desist order; the issuance of a  
 37 removal order; the denial, suspension, or revocation of a  
 38 license; or taking any other action within the authority of the  
 39 office pursuant to this chapter:

40 (e) Failure to maintain, preserve, keep available for  
 41 examination, and produce all books, accounts, files, or other  
 42 documents required by this chapter or related rules or orders,  
 43 by 31 C.F.R. ss. 1010.306, 1010.312, 1010.340, 1010.410,  
 44 1010.415, 1020.315, 1020.410, 1021.311, 1021.313, 1022.210,  
 45 1022.320, 1022.380, and 1022.410 ~~103.20, 103.22, 103.23, 103.27,~~  
 46 ~~103.28, 103.29, 103.33, 103.37, 103.41, and 103.125~~, or by an  
 47 ~~any~~ agreement entered into with the office.

48 (h) Engaging in an act prohibited under s. 560.111.

49 (y) Violations of 31 C.F.R. ss. 1010.306, 1010.312,  
 50 1010.340, 1010.410, 1010.415, 1020.315, 1020.410, 1021.311,  
 51 1021.313, 1022.210, 1022.320, 1022.380, and 1022.410 ~~103.20,~~  
 52 ~~103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, 103.41,~~  
 53 ~~and 103.125~~, and United States Treasury Interpretive Release  
 54 2004-1.

55 (2) Pursuant to s. 120.60(6), the office may summarily  
 56 suspend the license of a money services business if the office  
 57 has reason to believe that a licensee poses an immediate,  
 58 serious danger to the public health, safety, and welfare. A

Page 2 of 5

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59 proceeding for the summary suspension of a licensee must be  
 60 conducted by the commissioner of the office, or his or her  
 61 designee, who shall issue the final summary order. The following  
 62 acts are deemed to constitute an immediate and serious danger to  
 63 the public health, safety, and welfare, and the office may  
 64 immediately suspend the license of a ~~any~~ money services business  
 65 if ~~the money services business fails to~~:

66 (a) The money services business fails to provide to the  
 67 office, upon written request, any of the records required by s.  
 68 560.123, s. 560.1235, s. 560.211, or s. 560.310 or any rule  
 69 adopted under those sections. The suspension may be rescinded if  
 70 the licensee submits the requested records to the office.

71 (b) The money services business fails to maintain a  
 72 federally insured depository account as required by s. 560.309.

73 (c) Criminal charges are filed against a natural person  
 74 required to be listed on the license application pursuant to s.  
 75 560.141(1)(a)3. or such person is arrested for a crime listed in  
 76 paragraph (1)(o), paragraph (1)(p), or paragraph (1)(q).

77  
 78 ~~For purposes of s. 120.60(6), failure to perform any of the acts~~  
 79 ~~specified in this subsection constitutes immediate and serious~~  
 80 ~~danger to the public health, safety, and welfare.~~

81 Section 3. Section 560.1235, Florida Statutes, is amended  
 82 to read:

83 560.1235 Anti-money laundering requirements.—

84 (1) A licensee and authorized vendor must comply with all  
 85 state and federal laws and rules relating to the detection and  
 86 prevention of money laundering, including, as applicable, s.  
 87 560.123, and 31 C.F.R. ss. 1010.306, 1010.311, 1010.312,

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2014590\_\_

88 1010.313, 1010.340, 1010.410, 1010.415, 1020.315, 1020.410,  
 89 1021.311, 1021.313, 1022.320, 1022.380, and 1022.410 ~~103.20,~~  
 90 ~~103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, and~~  
 91 ~~103.41.~~

92 (2) A licensee and authorized vendor must maintain an anti-  
 93 money laundering program in accordance with 31 C.F.R. s.  
 94 1022.210 ~~103.125~~. The program must be reviewed and updated as  
 95 necessary to ensure that the program continues to be effective  
 96 in detecting and deterring money laundering activities.

97 (3) A licensee must comply with United States Treasury  
 98 Interpretive Release 2004-1.

99 Section 4. Subsection (1) of section 560.125, Florida  
 100 Statutes, is amended to read:

101 560.125 Unlicensed activity; penalties.—

102 (1) A person may not engage in the business of a money  
 103 services business or deferred presentment provider in this state  
 104 unless the person is licensed or exempted from licensure under  
 105 this chapter. A deferred presentment transaction conducted by a  
 106 person not licensed as a deferred presentment provider under  
 107 this chapter is void, and the unlicensed person has no right to  
 108 collect, receive, or retain any principal, interest, or charges  
 109 relating to such transaction.

110 Section 5. Subsections (3) and (4) of section 560.1401,  
 111 Florida Statutes, are amended to read:

112 560.1401 Licensing standards.—To qualify for licensure as a  
 113 money services business under this chapter, an applicant must:

114 (3) Be registered as a money services business with the  
 115 Financial Crimes Enforcement Network as required by 31 C.F.R. s.  
 116 1022.380 ~~103.41~~, if applicable.

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2014590

117 (4) Have an anti-money laundering program in place which  
118 meets the requirements of 31 C.F.R. s. 1022.210 ~~103.125~~.

119 Section 6. Paragraph (d) of subsection (1) of section  
120 560.141, Florida Statutes, is amended to read:

121 560.141 License application.—

122 (1) To apply for a license as a money services business  
123 under this chapter, the applicant must submit:

124 (d) A copy of the applicant's written anti-money laundering  
125 program required under 31 C.F.R. s. 1022.210 ~~103.125~~.

126 Section 7. Section 560.304, Florida Statutes, is amended to  
127 read:

128 560.304 Exemption from licensure.—The requirement for  
129 licensure under this part does not apply to a person cashing  
130 payment instruments that have an aggregate face value of less  
131 than \$1,000 ~~\$2,000~~ per person per day and that are incidental to  
132 the retail sale of goods or services whose compensation for  
133 cashing payment instruments at each site does not exceed 5  
134 percent of the total gross income from the retail sale of goods  
135 or services by such person during the last 60 days.

136 Section 8. Subsection (5) of section 560.309, Florida  
137 Statutes, is amended to read:

138 560.309 Conduct of business.—

139 (5) A licensee must report all suspicious activity to the  
140 office in accordance with the criteria ~~set forth~~ in 31 C.F.R. s.  
141 1022.320 ~~103.20~~. In lieu of filing such reports, the commission  
142 may prescribe by rule that the licensee may file such reports  
143 with an appropriate regulator.

144 Section 9. This act shall take effect July 1, 2014.



101998

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2014	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment (with title amendment)**

1  
2  
3  
4  
5  
6  
7  
8

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (6) is added to section 560.111,  
Florida Statutes, to read:



101998

9 560.111 Prohibited acts.—

10 (6) A person who knowingly and willfully violates s.  
11 560.310(2)(d) commits a felony of the third degree, punishable  
12 as provided in s. 775.082, s. 775.083, or s.775.084.

13 Section 2. Paragraphs (e) and (y) of subsection (1) and  
14 subsection (2) of section 560.114, Florida Statutes, are  
15 amended, and paragraph (h) of subsection (1) of that section is  
16 reenacted, to read:

17 560.114 Disciplinary actions; penalties.—

18 (1) The following actions by a money services business,  
19 authorized vendor, or affiliated party constitute grounds for  
20 the issuance of a cease and desist order; the issuance of a  
21 removal order; the denial, suspension, or revocation of a  
22 license; or taking any other action within the authority of the  
23 office pursuant to this chapter:

24 (e) Failure to maintain, preserve, keep available for  
25 examination, and produce all books, accounts, files, or other  
26 documents required by this chapter or related rules or orders,  
27 by 31 C.F.R. ss. 1010.306, 1010.312, 1010.340, 1010.410,  
28 1010.415, 1021.311, 1022.210, 1022.320, 1022.380, and 1022.410  
29 103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37,  
30 103.41, and 103.125, or by an any agreement entered into with  
31 the office.

32 (h) Engaging in an act prohibited under s. 560.111.

33 (y) Violations of 31 C.F.R. ss. 1010.306, 1010.312,  
34 1010.340, 1010.410, 1010.415, 1021.311, 1022.210, 1022.320,  
35 1022.380, and 1022.410 ~~103.20, 103.22, 103.23, 103.27, 103.28,~~  
36 ~~103.29, 103.33, 103.37, 103.41, and 103.125,~~ and United States  
37 Treasury Interpretive Release 2004-1.



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38           (2) Pursuant to s. 120.60(6), the office may summarily  
39 suspend the license of a money services business if the office  
40 finds that a licensee poses an immediate, serious danger to the  
41 public health, safety, and welfare. A proceeding in which the  
42 office seeks the issuance of a final order for the summary  
43 suspension of a licensee shall be conducted by the commissioner  
44 of the office, or his or her designee, who shall issue such  
45 order. The following acts are deemed to constitute an immediate  
46 and serious danger to the public health, safety, and welfare,  
47 and the office may immediately suspend the license of a any  
48 money services business if the money services business fails to:

49           (a) The money services business fails to provide to the  
50 office, upon written request, any of the records required by s.  
51 560.123, s. 560.1235, s. 560.211, or s. 560.310 or any rule  
52 adopted under those sections. The suspension may be rescinded if  
53 the licensee submits the requested records to the office.

54           (b) The money services business fails to maintain a  
55 federally insured depository account as required by s. 560.309.

56           (c) A natural person required to be listed on the license  
57 application for a money service business pursuant to s.  
58 560.141(1)(a)3. is criminally charged with, or arrested for, a  
59 crime described in paragraph (1)(o), paragraph (1)(p), or  
60 paragraph(1)(q).

61  
62 ~~For purposes of s. 120.60(6), failure to perform any of the acts~~  
63 ~~specified in this subsection constitutes immediate and serious~~  
64 ~~danger to the public health, safety, and welfare.~~

65           Section 3. Section 560.1235, Florida Statutes, is amended  
66 to read:



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67 560.1235 Anti-money laundering requirements.—

68 (1) A licensee and authorized vendor must comply with all  
69 state and federal laws and rules relating to the detection and  
70 prevention of money laundering, including, as applicable, s.  
71 560.123, and 31 C.F.R. ss. 1010.306, 1010.311, 1010.312,  
72 1010.313, 1010.340, 1010.410, 1010.415, 1020.315, 1020.410,  
73 1021.311, 1021.313, 1022.320, 1022.380, and 1022.410 ~~103.20,~~  
74 ~~103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, and~~  
75 ~~103.41.~~

76 (2) A licensee and authorized vendor must maintain an anti-  
77 money laundering program in accordance with 31 C.F.R. s.  
78 1022.210 ~~103.125~~. The program must be reviewed and updated as  
79 necessary to ensure that the program continues to be effective  
80 in detecting and deterring money laundering activities.

81 (3) A licensee must comply with United States Treasury  
82 Interpretive Release 2004-1.

83 Section 4. Subsection (1) of section 560.125, Florida  
84 Statutes, is amended to read:

85 560.125 Unlicensed activity; penalties.—

86 (1) A person may not engage in the business of a money  
87 services business or deferred presentment provider in this state  
88 unless the person is licensed or exempted from licensure under  
89 this chapter. A deferred presentment transaction conducted by a  
90 person not authorized to conduct such transaction under this  
91 chapter is void, and the unauthorized person has no right to  
92 collect, receive, or retain any principal, interest, or charges  
93 relating to such transaction.

94 Section 5. Subsections (3) and (4) of section 560.1401,  
95 Florida Statutes, are amended to read:



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96           560.1401 Licensing standards.—To qualify for licensure as a  
97 money services business under this chapter, an applicant must:

98           (3) Be registered as a money services business with the  
99 Financial Crimes Enforcement Network as required by 31 C.F.R. s.  
100 1022.380 ~~103.41~~, if applicable.

101           (4) Have an anti-money laundering program in place which  
102 meets the requirements of 31 C.F.R. s. 1022.210 ~~103.125~~.

103           Section 6. Paragraph (d) of subsection (1) of section  
104 560.141, Florida Statutes, is amended to read:

105           560.141 License application.—

106           (1) To apply for a license as a money services business  
107 under this chapter, the applicant must submit:

108           (d) A copy of the applicant's written anti-money laundering  
109 program required under 31 C.F.R. s. 1022.210 ~~103.125~~.

110           Section 7. Subsection (5) of section 560.309, Florida  
111 Statutes, is amended to read:

112           560.309 Conduct of business.—

113           (5) A licensee must report all suspicious activity to the  
114 office in accordance with the criteria ~~set forth~~ in 31 C.F.R. s.  
115 1022.320 ~~103.20~~. In lieu of filing such reports, the commission  
116 may prescribe by rule that the licensee may file such reports  
117 with an appropriate regulator.

118           Section 8. This act shall take effect July 1, 2014.

119  
120 ===== T I T L E   A M E N D M E N T =====

121 And the title is amended as follows:

122           Delete everything before the enacting clause  
123 and insert:

124                                   A bill to be entitled



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125 An act relating to money services businesses; amending  
126 s. 560.111, F.S.; providing that failing to provide  
127 certain information relating to a check cashing  
128 transaction is a felony; reenacting and amending s.  
129 560.114, F.S.; updating cross-references; authorizing  
130 the Office of Financial Regulation to summarily  
131 suspend a license if criminal charges are filed  
132 against certain persons or such persons are arrested  
133 for certain offenses; amending s. 560.1235, F.S.;  
134 updating cross-references; amending s. 560.125, F.S.;  
135 providing that a deferred presentment transaction  
136 conducted by an unauthorized person is void; amending  
137 ss. 560.1401, 560.141, and 560.309 F.S.; updating  
138 cross-references; providing an effective date.

**Senate Banking and Insurance  
2014 Citizens Proposals**

- 1. Allow Citizens 18 months to develop and establish a Citizens Clearinghouse for commercial residential policies.**
  - Private market insurers are very active in writing commercial residential policies that insure newer buildings with a replacement cost greater than \$10 million.
  - Citizens estimates 5-15 percent of its current commercial residential policies would be attractive to the private market.
  - A commercial clearinghouse would help enforce the 15 percent eligibility requirement under s. 627.351(6)(c)5.b., F.S., which applies to new applicants.
  
- 2. Stair-step Citizens commercial residential eligibility at no more than \$10 million per building.**
  - 5.4 percent of Citizens commercial residential policies insure buildings greater than \$5 million.
    - Less than \$5 million – 94.6 percent (64,850 buildings)
    - \$5 million up to \$10 million – 4.3 percent (2,918 buildings)
    - \$10 million up to \$15 million – 0.4 percent (243 buildings)
    - \$15 million up to \$20 million – 0.2 percent (153 buildings)
    - \$20 million up to \$25 million – 0.1 percent (99 buildings)
    - \$25 million and greater – 0.5 percent (323 buildings)
  - These 5.4 percent accounts for 47 percent of exposure and 39 percent of probable maximum loss.
  
- 3. Remove from the glide-path all commercial non-residential policies.**
  - There are 21,467 policies insuring 30,480 buildings.
  - The total exposure is \$14.27 billion and the 1-100 PML is \$1.175 billion.
  - There has been a 42 percent drop in policy count since 2007.
  - Average commercial non-residential wind-only policy is 24.3 percent below actuarially sound.
  - Average commercial non-residential multi-peril policy in the Coastal account is 73.5 percent below actuarially sound.
  - Average commercial non-residential multi-peril policy in the Commercial Lines Account is right around being actuarially sound.
  
- 4. Shift 5 percent of the Citizens Policyholder Surcharge from the Personal Lines Account to the Coastal Account.**
  - The Citizens Policyholder Surcharge is paid for by EVERY Citizens policyholder regardless of which account their policy is in.
  - Each of the three accounts can surcharge up to 15 percent for a total liability to a Citizens policyholder of 45 percent.
  - The Personal Lines account on average is 3.7 percent below actuarially sound and the Coastal Account is on average 24.1 percent below actuarially sound.
  - Shifting 5 percent to the Coastal Account does not reduce or increase the total liability of 45 percent to a Citizens policyholder.
  - Shifting the 5 percent does give more protection to the non-citizens policy holders who are liable for up to 12 percent of the Coastal Account deficits.

**Senate Banking and Insurance  
2014 Citizens Proposals**

**5. Allow surplus lines carriers to participate in the Citizens clearinghouse.**

- In 2012 the Senate passed HB CS/CS/HB245 allowing surplus lines insurers to participate in Citizens depopulation programs.
- The bill required OIR to verify each surplus lines insurer participating had:
  - ✓ \$50 million in reserves, \$35 million more than currently required.
  - ✓ A.M. Bests rating of A- or better.
  - ✓ Provided coverage for two 1-100 year storms in the same season.
  - ✓ Required additional disclosures to the consumer.
- In this proposal any offer from a surplus lines insurer made through the clearinghouse would not make a policy ineligible for coverage with Citizens.

1           627.35181 Citizens Property Insurance Corporation  
2 commercial residential policyholder eligibility clearinghouse  
3 program.—

4           (1) As used in this section, the term:

5           (a) "Corporation" means Citizens Property Insurance  
6 Corporation.

7           (b) "Eligible Insurer" means admitted and surplus lines  
8 insurers under Ch. 626, F.S.

9           (c) "Exclusive agent" means any licensed insurance agent  
10 that has, by contract, agreed to act exclusively for one company  
11 or group of affiliated insurance companies and is disallowed by  
12 the provisions of that contract to directly write for any other  
13 unaffiliated insurer absent express consent from the company or  
14 group of affiliated insurance companies.

15           (d) "Independent agent" means any licensed insurance agent  
16 not described in paragraph (c).

17           (e) "Program" means the commercial clearinghouse created  
18 under this section.

19           (2) In order to confirm eligibility with the corporation  
20 and to enhance access of new applicants for coverage and  
21 existing policyholders of the corporation to offers of coverage  
22 from eligible insurers, the corporation shall establish a  
23 program for commercial lines residential risks in order to  
24 facilitate the diversion of ineligible applicants and existing  
25 policyholders from the corporation into the voluntary insurance  
26 market.

27           (3) The corporation board shall establish the clearinghouse  
28 program as an organizational unit within the corporation. The  
29 program shall have all the rights and responsibilities in

30 carrying out its duties as a licensed general lines agent, but  
31 may not be required to employ or engage a licensed general lines  
32 agent or to maintain an insurance agency license to carry out  
33 its activities in the solicitation and placement of insurance  
34 coverage. In establishing the program, the corporation may:

35 (a) Require all new applications, and all policies due for  
36 renewal, to be submitted for coverage to the program in order to  
37 facilitate obtaining an offer of coverage from an eligible  
38 insurer before binding or renewing coverage by the corporation.

39 (b) Employ or otherwise contract with individuals or other  
40 entities for appropriate administrative or professional services  
41 to effectuate the plan within the corporation in accordance with  
42 the applicable purchasing requirements under s. 627.351.

43 (c) Enter into contracts with any eligible insurers wishing  
44 to participate in the program and accept an appointment by such  
45 insurer.

46 (d) Provide funds to operate the program. Insurers and  
47 agents participating in the program are not required to pay a  
48 fee to offset or partially offset the cost of the program or use  
49 the program for renewal of policies initially written through  
50 the clearinghouse.

51 (e) Develop an enhanced application that includes  
52 information to assist private insurers in determining whether to  
53 make an offer of coverage through the program.

54 (4) Any eligible insurer may participate in the program;  
55 however, participation is not mandatory for any insurer.  
56 Insurers making offers of coverage to new applicants or renewal  
57 policyholders through the program:

58 (a) May not be required to individually appoint any agent

59 whose customer is underwritten and bound through the program.  
60 Notwithstanding s. 626.112, insurers are not required to appoint  
61 any agent on a policy underwritten through the program for as  
62 long as that policy remains with the insurer. Insurers may, at  
63 their election, appoint any agent whose customer is initially  
64 underwritten and bound through the program. In the event an  
65 insurer accepts a policy from an agent who is not appointed  
66 pursuant to this paragraph, and thereafter elects to accept a  
67 policy from such agent, the provisions of s. 626.112 requiring  
68 appointment apply to the agent.

69 (b) Must enter into a limited agency agreement with each  
70 agent that is not appointed in accordance with paragraph (a) and  
71 whose customer is underwritten and bound through the program.

72 (c) Must enter into its standard agency agreement with each  
73 agent whose customer is underwritten and bound through the  
74 program when that agent has been appointed by the insurer  
75 pursuant to s. 626.112.

76 (d) Must comply with s. 627.4133(2).

77 (e) May participate through their single-designated  
78 managing general agent or broker; however, the provisions of  
79 paragraph (6) (a) regarding ownership, control, and use of the  
80 expirations continue to apply.

81 (f) Must pay to the producing agent a commission equal to  
82 that paid by the corporation or the usual and customary  
83 commission paid by the insurer for that line of business,  
84 whichever is greater.

85 (5) Notwithstanding s. 627.3517, any applicant for new  
86 coverage from the corporation is not eligible for coverage from  
87 the corporation if provided an offer of coverage from an

88 eligible insurer through the program at a premium that is at or  
89 below the eligibility threshold established in s.  
90 627.351(6)(c)5.b. Whenever an offer of coverage for a commercial  
91 lines residential risk is received for a policyholder of the  
92 corporation at renewal from an eligible insurer through the  
93 program, if the offer is equal to or less than the corporation's  
94 renewal premium for comparable coverage, the risk is not  
95 eligible for coverage with the corporation. In the event an  
96 offer of coverage for a new applicant is received from an  
97 eligible insurer through the program, and the premium offered  
98 exceeds the eligibility threshold contained in s.  
99 627.351(6)(c)5.b., the applicant or insured may elect to accept  
100 such coverage, or may elect to accept or continue coverage with  
101 the corporation. In the event an offer of coverage for a  
102 commercial lines residential risk is received from an eligible  
103 insurer at renewal through the program, and the premium offered  
104 is more than the corporation's renewal premium for comparable  
105 coverage, the insured may elect to accept such coverage, or may  
106 elect to accept or continue coverage with the corporation.  
107 Section 627.351(6)(c)5.b.(I) does not apply to an offer of  
108 coverage from an authorized insurer obtained through the  
109 program.

110 (6) Independent insurance agents submitting new  
111 applications for coverage or that are the agent of record on a  
112 renewal policy submitted to the program:

113 (a) Are granted and must maintain ownership and the  
114 exclusive use of expirations, records, or other written or  
115 electronic information directly related to such applications or  
116 renewals written through the corporation or through an insurer

117 participating in the program, notwithstanding s.  
118 627.351(6)(c)5.b.(I)(B) and (II)(B). Such ownership is granted  
119 for as long as the insured remains with the agency or until sold  
120 or surrendered in writing by the agent. Contracts with the  
121 corporation or required by the corporation must not amend,  
122 modify, interfere with, or limit such rights of ownership. Such  
123 expirations, records, or other written or electronic information  
124 may be used to review an application, issue a policy, or for any  
125 other purpose necessary for placing such business through the  
126 program.

127 (b) May not be required to be appointed by any insurer  
128 participating in the program for policies written solely through  
129 the program, notwithstanding the provisions of s. 626.112.

130 (c) May accept an appointment from any insurer  
131 participating in the program.

132 (d) May enter into either a standard or limited agency  
133 agreement with the insurer, at the insurer's option.

134 Applicants ineligible for coverage in accordance with  
135 subsection (5) remain ineligible if their independent agent is  
136 unwilling or unable to enter into a standard or limited agency  
137 agreement with an insurer participating in the program.

138 (7) Exclusive agents submitting new applications for  
139 coverage or that are the agent of record on a renewal policy  
140 submitted to the program:

141 (a) Must maintain ownership and the exclusive use of  
142 expirations, records, or other written or electronic information  
143 directly related to such applications or renewals written  
144 through the corporation or through an insurer participating in  
145 the program, notwithstanding s. 627.351(6)(c)5.b.(I)(B) and

146 (II) (B). Contracts with the corporation or required by the  
147 corporation must not amend, modify, interfere with, or limit  
148 such rights of ownership. Such expirations, records, or other  
149 written or electronic information may be used to review an  
150 application, issue a policy, or for any other purpose necessary  
151 for placing such business through the program.

152 (b) May not be required to be appointed by any insurer  
153 participating in the program for policies written solely through  
154 the program, notwithstanding the provisions of s. 626.112.

155 (c) Must only facilitate the placement of an offer of  
156 coverage from an insurer whose limited servicing agreement is  
157 approved by that exclusive agent's exclusive insurer.

158 (d) May enter into a limited servicing agreement with the  
159 insurer making an offer of coverage, and only after the  
160 exclusive agent's insurer has approved the limited servicing  
161 agreement terms. The exclusive agent's insurer must approve a  
162 limited service agreement for the program for any insurer for  
163 which it has approved a service agreement for other purposes.

164 Applicants ineligible for coverage in accordance with  
165 subsection (8) remain ineligible if their exclusive agent is  
166 unwilling or unable to enter into a standard or limited agency  
167 agreement with an insurer making an offer of coverage to that  
168 applicant.

169 (9) Submission of an application for coverage by the  
170 corporation to the program does not constitute the binding of  
171 coverage by the corporation, and failure of the program to  
172 obtain an offer of coverage by an insurer may not be considered  
173 acceptance of coverage of the risk by the corporation.

174 (10) The program may not include commercial nonresidential

175 policies.

176 (11) Proprietary business information provided to the  
177 corporation's clearinghouse by insurers with respect to  
178 identifying and selecting risks for an offer of coverage is  
179 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
180 of the State Constitution.

181 (a) As used in this subsection, the term "proprietary  
182 business information" means information, regardless of form or  
183 characteristics, which is owned or controlled by an insurer and:

184 1. Is identified by the insurer as proprietary business  
185 information and is intended to be and is treated by the insurer  
186 as private in that the disclosure of the information would cause  
187 harm to the insurer, an individual, or the company's business  
188 operations and has not been disclosed unless disclosed pursuant  
189 to a statutory requirement, an order of a court or  
190 administrative body, or a private agreement that provides that  
191 the information will not be released to the public;

192 2. Is not otherwise readily ascertainable or publicly  
193 available by proper means by other persons from another source  
194 in the same configuration as provided to the clearinghouse; and

195 3. Includes, but is not limited to:

196 a. Trade secrets.

197 b. Information relating to competitive interests, the  
198 disclosure of which would impair the competitive business of the  
199 provider of the information.

200 Proprietary business information may be found in  
201 underwriting criteria or instructions which are used to identify  
202 and select risks through the program for an offer of coverage  
203 and are shared with the clearinghouse to facilitate the shopping

204 of risks with the insurer.

205 (b) The clearinghouse may disclose confidential and exempt  
206 proprietary business information:

207 1. If the insurer to which it pertains gives prior written  
208 consent;

209 2. Pursuant to a court order; or

210 3. To another state agency in this or another state or to a  
211 federal agency if the recipient agrees in writing to maintain  
212 the confidential and exempt status of the document, material, or  
213 other information and has verified in writing its legal  
214 authority to maintain such confidentiality.

215 (c) This subsection is subject to the Open Government  
216 Sunset Review Act in accordance with s. 119.15 and shall stand  
217 repealed on October 2, 2019, unless reviewed and saved from  
218 repeal through reenactment by the Legislature.

1 627.351(6)(c)

2 18. May provide such limits of coverage as the board  
3 determines, consistent with the requirements of this subsection.

4 a. Effective January 1, 2015, a commercial lines  
5 residential structure that has a replacement cost of \$20 million  
6 or more is not eligible for coverage by the corporation. Such  
7 buildings insured by the corporation on December 31, 2014, may  
8 continue to be covered by the corporation until the end of the  
9 policy term. The office shall approve the method used by the  
10 corporation for valuing the replacement cost for the purposes of  
11 this subparagraph.

12 b. Effective January 1, 2016, a commercial lines  
13 residential structure that has a replacement cost of \$15 million  
14 or more is not eligible for coverage by the corporation. Such  
15 buildings insured by the corporation on December 31, 2015, may  
16 continue to be covered by the corporation until the end of the  
17 policy term.

18 c. Effective January 1, 2017, a commercial lines  
19 residential structure that has a replacement cost of \$10 million  
20 or more is not eligible for coverage by the corporation. Such  
21 buildings insured by the corporation on December 31, 2016, may  
22 continue to be covered by the corporation until the end of the  
23 policy term.

1 627.351(6)(n)

2 6. Beginning on or after January 1, 2015~~–2010~~, and  
3 notwithstanding the board's recommended rates and the office's  
4 final order regarding the corporation's filed rates under  
5 subparagraph 1., the corporation shall annually implement a rate  
6 increase which, except for commercial non-residential and  
7 sinkhole coverage, does not exceed 10 percent for any single  
8 policy issued by the corporation, excluding coverage changes and  
9 surcharges.

1 627.351(6)(b)3

2 i. In 2008 or thereafter, upon a determination by the board  
3 of governors that an account has a projected deficit, the board  
4 shall levy a Citizens policyholder surcharge against all  
5 policyholders of the corporation.

6 (I) The surcharge shall be levied as a uniform percentage  
7 of the premium for the policy of up to 10 percent for a deficit  
8 in the personal lines account, 15 percent~~of~~ for a deficit in  
9 the commercial lines account and 20 percent for a deficit in the  
10 coastal account. Funds from such premium shall be used to offset  
11 the deficit per each account. ~~such premium, which funds shall be~~  
12 ~~used to offset the deficit.~~

1           627.3518 Citizens Property Insurance Corporation  
2 residential policyholder eligibility clearinghouse program.— The  
3 purpose of this section is to provide a framework for the  
4 corporation to implement a clearinghouse program by January 1,  
5 2014.

6           (1) As used in this section, the term:

7           (a) "Corporation" means Citizens Property Insurance  
8 Corporation.

9           (b) "Exclusive agent" means any licensed insurance agent  
10 that has, by contract, agreed to act exclusively for one company  
11 or group of affiliated insurance companies and is disallowed by  
12 the provisions of that contract to directly write for any other  
13 unaffiliated insurer absent express consent from the company or  
14 group of affiliated insurance companies.

15           (c) "Independent agent" means any licensed insurance agent  
16 not described in paragraph (b).

17           (d) "Program" means the clearinghouse created under this  
18 section.

19           (e) "Surplus Lines" means an eligible insurer under s.  
20 626.918, F.S. Before participating in the program the Office of  
21 Insurance Regulation must determine that the surplus lines  
22 insurer meets the following requirements:

23           I. Maintains surplus of \$50 million on company or pooled  
24 basis;

25           II. Maintains an A.M. Best Financial Strength Rating of A-  
26 or better;

27           III. Maintains reserves, surplus, reinsurance, and  
28 reinsurance equivalents sufficient to cover the insurer's 100-  
29 year probable maximum hurricane loss at least twice in a single

30 hurricane season.

31 (2) In order to confirm eligibility with the corporation  
32 and to enhance access of new applicants for coverage and  
33 existing policyholders of the corporation to offers of coverage  
34 from authorized and surplus lines insurers, the corporation  
35 shall establish a program for personal residential risks in  
36 order to facilitate the diversion of ineligible applicants and  
37 existing policyholders from the corporation into the voluntary  
38 insurance market. The corporation shall also develop appropriate  
39 procedures for facilitating the diversion of ineligible  
40 applicants and existing policyholders for commercial residential  
41 coverage into the private insurance market and shall report such  
42 procedures to the President of the Senate and the Speaker of the  
43 House of Representatives by January 1, 2014.

44 (3) The corporation board shall establish the clearinghouse  
45 program as an organizational unit within the corporation. The  
46 program shall have all the rights and responsibilities in  
47 carrying out its duties as a licensed general lines agent, but  
48 may not be required to employ or engage a licensed general lines  
49 agent or to maintain an insurance agency license to carry out  
50 its activities in the solicitation and placement of insurance  
51 coverage. In establishing the program, the corporation may:

52 (a) Require all new applications, and all policies due for  
53 renewal, to be submitted for coverage to the program in order to  
54 facilitate obtaining an offer of coverage from an authorized or  
55 surplus lines insurer before binding or renewing coverage by the  
56 corporation.

57 (b) Employ or otherwise contract with individuals or other  
58 entities for appropriate administrative or professional services

59 to effectuate the plan within the corporation in accordance with  
60 the applicable purchasing requirements under s. 627.351.

61 (c) Enter into contracts with any authorized or surplus  
62 lines insurer to participate in the program and accept an  
63 appointment by such insurer.

64 (d) Provide funds to operate the program. Insurers and  
65 agents participating in the program are not required to pay a  
66 fee to offset or partially offset the cost of the program or use  
67 the program for renewal of policies initially written through  
68 the clearinghouse.

69 (e) Develop an enhanced application that includes  
70 information to assist private insurers in determining whether to  
71 make an offer of coverage through the program.

72 (f) For personal lines residential risks, require, before  
73 approving all new applications for coverage by the corporation,  
74 that every application be subject to a period of 2 business days  
75 when any insurer participating in the program may select the  
76 application for coverage. The insurer may issue a binder on any  
77 policy selected for coverage for a period of at least 30 days  
78 but not more than 60 days.

79 (4) Any authorized or surplus lines insurer may participate  
80 in the program; however, participation is not mandatory for any  
81 insurer. Insurers making offers of coverage to new applicants or  
82 renewal policyholders through the program:

83 (a) May not be required to individually appoint any agent  
84 whose customer is underwritten and bound through the program.  
85 Notwithstanding s. 626.112, insurers are not required to appoint  
86 any agent on a policy underwritten through the program for as  
87 long as that policy remains with the insurer. Insurers may, at

88 their election, appoint any agent whose customer is initially  
89 underwritten and bound through the program. In the event an  
90 insurer accepts a policy from an agent who is not appointed  
91 pursuant to this paragraph, and thereafter elects to accept a  
92 policy from such agent, the provisions of s. 626.112 requiring  
93 appointment apply to the agent.

94 (b) Must enter into a limited agency agreement with each  
95 agent that is not appointed in accordance with paragraph (a) and  
96 whose customer is underwritten and bound through the program.

97 (c) Must enter into its standard agency agreement with each  
98 agent whose customer is underwritten and bound through the  
99 program when that agent has been appointed by the insurer  
100 pursuant to s. 626.112.

101 (d) Must comply with s. 627.4133(2).

102 (e) May participate through their single-designated  
103 managing general agent or broker; however, the provisions of  
104 paragraph (6)(a) regarding ownership, control, and use of the  
105 expirations continue to apply.

106 (f) Must pay to the producing agent a commission equal to  
107 that paid by the corporation or the usual and customary  
108 commission paid by the insurer for that line of business,  
109 whichever is greater.

110 (5) Notwithstanding s. 627.3517, any applicant for new  
111 coverage from the corporation is not eligible for coverage from  
112 the corporation if provided an offer of coverage from an  
113 authorized insurer through the program at a premium that is at  
114 or below the eligibility threshold established in  
115 s. 627.351(6)(c)5.a. Whenever an offer of coverage for a  
116 personal lines risk is received for a policyholder of the

117 corporation at renewal from an authorized insurer through the  
118 program, if the offer is equal to or less than the corporation's  
119 renewal premium for comparable coverage, the risk is not  
120 eligible for coverage with the corporation. In the event an  
121 offer of coverage for a new applicant is received from an  
122 authorized or surplus lines insurer through the program, and the  
123 premium offered exceeds the eligibility threshold contained in  
124 s. 627.351(6)(c)5.a., the applicant or insured may elect to  
125 accept such coverage, or may elect to accept or continue  
126 coverage with the corporation. In the event an offer of coverage  
127 for a personal lines risk is received from an authorized or  
128 surplus lines insurer at renewal through the program, and the  
129 premium offered is more than the corporation's renewal premium  
130 for comparable coverage, the insured may elect to accept such  
131 coverage, or may elect to accept or continue coverage with the  
132 corporation. Section 627.351(6)(c)5.a.(I) does not apply to an  
133 offer of coverage from an authorized insurer obtained through  
134 the program. An applicant for coverage from the corporation  
135 who was declared ineligible for coverage at renewal by the  
136 corporation in the previous 36 months due to an offer of  
137 coverage pursuant to this subsection shall be considered a  
138 renewal under this section if the corporation determines that  
139 the authorized insurer making the offer of coverage pursuant to  
140 this subsection continues to insure the applicant and increased  
141 the rate on the policy in excess of the increase allowed for the  
142 corporation under s. 627.351(6)(n)6.

CITIZENS PROPERTY INSURANCE CORPORATION  
2312 KILLEARN CENTER BLVD., BUILDING A  
TALLAHASSEE, FLORIDA 32309



TELEPHONE: (850) 513-3700 FAX: (850) 513-3903

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January 13, 2014

The Honorable David Simmons  
District 10, The Florida Senate  
406 Senate Office Building  
404 South Monroe Street  
Tallahassee FL 32399-1100

Chairman Simmons,

Thank you for the opportunity to appear before the Senate Banking and Insurance committee on January 8. I am submitting this letter pursuant to your request for comment on the proposals currently under consideration by the committee. I share your commitment in identifying solutions that will make measurable gains in reducing the size of Citizens, spread storm risk away from the taxpayers of Florida, and do so without affecting the availability of quality property insurance for Florida buyers.

Our comments below address the proposals by number:

**Proposal #1 – Commercial-Residential Clearinghouse**

This initiative was enacted in SB 1770 last year and supported widely across the insurance and economic community, and Citizens is excited to report it is nearing fruition. A fully automated platform for “shopping” homeowners’ multi-peril policies on the open market, in near real-time as they are submitted to Citizens, is scheduled to “go live” on January 27 with five participating insurers. More insurers will be added regularly every few weeks; for example, six more insurers are scheduled for a March 10 release. In all, twenty insurers have signed contracts to participate and are developing technology and workflow to come online throughout 2014. What is especially exciting is that these insurers are in growth mode and actively writing new business all over Florida; the first five insurers wrote 17% of all new policies in the state in the last 12 months, and the twenty signed insurers together wrote over 40%. Renewals of existing Citizens customers will also be subjected to clearinghouse shopping beginning in the second quarter of 2014, and we expect the program to function as an effective way to keep policies out of Citizens that have affordable insurance options in the private market.

We submitted a report on the feasibility of a clearinghouse for commercial-residential properties (e.g. condominium association buildings) to you as required by SB 1770 at the end of 2013. We believe these properties are susceptible to a clearinghouse shopping approach, but that the workflow will be somewhat different. Insurance procurement for these risks is too complex to be fully automated, because policies typically insure multiple buildings at separate locations, and larger buildings are individually rated (A-rated) rather than class-rated using a standardized rate manual. However, a semi-automated platform, with some manual review of insurance applications during a waiting period, can be developed to achieve

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Chris Gardner, Chairman, Orange County  
Gary Aubuchon, Lee County • Juan Cocuy, Palm Beach County • Don Glisson, Jr., Duval County  
Tom Lynch, Palm Beach County • Freddie Schinz, Okaloosa County • John Wortman, St. Johns County  
Barry Gilway, President/CEO and Executive Director

the same outcomes as those of the Personal Lines Clearinghouse. We believe a commercial-residential clearinghouse could go live in approximately 18 months.

In contrast to personal lines, the private market for these properties is more concentrated among a few insurers – Citizens holds 43% market share, but the three largest private insurers hold market share of over 40% as well. However, these insurers are actively writing new business, and in fact have helped Citizens reduce its commercial-residential building count by over 50% in the past six years. They tend to focus on buildings with high insured values, such as coastal condominium towers, and well-engineered construction, which has implications for your other proposals discussed below.

Importantly, this part of the Citizens exposure represents low-hanging fruit for a return to the private market for several reasons. First, these properties contribute disproportionately to our storm risk, at less than 2% of our policy count, but well over 20% of our Probable Maximum Loss (PML, a benchmark scientific measure of storm risk, a hurricane loss amount that could be exceeded any year with a chance of 1%) and \$93 billion of Citizens' \$330 billion in insured value. Second, insurers specializing in this type of property are well-capitalized, highly skilled in evaluating the engineering of such structures, and aggressively pursue policies with high premiums per building. Even if only 5% to 15% of Citizens commercial-residential policies were kept out by the clearinghouse, the reduction of taxpayer risk would be significant and sustainable.

In short, we believe that additional legislative authority is required to allow us to implement the commercial-residential clearinghouse and that it would be feasible and effective under specified conditions.

#### **Proposal #1 (second part) – Eligibility Step-Down**

Again, some brief background. A step-down in the maximum insured value making a building eligible for Citizens was enacted for Coastal Account homeowners policies in SB 1770. The Board of Governors reduced the maximum Coastal policy size from \$2 million to \$1 million in 2012, and nearly all oversized policies over the maximum value have run off successfully. SB 1770 requires that we build on that success by stepping down maximum eligibility to \$700,000 in main structure insured value over the next three years.

Commercial-residential is the only product line in which Citizens currently has no maximum eligible insured value. We insure many buildings with values of tens of millions of dollars, located directly in harm's way during a hurricane. Legislative direction would assist Citizens in filing rules with the Office and determining the step-down that represents a balanced approach to reducing exposure in this product line. As you note, a step-down from an initial \$25 million maximum to an eventual \$5 million maximum over several years would eventually affect only about 5% of buildings, but would reduce Citizens' storm risk (for the commercial-residential book) by nearly 40%, or nearly \$2 billion. This reduction translates nearly dollar-for-dollar into reduced policyholder assessment risk in a large storm.

We should clarify one key point – any step-down will be much more straightforward to implement as a simple maximum eligible insured value, not a requirement that Citizens write up to a specified amount of insurance on a larger building. The latter would require development of a “first loss” rating plan that does not currently exist, and the Office would be required, absent other law changes, to establish those new rates for Citizens. Further, the market outcome may be that Citizens remains an insurer of the first layer of loss on these buildings (albeit with less total exposure), creating confusion for associations and their agents with multiple policies in force, and undercutting the benefits of reducing Citizens' policy count and market footprint.

Rate adequacy for commercial-residential buildings varies widely for several historical reasons. First, the multi-peril program and wind-only Coastal programs were inherited from two different predecessor entities – the FRPCJUA and FWUA (windpool), respectively. The contracts, rules, and rating plans differed greatly, and still do. Second, due to the “glide path” law limiting Citizens’ maximum annual rate increases to 10%, rate inadequacy persists in both programs, is more severe in the Coastal wind-only program, and will be perpetuated for several more years absent changes to the law. On average, multi-peril rates are close to adequate except in pockets around the state, but wind-only rates should be approximately half again as high as they are now.

### **Proposal #2 – Actuarially Sound Rates for Commercial Non-Residential Policies**

Citizens currently maintains both a multi-peril non-residential commercial program limited to the first \$2.5 million in insured value, and a similar wind-only program limited to the first \$1 million in insured value. As with commercial-residential, the combination of two historical markets of last resort, plus the glide path law, have resulted in widespread and persistent rate inadequacy in both programs. However, in contrast, the “first loss” commercial programs, the rate inadequacy is concentrated near the coast. As you note, on average the rates should be about 25% higher for wind-only policies and in some cases, over 75% higher for multi-peril policies in coastal areas.

The vast bulk of Citizens’ commercial non-residential exposure (about \$12 billion) and storm risk (about \$1.1 billion in PML) is in the wind-only program.

Implementation of a higher glide path (higher maximum annual percentage rate change than 10%) or its elimination altogether is a straightforward actuarial and operational exercise at Citizens, for two reasons. First, actuarially sound rates are calculated for every product line separately – the imposition of the 10% annual cap is actually the final step before submission to the Office. Said differently, we know what the sound rates should be and can impose a different cap each year, or no cap at all, if directed by the Legislature. Second, rates are calculated separately by product line, so a change in commercial non-residential rates does not have financial or operational effects on other product lines.

Finally, it is important to note that commercial non-residential buildings do not qualify for reimbursement by the Florida Hurricane Catastrophe Fund (Cat Fund). Citizens is the largest customer of the Cat Fund, at approximately 30% of its coverage, and the Cat Fund provides a crucial source of liquidity and financial stability for Citizens after large hurricane events. This exposure is fully funded by Citizens, and losses fall directly to the bottom line toward potential deficits and assessments.

### **Proposal #6 – Clearinghouse Threshold for Higher Value Homes**

SB 1770 provides that any offer to personal lines new business, for comparable coverage, that entails a premium less than 15% greater than the analogous Citizens premium makes the policy ineligible for Citizens. In contrast, any offer to a renewal policy shopped in the clearinghouse must receive a comparable offer that is at or lower than Citizens premium to become ineligible for Citizens. The Legislature could change either of these thresholds, and could change the threshold only for policies that exceed a certain proposed insured value; you proposed \$300,000. As you note, there are hundreds of thousands of policies above this threshold. However, the Legislature should be clear regarding whether the threshold applies to main structure coverage (Coverage A) only, or to the entire coverage amount combined for structures, contents, and loss of use.

One of the first steps in gathering data to shop a policy in the clearinghouse is the estimation of the home’s replacement cost. This replacement cost is calculated using Citizens’ cost estimation platform and is the basis of the comparative premium calculations across Citizens and all participating insurers. A

legislative threshold could be implemented in the clearinghouse by applying a comparison threshold that depends on the estimated replacement cost calculated by Citizens. This is the only criteria available to Citizens for the implementation of such a change.

In short, at legislative direction, it is feasible for Citizens to implement an estimated replacement cost threshold for an alternative premium comparison and potential ineligibility for higher value homes in the automated clearinghouse, though legislative intent should be carefully specified.

#### **Proposal #5 – Glide Path Eligibility for Higher Value Homes**

In the clearinghouse environment, increasing the maximum annual rate change for higher value homes would also eventually make more policies ineligible for Citizens, because a higher Citizens premium would mean that private market quotes compare more favorably to Citizens premium either upon renewal or at the submission of a new application. Even in the absence of a current clearinghouse environment, as with wind-only dwelling policies that will be added to the clearinghouse over time, a higher Citizens premium may encourage the consumer to shop in the open market directly or with the consumer's agent.

Citizens is not in a position to comment on issues of fairness, or to provide data on incomes or residency status. This data is not used in the application or underwriting process by either Citizens or private insurers. It is true that the average coverage amount on coastal wind-only policies is significantly higher than the corresponding average on statewide multi-peril policies.

However, as noted above, it is feasible to implement a rating plan that routes a home above an insured value threshold (you proposed \$400,000) to a rate table containing actuarially sound rates not capped by the glide path. The routing would require some systems changes, and could be implemented with the January 2015 cycle of rate changes. Citizens makes annual rate filings and the Office establishes our rates on this annual schedule. Once again, the Legislature should specify the applicability of the threshold carefully with respect to structure or combined total coverage, product lines, and the like.

#### **Proposal #4 – Re-Allocate Citizens Policyholder Surcharge**

As you note, current law imposes a first assessment of up to 15% of annual premium on Citizens policyholders only, and possibly in each account separately (the Personal Lines Account, Commercial Lines Account, and Coastal Account could all have Plan Year Deficits in the same year) before the next tiers of assessments would be imposed on insurers ("regular assessments" of up to 2% of premium in the Coastal Account only) or directly on policyholders ("emergency assessments" of up to 10% of premium per year in each account with a deficit). Importantly, all Citizens policyholders pay the surcharge for the deficit in any account – not just policyholders holding a policy in the account incurring a deficit. Therefore, changing the distribution of the Citizens Policyholder Surcharge to a maximum of 10% in the PLA and maximum of 20% in the Coastal Account, and retaining the 15% maximum in the CLA, would leave the total potential surcharge at 45%, but raise the burden of assessments to all Citizens policyholders if there is a deficit in (only) the Coastal Account. If multiple accounts incurred a deficit, all Citizens policyholders would still pay assessments, then all Florida policyholders would be affected by the remaining deficit due to the recoupment of regular assessments by insurers, and the pass-through of emergency assessments to them.

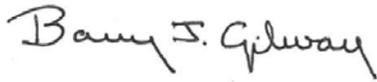
As this change affects the post-funding of hurricanes rather than the pre-funding of insurance losses through premiums and reinsurance, there would be no direct impact on the clearinghouse or premium shopping in the open market. However, some consumers do consider assessment burden when determining whether to seek a Citizens policy, and some may be incented to make decisions to take

private market policies even when they remain eligible for Citizens. Agents often make consumers aware of this risk as well.

Lastly, questions were raised at the January 8 meeting regarding the benefits of allowing surplus lines insurers to participate in the clearinghouse and other Citizens programs to reduce its size. We note that there has been a robust debate regarding surplus lines participation, both at the legislative level and at the Citizens Board of Governors. Many pros and cons have been discussed, many of which are outside our scope for comment. Ultimately, we do not have authority to evaluate the financial strength, market conduct, or business models of surplus lines insurers – that authority rests with the Office.

We appreciate the opportunity to comment on your proposals and look forward to providing insight on Citizens issues as you continue to work toward optimal public policy regarding Citizens' role in Florida's property insurance market.

Respectfully,

A handwritten signature in black ink that reads "Barry J. Gilway". The signature is written in a cursive, slightly slanted style.

Barry Gilway  
President/CEO and Executive Director

cc: Members of the Senate Banking and Insurance Committee

**Citizens Property Insurance Corporation**  
**Impact from Shift of 5% PLA Policyholder Surcharge to Coastal Account**  
**Sample Storm Scenarios based on 2013 Storm Season**

1 in 50 Year Event Scenario	Existing Policyholder Surcharge Relationship		Proposed Policyholder Surcharge Relationship		There is <u>no</u> impact from the proposed shift in policyholder surcharge for this scenario.  Risk transfer, FHCF, and surplus primarily cover the loss. This applies to all events below the 1 in 53 year event.
	PLA/CLA	Coastal	PLA/CLA	Coastal	
Event PML including 10% Loss Adjusted Expenses (in millions)	\$3,933	\$7,977	\$3,933	\$7,977	
Deficit remaining after surplus, FHCF and risk transfer (in millions)	\$0	\$86	\$0	\$86	
Policyholder Surcharge	0%	3%	0%	3%	
Regular Assessment	n/a	0%	n/a	0%	
Emergency Assessment	0%	0%	0%	0%	
	<b>\$1,800 Average premium + surcharges and Assessments</b>				<b>Resulting Change from Shifting 5% Policyholder surcharge from PLA to the Coastal Account</b>
Citizens policyholder	\$1,856		\$1,856		\$0
non-Citizens policyholder	\$1,800		\$1,800		\$0
<b>Difference between Citizens policyholder and non-Citizens policyholder</b>		\$56		\$56	

1 in 60 Year Event Scenario	Existing Policyholder Surcharge Relationship		Proposed Policyholder Surcharge Relationship		In this example, the impact from the proposed shift in policyholder surcharge is an \$89 increase in the surcharge paid by a Citizens policyholder and a decrease of \$7 for non-citizens policyholders.
	PLA/CLA	Coastal	PLA/CLA	Coastal	
Event PML including 10% Loss Adjusted Expenses (in millions)	\$4,536	\$9,001	\$4,536	\$9,001	
Deficit remaining after surplus, FHCF and risk transfer (in millions)	\$0	\$1,110	\$0	\$1,110	
Policyholder Surcharge	0%	15%	0%	20%	
Regular Assessment	n/a	2%	n/a	2%	
Emergency Assessment	0%	0%	0%	0%	
	<b>\$1,800 Average premium + surcharges and Assessments</b>				<b>Resulting Change from Shifting 5% Policyholder surcharge from PLA to the Coastal Account</b>
Citizens policyholder	\$2,071		\$2,160		\$89
non-Citizens policyholder	\$1,837		\$1,830		-\$7
<b>Difference between Citizens policyholder and non-Citizens policyholder</b>		\$234		\$330	

1 in 75 Year Event Scenario	Existing Policyholder Surcharge Relationship		Proposed Policyholder Surcharge Relationship		In this example, the impact from the proposed shift in policyholder surcharge is an \$83 increase in the surcharge paid by a Citizens policyholder and a decrease of \$7 for non-citizens policyholders.
	PLA/CLA	Coastal	PLA/CLA	Coastal	
Event PML including 10% Loss Adjusted Expenses (in millions)	\$5,421	\$10,428	\$5,421	\$10,428	
Deficit remaining after surplus, FHCF and risk transfer (in millions)	\$0	\$2,537	\$0	\$2,537	
Policyholder Surcharge	0%	15%	0%	20%	
Regular Assessment	n/a	2%	n/a	2%	
Emergency Assessment	0%	4%	0%	4%	
	<b>\$1,800 Average premium + surcharges and Assessments</b>				<b>Resulting Change from Shifting 5% Policyholder surcharge from PLA to the Coastal Account</b>
Citizens policyholder	\$2,142		\$2,225		\$83
non-Citizens policyholder	\$1,908		\$1,901		-\$7
<b>Difference between Citizens policyholder and non-Citizens policyholder</b>		\$234		\$324	

1 in 100 Year Event Scenario	Existing Policyholder Surcharge Relationship		Proposed Policyholder Surcharge Relationship		There is <u>no</u> impact from the proposed shift in policyholder surcharge in this scenario due to the algebraic relationship detailed below.
	PLA/CLA	Coastal	PLA/CLA	Coastal	
Event PML including 10% Loss Adjusted Expenses (in millions)	\$6,793	\$12,513	\$6,793	\$12,513	
Deficit remaining after surplus, FHCF and risk transfer (in millions)	\$906	\$4,622	\$906	\$4,622	
Policyholder Surcharge	30%	15%	25%	20%	
Regular Assessment	n/a	2%	n/a	2%	
Emergency Assessment	0%	10%	1%	9%	
	<b>\$1,800 Average premium + surcharges and Assessments</b>				<b>Resulting Change from Shifting 5% Policyholder surcharge from PLA to the Coastal Account</b>
Citizens policyholder	\$2,789		\$2,789		\$0
non-Citizens policyholder	\$2,015		\$2,015		\$0
<b>Difference between Citizens policyholder and non-Citizens policyholder</b>		\$774		\$774	

With the proposed shift of 5% PLA policyholder surcharge, the relationship between per account deficit and direct written premium (DWP) for all scenarios above the 1 in 98 year storm event will be:

For a Citizens policyholder, the additional percent of assessment follows

$$.43 + \{(\text{DeficitRemainingPLA/CLA} + \text{DeficitRemainingCoastal} - .43 * \text{DWPCitizens}) / \text{DWPSState}\}$$

For a non-Citizens policyholder, the additional percent of assessment follows

$$(\text{DeficitRemainingPLA/CLA} + \text{DeficitRemainingCoastal} - .43 * \text{DWPCitizens}) / \text{DWPSState}$$

**Therefore, in any storm scenario where the remaining deficit results in Emergency Assessments on both PLA/CLA and Coastal, algebraically there is no impact from the proposed shift in policyholder surcharge on Citizens or non-Citizens premium no matter how one shifts the 45%**

**Notes:**

DWPCitizens = Citizens Direct Written Premium = Citizens Policyholder Surcharge Base

DWPSState = Statewide Direct Written Premium = Emergency Assessment Base

Regular Assessment Base = Emergency Assessment Base - Citizens Policyholder Surcharge Base

**Citizens Property Insurance Corporation**  
**Commercial Residential Multi Peril and Wind Only**  
**Total Insured Value \$10 Million + at the Building Level**  
**Building Counts and Total Insured Value by County and Building Age**

County Name	Commercial Lines Account				Coastal Account				Total Commercial Residential	
	20 Years and Younger		More than 20 Years Old		20 Years and Younger		More than 20 Years Old		Building Count	Total Insured Value
	Building Count	Total Insured Value	Building Count	Total Insured Value	Building Count	Total Insured Value	Building Count	Total Insured Value		
Brevard	0	\$0	0	\$0	0	\$0	4	\$57,979,883	4	\$57,979,883
Broward	0	\$0	9	\$126,117,185	6	\$265,876,200	139	\$4,087,280,682	154	\$4,479,274,067
Collier	0	\$0	0	\$0	5	\$253,483,413	35	\$851,013,901	40	\$1,104,497,314
Escambia	0	\$0	0	\$0	1	\$19,550,000	1	\$13,581,700	2	\$33,131,700
Hillsborough	0	\$0	3	\$39,828,100	0	\$0	0	\$0	3	\$39,828,100
Indian River	0	\$0	0	\$0	1	\$10,075,000	1	\$13,789,300	2	\$23,864,300
Lee	4	\$150,445,800	0	\$0	7	\$349,983,710	10	\$153,555,118	21	\$653,984,628
Manatee	0	\$0	0	\$0	0	\$0	1	\$13,263,209	1	\$13,263,209
Martin	0	\$0	4	\$69,673,900	0	\$0	0	\$0	4	\$69,673,900
Miami-Dade	7	\$71,520,662	9	\$130,770,400	49	\$2,445,976,690	207	\$7,061,478,168	272	\$9,709,745,920
Monroe	0	\$0	0	\$0	1	\$17,346,000	3	\$42,391,000	4	\$59,737,000
Palm Beach	2	\$21,466,100	3	\$33,418,100	8	\$170,797,550	114	\$2,424,332,128	127	\$2,650,013,878
Pinellas	12	\$157,514,600	44	\$760,511,064	9	\$190,495,535	22	\$412,164,889	87	\$1,520,686,088
Saint Lucie	0	\$0	0	\$0	4	\$56,183,300	11	\$254,766,800	15	\$310,950,100
Santa Rosa	0	\$0	0	\$0	1	\$10,033,046	0	\$0	1	\$10,033,046
Sarasota	0	\$0	0	\$0	18	\$582,188,452	46	\$878,128,982	64	\$1,460,317,434
Volusia	0	\$0	0	\$0	7	\$154,013,252	10	\$256,042,646	17	\$410,055,898
<b>Total</b>	<b>25</b>	<b>\$400,947,162</b>	<b>72</b>	<b>\$1,160,318,749</b>	<b>117</b>	<b>\$4,526,002,148</b>	<b>604</b>	<b>\$16,519,768,406</b>	<b>818</b>	<b>\$22,607,036,465</b>

Data as of 09/30/2013

# Citizens Property Insurance Corporation

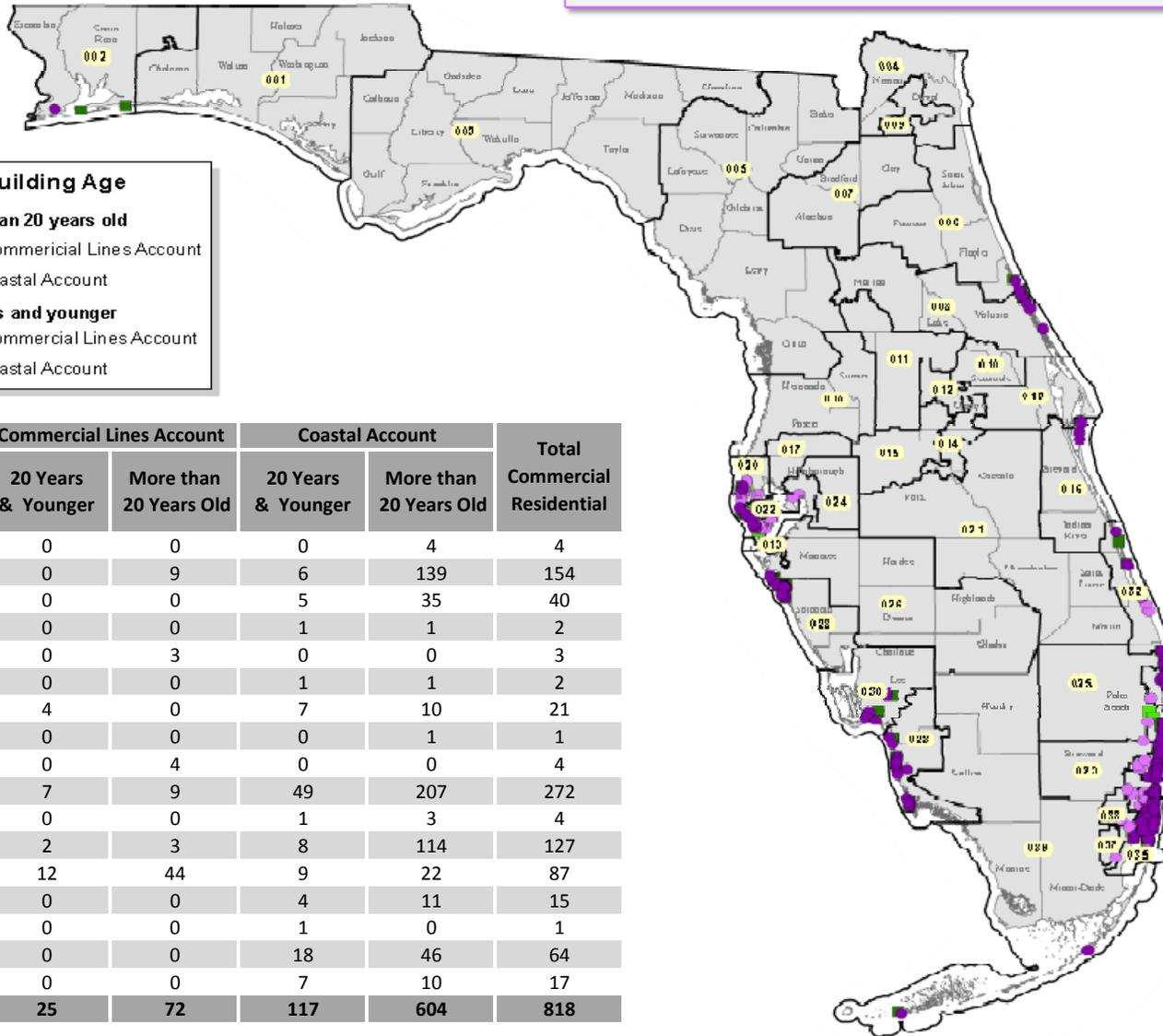
## Commercial Residential Multi Peril and Wind Only

### Total Insured Value \$10 Million + at the Building Level

#### Building Counts by County and Building Age

74% of Citizens' commercial residential buildings valued \$10 million or greater are in the Coastal Account and are more than 20 years old.

17% of Citizens' commercial residential buildings valued \$10 million or greater are 20 years old or younger.



**Building Age**

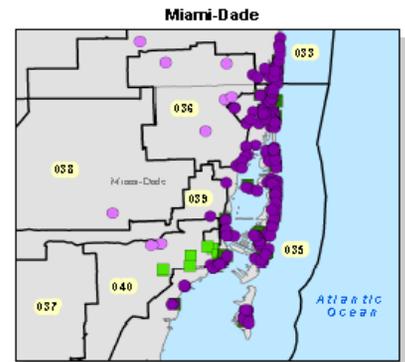
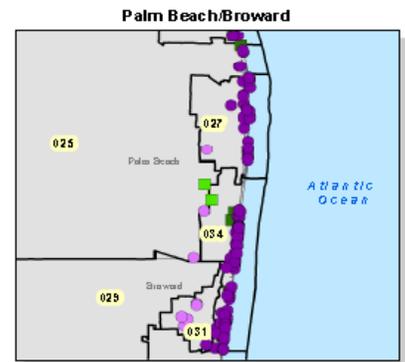
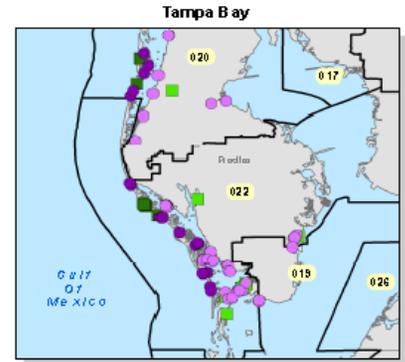
**More than 20 years old**

- Commercial Lines Account (Green Circle)
- Coastal Account (Purple Circle)

**20 years and younger**

- Commercial Lines Account (Green Square)
- Coastal Account (Purple Square)

County	Commercial Lines Account		Coastal Account		Total Commercial Residential
	20 Years & Younger	More than 20 Years Old	20 Years & Younger	More than 20 Years Old	
Brevard	0	0	0	4	4
Broward	0	9	6	139	154
Collier	0	0	5	35	40
Escambia	0	0	1	1	2
Hillsborough	0	3	0	0	3
Indian River	0	0	1	1	2
Lee	4	0	7	10	21
Manatee	0	0	0	1	1
Martin	0	4	0	0	4
Miami-Dade	7	9	49	207	272
Monroe	0	0	1	3	4
Palm Beach	2	3	8	114	127
Pinellas	12	44	9	22	87
Saint Lucie	0	0	4	11	15
Santa Rosa	0	0	1	0	1
Sarasota	0	0	18	46	64
Volusia	0	0	7	10	17
<b>Total</b>	<b>25</b>	<b>72</b>	<b>117</b>	<b>604</b>	<b>818</b>



Data as of 09/30/2013

# Citizens Property Insurance Corporation

## Commercial Residential Multi Peril and Wind Only

Average Premium per Policy vs. Average Premium per Building  
Per Policy Data from OIR; Per Building Data from Citizens' Inforce Files  
Data as of 09/30/2013

Commercial residential business can have multiple buildings per policy. Data collected by the Office of Insurance Regulation (OIR) is not at the policy level and does not include building age. Additionally, the OIR data is not listed by coverage amount and therefore, industry data for +\$10M coverage does not exist. Data below is for Citizens and All Other Carriers where Citizens' information is provided by per building for comparison.

OIR Per Policy Data - QUASR				OIR Per Policy Data - QUASR			
County Name	All Other Carriers Avg Premium per Policy	Citizens Avg Premium per Policy	Citizens Avg Premium per Building *	County Name	All Other Carriers Avg Premium per Policy	Citizens Avg Premium per Policy	Citizens Avg Premium per Building *
Alachua	\$4,094	\$8,152	\$1,970	Lake	\$1,938	\$9,332	\$788
Baker	\$842	n/a		Lee	\$23,690	\$19,575	\$4,859
Bay	\$4,275	\$12,645	\$4,692	Leon	\$1,922	\$8,034	\$2,311
Bradford	\$1,192	n/a	n/a	Levy	\$6,050	\$7,455	\$7,512
Brevard	\$8,396	\$14,331	\$4,570	Liberty	\$2,272	n/a	n/a
Broward	\$33,102	\$25,675	\$9,034	Madison	\$921	n/a	n/a
Calhoun	\$1,863	n/a	n/a	Manatee	\$33,755	\$28,592	\$4,843
Charlotte	\$13,822	\$29,153	\$5,164	Marion	\$1,608	\$7,772	\$2,591
Citrus	\$2,124	\$16,055	\$5,114	Martin	\$46,477	\$45,910	\$5,357
Clay	\$1,329	\$10,236	\$5,152	Monroe	\$2,344	\$32,719	\$9,415
Collier	\$40,009	\$30,983	\$6,462	Nassau	\$8,253	\$11,496	\$4,606
Columbia	\$720	n/a	n/a	Okaloosa	\$3,683	\$17,168	\$5,370
Miami-Dade	\$37,720	\$29,895	\$11,772	Okeechobee	\$2,508	\$35,911	\$1,708
Desoto	\$3,294	n/a	n/a	Orange	\$4,028	\$33,272	\$3,273
Dixie	\$9,544	\$18,194	\$5,459	Osceola	\$3,096	\$17,884	\$2,330
Duval	\$2,281	\$8,959	\$3,891	Palm Beach	\$53,470	\$36,553	\$4,943
Escambia	\$2,756	\$21,694	\$5,055	Pasco	\$12,751	\$30,544	\$2,445
Flagler	\$9,380	\$7,239	\$5,496	Pinellas	\$33,384	\$25,630	\$7,515
Franklin	\$7,197	\$7,574	\$2,775	Polk	\$1,901	\$8,740	\$2,014
Gadsden	\$1,066	\$3,660	\$3,681	Putnam	\$1,128	n/a	n/a
Gilchrist	\$15,464	n/a	n/a	Santa Rosa	\$2,529	\$20,318	\$4,525
Glades	\$955	n/a	n/a	Sarasota	\$23,060	\$29,280	\$3,266
Gulf	\$5,207	\$5,571	\$4,645	Seminole	\$3,319	\$36,226	\$2,995
Hamilton	\$2,427	n/a	n/a	Saint Johns	\$12,627	\$9,149	\$3,621
Hardee	\$2,082	n/a	n/a	Saint Lucie	\$18,953	\$41,567	\$7,509
Hendry	\$1,307	\$15,749	\$4,998	Sumter	\$1,259	n/a	n/a
Hernando	\$1,695	\$16,615	\$2,662	Suwannee	\$1,508	n/a	n/a
Highlands	\$2,635	\$9,665	\$4,194	Taylor	\$1,857	\$3,070	\$1,546
Hillsborough	\$14,998	\$29,268	\$3,975	Union	\$1,135	n/a	n/a
Holmes	\$2,901	n/a	n/a	Volusia	\$4,455	\$13,709	\$5,286
Indian River	\$17,225	\$23,260	\$4,212	Wakulla	\$3,706	\$7,902	\$7,966
Jackson	\$2,268	n/a	n/a	Walton	\$8,846	\$14,545	\$4,011
Jefferson	\$1,530	n/a	n/a	Washington	\$1,884	n/a	n/a
Lafayette	\$4,375	n/a	n/a	<b>Total</b>	<b>\$12,448</b>	<b>\$27,904</b>	<b>\$6,889</b>

\* Average Premium per Building excludes special class risks and is an approximate representation of the total premium reported to the OIR via QUASR. In Citizens' commercial residential premium calculation, most surcharges are applied at the policy level as a percentage of the premium subtotal.

## Citizens Property Insurance Corporation

### Indicated Rate Change and Expected Loss Ratio

Data as of 06/30/2013

#### Commercial Lines Account - Commercial non-Residential Multi Peril

Indicated Total Rate Change Range		Inforce Policy Count	Inforce Premium (at 2014 Rate Level)	Average Inforce Premium (at 2014 Rate Level)	Expected Projected Loss & LAE Ratio	Expected Rate Need Using 2014 Rates	Total Insured Value
Minimum	Maximum						
Below	-5.0%	0	\$0	\$0	0.0%	0.0%	\$ -
-5.0%	-2.5%	1,279	\$8,113,604	\$6,344	70.7%	-3.3%	\$ 1,487,869,744
-2.5%	0.0%	265	\$1,622,088	\$6,121	72.3%	-1.1%	\$ 229,316,700
0.0%	2.5%	0	\$0	\$0	0.0%	0.0%	\$ -
2.5%	5.0%	0	\$0	\$0	0.0%	0.0%	\$ -
5.0%	7.5%	0	\$0	\$0	0.0%	0.0%	\$ -
7.5%	Above	28	\$123,732	\$4,419	79.9%	9.3%	\$ 37,885,954
<b>TOTAL</b>		<b>1,572</b>	<b>\$9,859,424</b>	<b>\$6,272</b>	<b>71.1%</b>	<b>-2.8%</b>	<b>\$ 1,755,072,398</b>

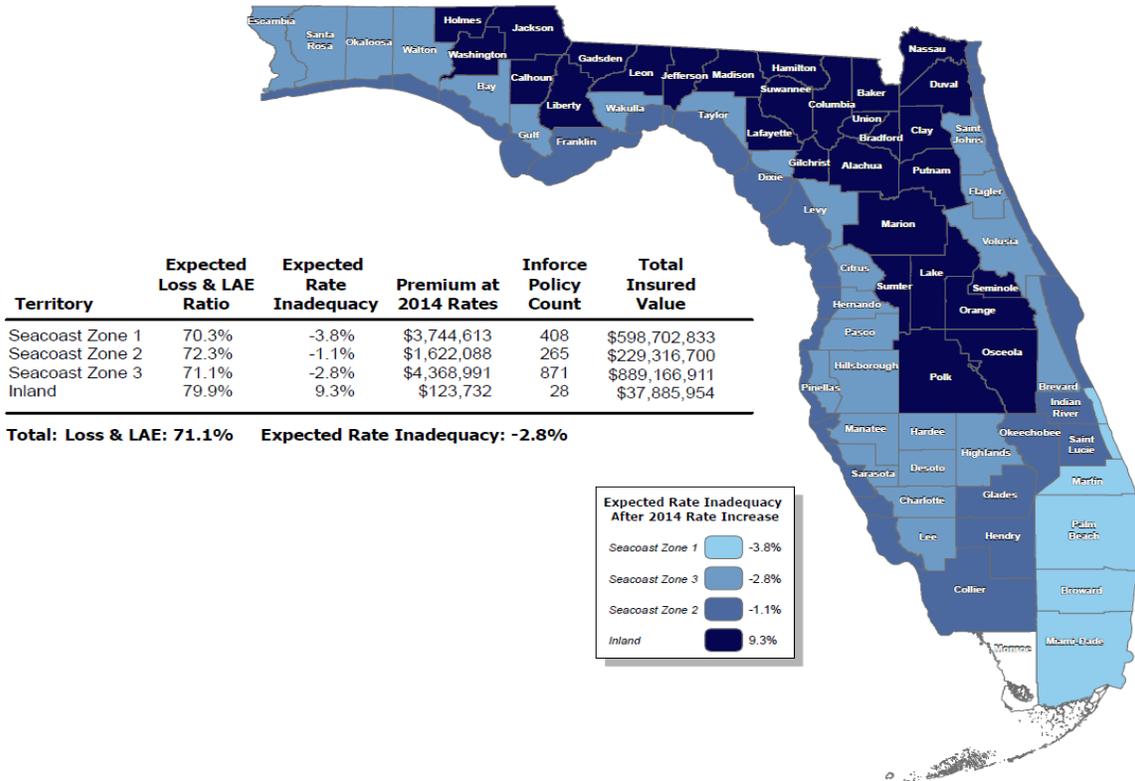
#### Coastal Account - Commercial non-Residential Multi Peril

Indicated Total Rate Change Range		Inforce Policy Count	Inforce Premium (at 2014 Rate Level)	Average Inforce Premium (at 2014 Rate Level)	Expected Projected Loss & LAE Ratio	Expected Rate Need Using 2014 Rates	Total Insured Value
Minimum	Maximum						
Below	70%	2	\$57,528	\$28,764	82.8%	13.3%	\$ 4,500,000
70%	75%	112	\$1,396,346	\$12,467	127.4%	74.3%	\$ 202,786,900
75%	80%	116	\$785,800	\$6,774	129.0%	76.5%	\$ 139,044,100
80%	85%	0	\$0	\$0	0.0%	0.0%	\$ -
85%	90%	0	\$0	\$0	0.0%	0.0%	\$ -
90%	95%	0	\$0	\$0	0.0%	0.0%	\$ -
95%	Above	0	\$0	\$0	0.0%	0.0%	\$ -
<b>TOTAL</b>		<b>230</b>	<b>\$2,239,673</b>	<b>\$9,738</b>	<b>126.8%</b>	<b>73.5%</b>	<b>\$ 346,331,000</b>

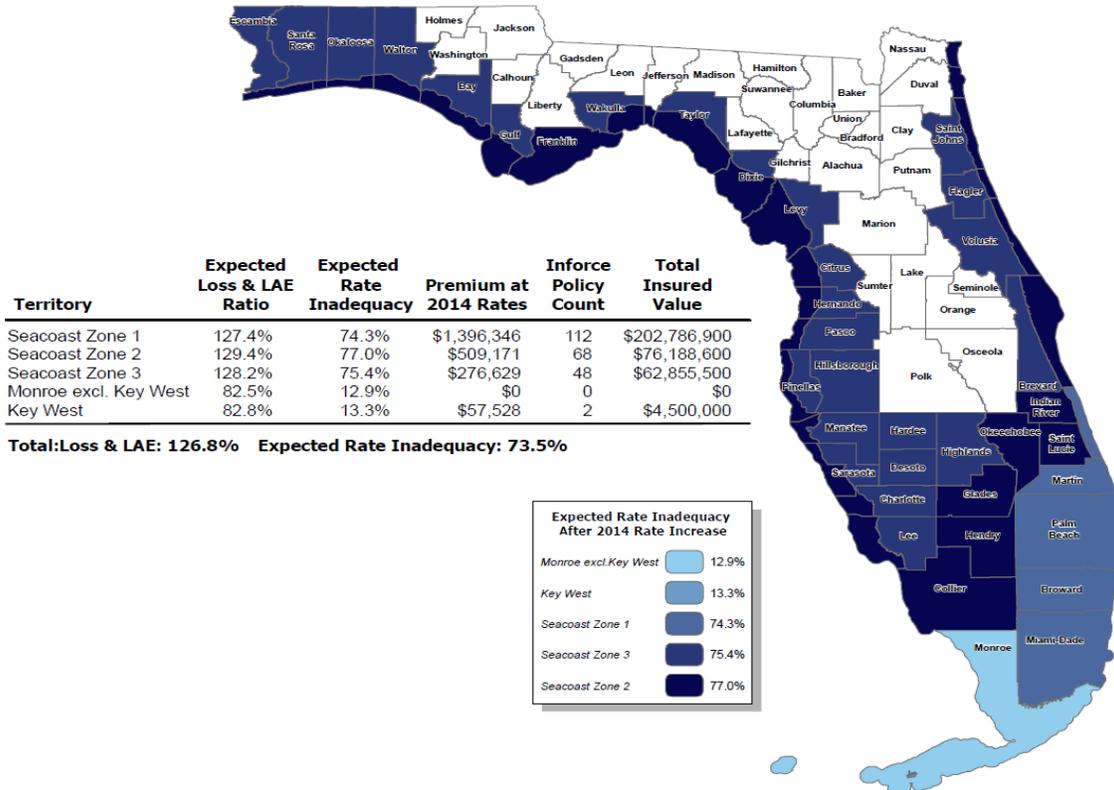
# Citizens Property Insurance Corporation

## Indicated Rate Change and Expected Loss Ratio

### Commercial Lines Account - Commercial non-Residential Multi Peril



### Coastal Account - Commercial non-Residential Multi Peril

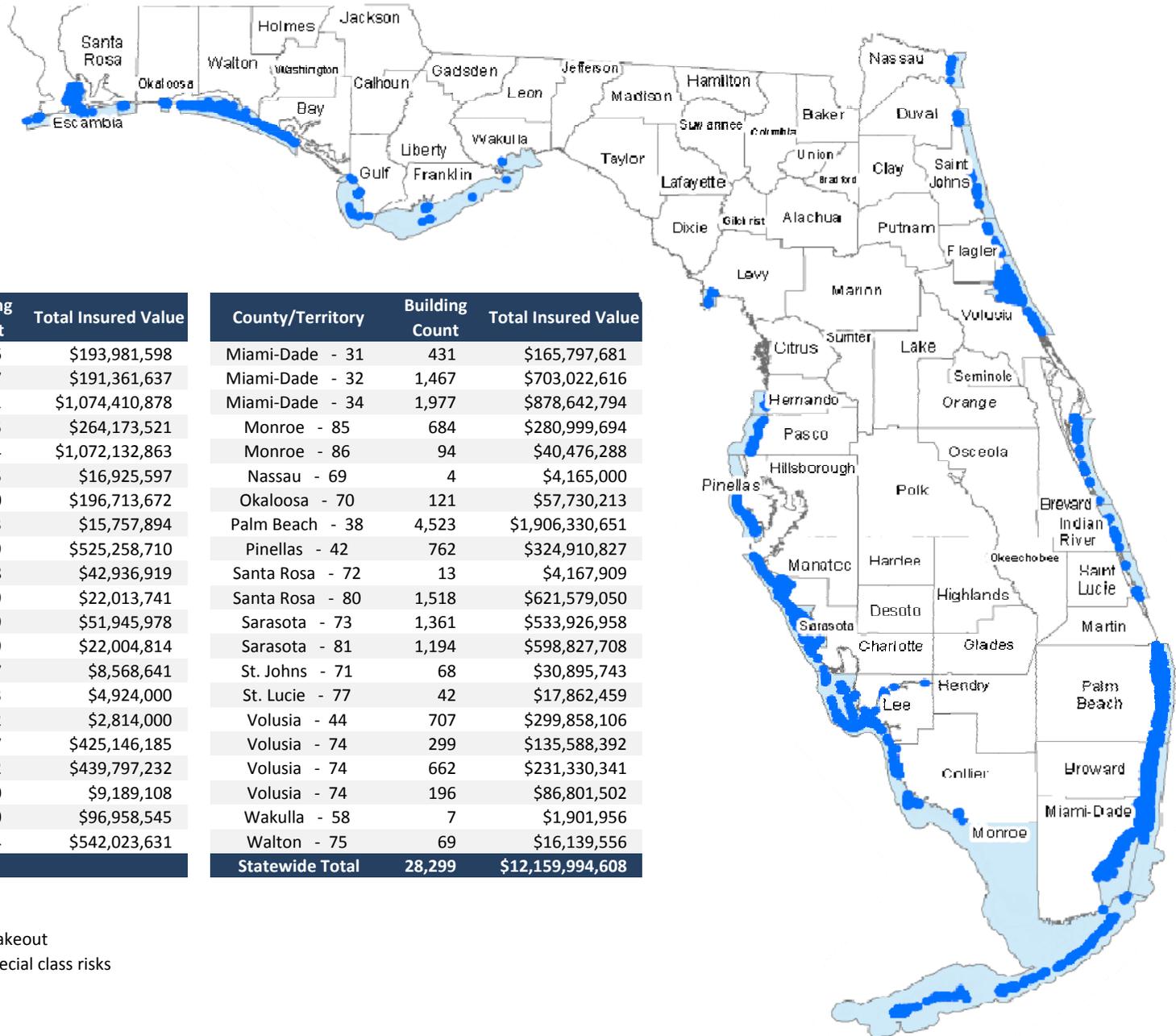


Data as of 06/30/2013

# Citizens Property Insurance Corporation

## Commercial Non-Residential Wind Only

### Building Count and Total Insured Value by County and Territory



County/Territory	Building Count	Total Insured Value
Bay - 59	546	\$193,981,598
Brevard - 60	477	\$191,361,637
Broward - 35	2,561	\$1,074,410,878
Broward - 36	565	\$264,173,521
Broward - 37	2,474	\$1,072,132,863
Charlotte - 61	35	\$16,925,597
Collier - 62	460	\$196,713,672
Duval - 41	43	\$15,757,894
Escambia - 43	1,199	\$525,258,710
Escambia - 63	108	\$42,936,919
Flagler - 64	69	\$22,013,741
Flagler - 78	149	\$51,945,978
Franklin - 65	59	\$22,004,814
Gulf - 66	27	\$8,568,641
Hernando - 56	13	\$4,924,000
Indian River - 76	12	\$2,814,000
Lee - 67	1,067	\$425,146,185
Lee - 79	942	\$439,797,232
Levy - 57	40	\$9,189,108
Manatee - 68	240	\$96,958,545
Miami-Dade - 30	1,014	\$542,023,631

County/Territory	Building Count	Total Insured Value
Miami-Dade - 31	431	\$165,797,681
Miami-Dade - 32	1,467	\$703,022,616
Miami-Dade - 34	1,977	\$878,642,794
Monroe - 85	684	\$280,999,694
Monroe - 86	94	\$40,476,288
Nassau - 69	4	\$4,165,000
Okaloosa - 70	121	\$57,730,213
Palm Beach - 38	4,523	\$1,906,330,651
Pinellas - 42	762	\$324,910,827
Santa Rosa - 72	13	\$4,167,909
Santa Rosa - 80	1,518	\$621,579,050
Sarasota - 73	1,361	\$533,926,958
Sarasota - 81	1,194	\$598,827,708
St. Johns - 71	68	\$30,895,743
St. Lucie - 77	42	\$17,862,459
Volusia - 44	707	\$299,858,106
Volusia - 74	299	\$135,588,392
Volusia - 74	662	\$231,330,341
Volusia - 74	196	\$86,801,502
Wakulla - 58	7	\$1,901,956
Walton - 75	69	\$16,139,556
<b>Statewide Total</b>	<b>28,299</b>	<b>\$12,159,994,608</b>

**Notes:**

- 1) Excludes risks tagged for takeout
- 2) Building count excludes special class risks
- 3) Data as of 09/30/2013

# **Citizens Property Insurance Corporation**

## **Senate Banking & Insurance Committee – Response to data Request**

January 3, 2014



# Response to Legislative Requests

- Commercial Products
  - Fast facts
  - Exposure and storm risk
- Commercial Residential
  - Contributions to exposure and storm risk
  - Market share
  - Analysis of building total insured value >\$5M and >\$10M
  - Rate adequacy
- Commercial Non-Residential
  - Contributions to exposure
  - Rate adequacy
- Personal Lines
  - Occupancy and residency issues
  - Total insured value in \$100K bands
  - Multi-Peril non-catastrophe historic loss ratios by account
  - Wind-Only average premium
  - Wind-Only new business policy count

# Citizens Commercial Lines Fast Facts

## Commercial-Residential

- Citizens writes unlimited insured values for qualifying policies
- Commercial-residential, at about \$4.1B, is over 20% of Citizens' probable maximum loss (PML), a.k.a. storm risk in a 100-year scenario
- Citizens is a dominant insurer in commercial-residential with over 40% share, though trending downward as several private market insurers are active
- The predominant occupancy is condominium associations
- Citizens attracts older, smaller, and less wind-resistive buildings - but the large buildings we insure impact storm risk disproportionately
- Wind-only commercial-residential policies are the most underpriced (actuarially speaking)
- Rate need is consistent around the state, should be generally 20-70% higher than current rates depending on the property's features

## Commercial Non-Residential

- Citizens writes only the first \$1 million of wind-only (Coastal, inherited from FWUA) or \$2.5 million of multi-peril (statewide, as authorized in 2007 by HB1A) coverage
- Commercial non-residential contributes over \$1B to Citizens storm risk
- Hard to gauge market share in non-residential because of light regulation and reporting
- Citizens inland multi-peril commercial rates are generally actuarially reasonable, but wind-only and Coastal policies are significantly underpriced

# Commercial Lines are Disproportionate Contributors to Citizens Exposure and Storm Risk

	PML (000s)	Exposure (000s)
Non-Coastal Commercial Residential Multi-Peril	\$1,088,140	\$35,857,156
Coastal Commercial Residential Multi-Peril	\$751,724	\$12,855,967
Non-Coastal Commercial Non-Residential Multi-Peril	\$75,162	\$1,756,637
Coastal Commercial Non-Residential Multi-Peril	\$32,118	\$365,349
Coastal Commercial Residential Wind-Only	\$2,324,435	\$44,575,147
Coastal Commercial Non-Residential Wind-Only	\$1,072,314	\$12,159,995

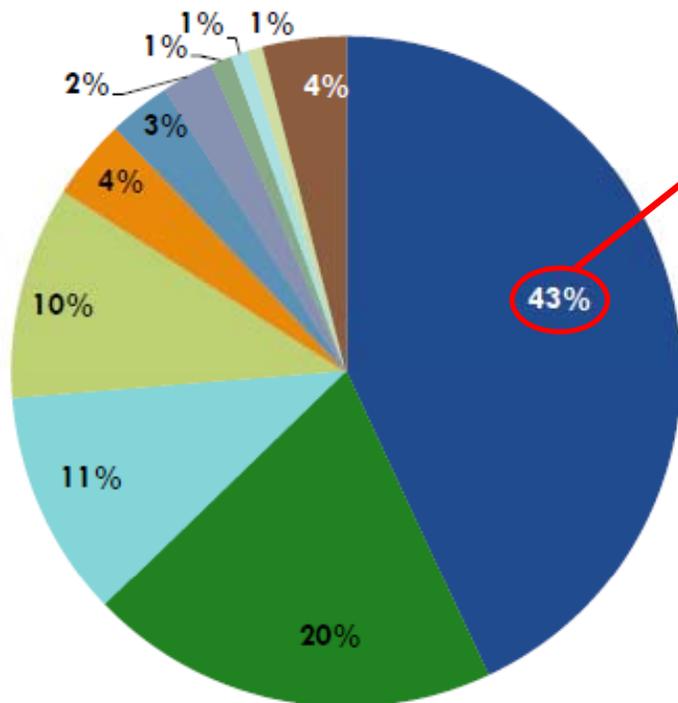
	PML (000s)	Exposure (000s)
Commercial Residential Multi-Peril	\$1,772,346	\$48,713,124
Commercial Residential Wind-Only	\$2,324,435	\$44,575,147
<b>TOTAL Commercial Residential Lines</b>	<b>\$4,065,058</b>	<b>\$93,288,271</b>
Commercial Non-Residential Multi-Peril	\$103,514	\$2,121,986
Commercial Non-Residential Wind-Only	\$1,072,314	\$12,159,995
<b>TOTAL Commercial Non-Residential Lines</b>	<b>\$1,150,748</b>	<b>\$14,281,980</b>

**Notes:**

- 1) Data as of 09/30/2013 for Commercial products only
- 2) PMLs represent Citizens modeled loss in a single storm with a 1% chance of exceeding this loss each year.
- 3) PMLs are not additive across product lines because multiple lines will be impacted in any one storm. Totals are true combined PMLs.

**Commercial Residential:  
A Major Contributor to Exposure and Storm Risk**

# Citizens is the Dominant Commercial-Residential Insurer, but Others are Growing



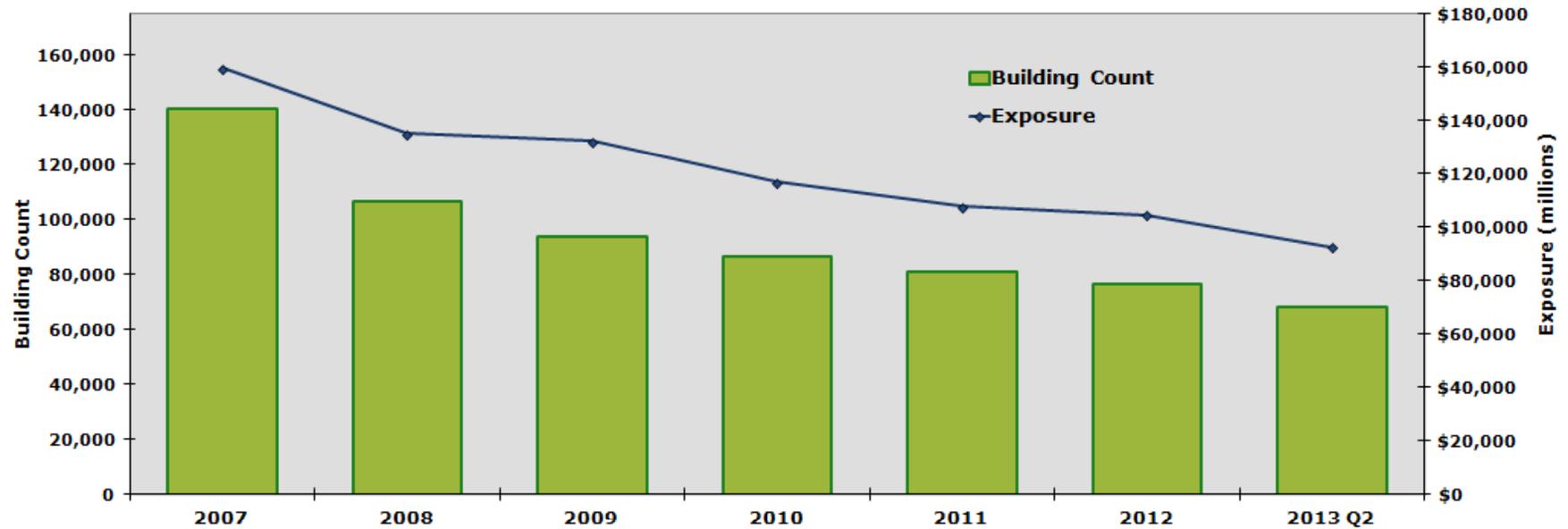
Carrier	Total Insured Value
Citizens Property Insurance Corporation	\$92,738,142,474
American Coastal Insurance Company	\$42,740,093,177
QBE Insurance Corporation	\$23,480,071,933
American Capital Assurance Corp.	\$22,157,936,645
Weston Insurance Company	\$8,464,492,746
State Farm Florida Insurance Company	\$6,372,605,563
Philadelphia Indemnity Insurance Company	\$5,427,746,215
Service Insurance Company	\$2,214,743,000
Nova Casualty Company	\$1,783,177,848
Sunshine State Insurance Company	\$1,555,923,161
All Other	\$8,681,736,157
<b>Totals - All Carriers</b>	<b>\$215,616,668,919</b>

OIR QUASR Data as of 06/30/2013

- Citizens Property Insurance Corporation
- American Coastal Insurance Company
- QBE Insurance Corporation
- American Capital Assurance Corp.
- Weston Insurance Company
- State Farm Florida Insurance Company
- Philadelphia Indemnity Insurance Company
- Service Insurance Company
- Nova Casualty Company
- Sunshine State Insurance Company
- All Other

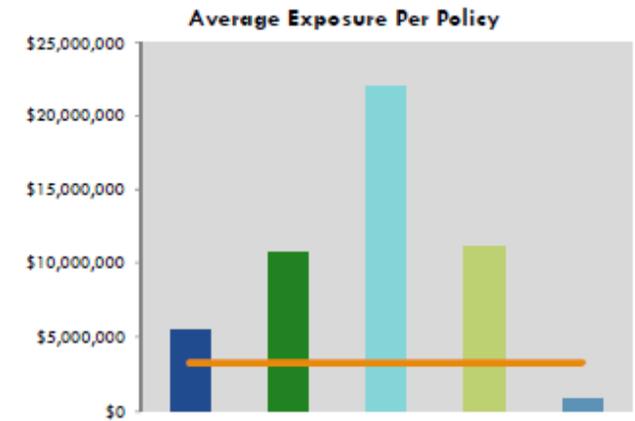
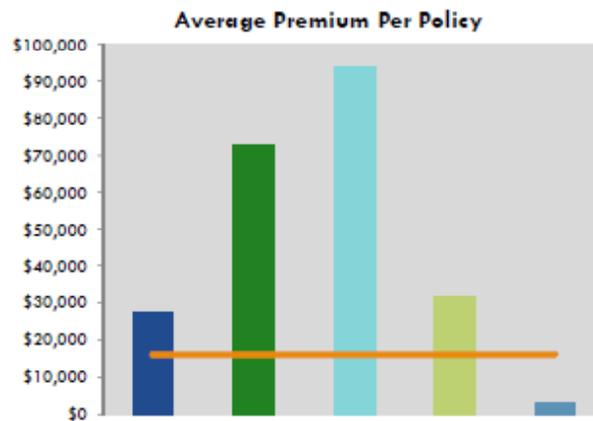
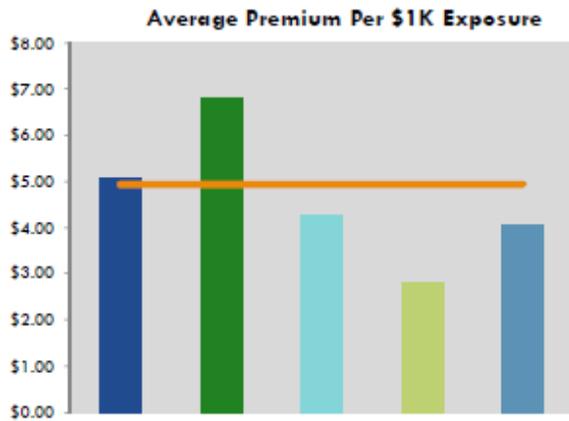
# Commercial-Residential Historical Market Share

(Data as of 06/30/2013)



	Coastal Account			Commercial Lines Account			Total		
	Number of Policies	Number of Buildings	Exposure <sup>1</sup> (millions)	Number of Policies	Number of Buildings	Exposure <sup>1</sup> (millions)	Number of Policies	Number of Buildings	Exposure <sup>1</sup> (millions)
2007	17,346	45,744	\$83,588	11,158	94,715	\$76,298	28,504	140,459	\$159,885
2008	15,887	43,266	\$80,075	8,810	63,354	\$55,134	24,697	106,620	\$135,209
2009	15,049	41,011	\$82,089	8,355	52,523	\$50,236	23,404	93,534	\$132,325
2010	14,440	40,797	\$74,778	7,323	45,504	\$42,107	21,763	86,301	\$116,885
2011	13,815	38,644	\$68,923	6,961	42,180	\$38,929	20,776	80,824	\$107,853
2012	13,139	37,166	\$66,711	6,602	39,637	\$38,052	19,741	76,803	\$104,764
2013 Q2	10,961	31,594	\$56,789	6,189	36,476	\$35,949	17,150	68,070	\$92,738
% Change from 2012 to 2Q 2013	-16.6%	-15.0%	-14.9%	-6.3%	-8.0%	-5.5%	-13.1%	-11.4%	-11.5%

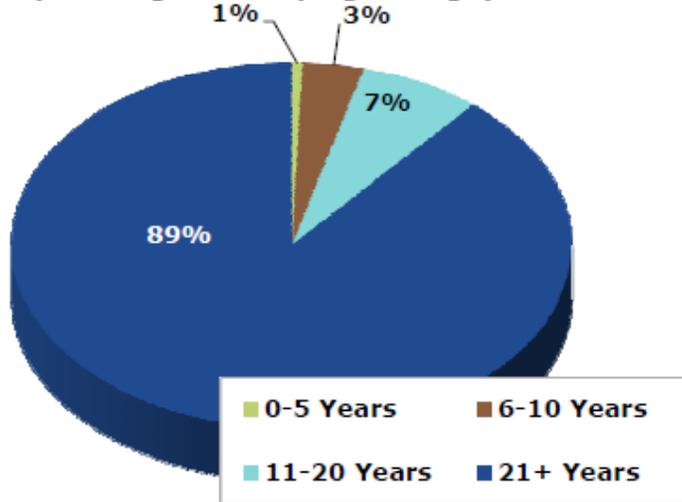
# Commercial-Residential Premium and Policies



Carrier	Policies Inforce	Premium	Exposure	Average Premium Per \$1,000 Exposure	Average Premium Per Policy	Average Exposure Per Policy
Citizens Property Insurance Corporation	17,150	\$470,490,957	\$92,738,142,474	\$5.07	\$27,434	\$5,407,472
American Coastal Insurance Company	3,975	\$290,108,649	\$42,740,093,177	\$6.79	\$72,983	\$10,752,225
Q&E Insurance Corporation	1,071	\$100,414,172	\$23,480,071,933	\$4.28	\$93,757	\$21,923,503
American Capital Assurance Corp.	1,981	\$62,173,579	\$22,157,936,645	\$2.81	\$31,385	\$11,185,228
All Other	41,934	\$139,931,444	\$34,500,424,690	\$4.06	\$3,337	\$822,732
<b>Total Market</b>	<b>66,111</b>	<b>\$1,063,118,801</b>	<b>\$215,616,668,919</b>	<b>\$4.93</b>	<b>\$16,081</b>	<b>\$3,261,434</b>

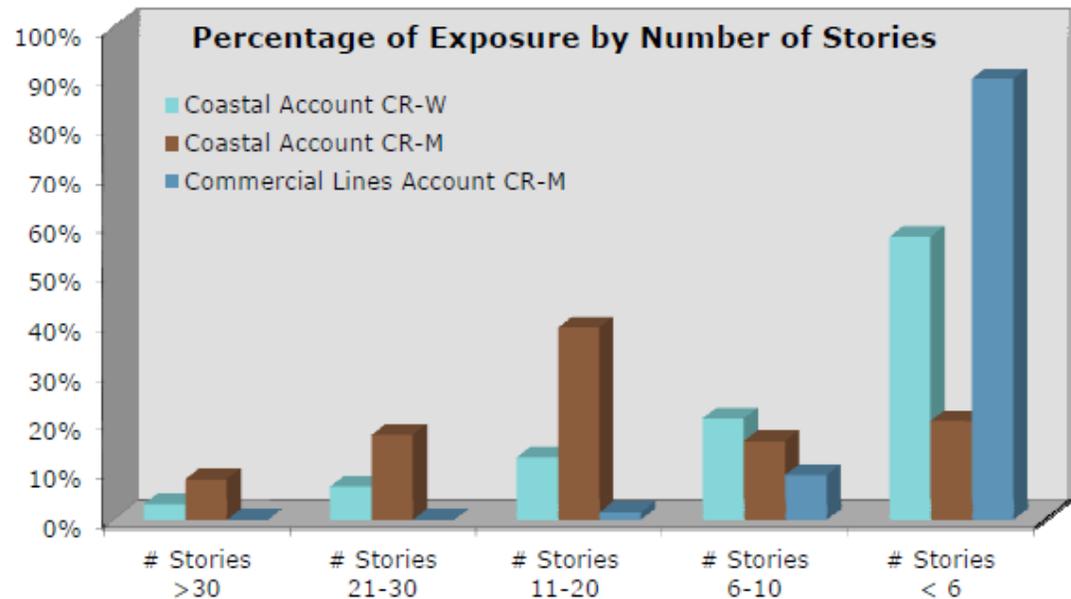
# Commercial-Residential Buildings are Generally Older and Smaller, But Towers Contribute Most to Exposure

(Building Count by Age Range)



89% of all commercial residential buildings were built before 1992.

Only 1% of all commercial residential buildings are taller than 10 stories but account for 20% of total exposure for all commercial residential buildings.



Number of Stories	Coastal Account CR-W	Coastal Account CR-M	Commercial Lines Account CR-M
> 30	3.1%	8.2%	0.0%
21 to 30	6.6%	17.1%	0.0%
11 to 20	12.5%	39.1%	1.4%
6 to 10	20.5%	15.9%	9.0%
< 6	57.3%	19.8%	89.5%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

# Commercial Residential Multi-Peril and Wind-Only Total Insured Value Ranges

Total Insured Value Range at Building Level	Building Count	Total Insured Value (\$'s in millions)	Building Level Premium (\$'s in millions)
\$25,000,000 +	323	\$14,820	\$83
\$20,000,000 to \$24,999,999	99	\$2,194	\$12
\$15,000,000 to \$19,999,999	153	\$2,625	\$14
\$10,000,000 to \$14,999,999	243	\$2,968	\$15
\$5,000,000 to \$9,999,999	2,918	\$20,659	\$55
\$4,999,999 and Less	64,850	\$49,136	\$246
<b>Total</b>	<b>68,586</b>	<b>\$92,402</b>	<b>\$426</b>

**Notes:**

- 1) Excludes special class risks. All commercial residential special class items are in the range below \$5 million with a total insured value of \$886,707,625.
- 2) CLA CRM includes 325 x-wind buildings consisting of: 14 buildings with total insured value of \$99,246,100 in the \$5 to \$9.9 range; 311 buildings with total insured value of \$227,519,900 in the \$4.9 and less range.
- 3) Building level premium is before policy level surcharges and includes FHCF build up premium in addition to building and contents premium.
- 4) Excludes buildings in policies tagged for takeout.
- 5) Data as of 09/30/2013

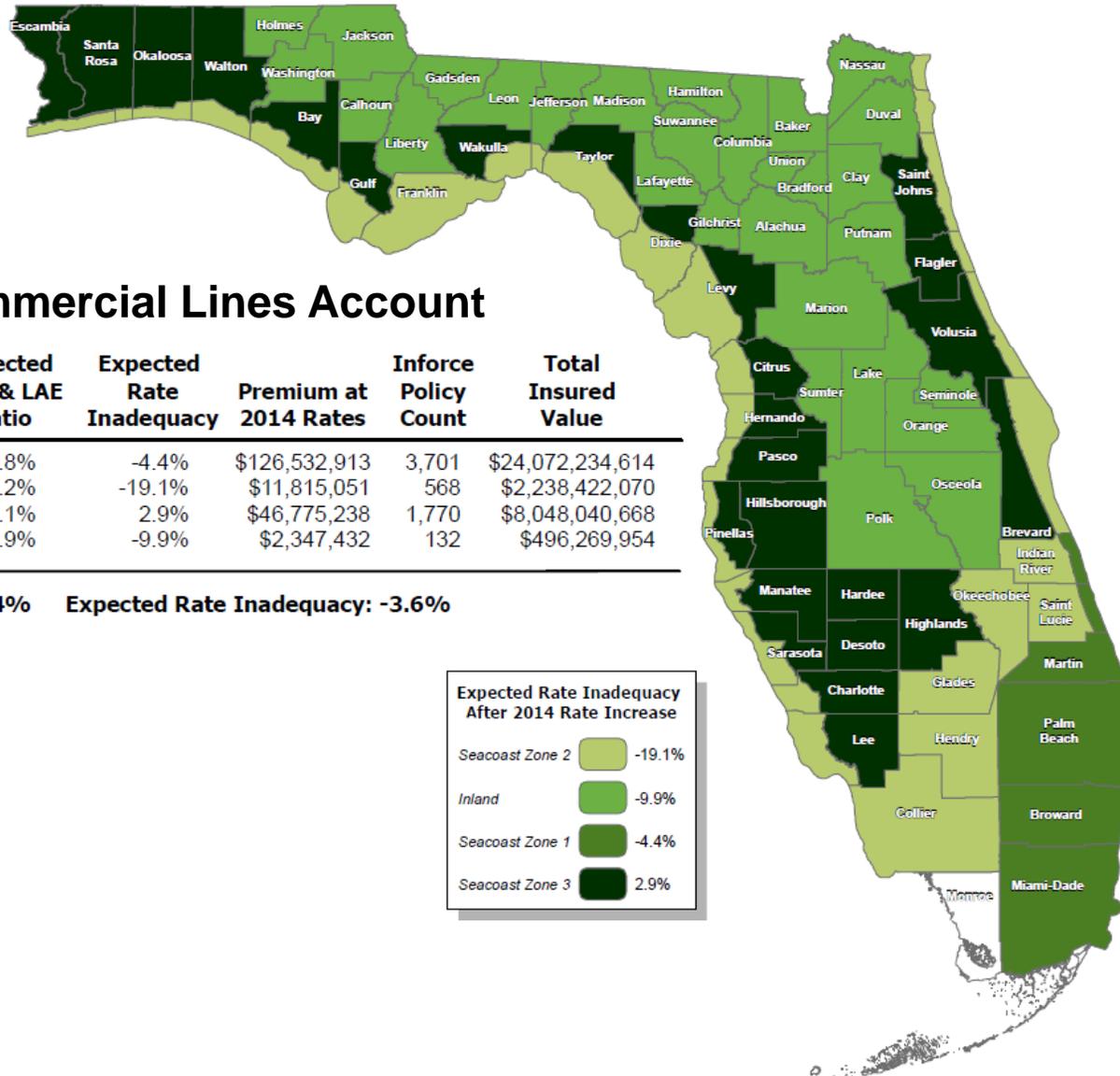
# Commercial Residential Multi-Peril and Wind-Only Exposure Could Be Reduced by a Total Insured Value Cap of \$5M or \$10M

(\$'s in millions)	Total Inforce	\$5 Million Cap		\$10 Million Cap	
	Commercial Residential	Buildings with Total Insured Value >= \$5 M	% Reduction in Commercial Residential	Buildings with Total Insured Value >= \$10 M	% Reduction in Commercial Residential
<b>Building Count</b>	68,586	3,736	5%	818	1%
<b>Total Insured Value</b>	\$92,402	\$43,266	47%	\$22,607	24%
<b>Building Level Premium</b>	\$426	\$180	42%	\$125	29%
<b>1 in 100 Yr PML</b>	\$4,065	\$1,594	39%	\$925	23%

## Notes:

- 1) Building Count, Total Insured Value, and Building Level Premium exclude special class risks. All commercial residential special class items are in the range below \$5 million with total a total insured value of \$886,707,625.
- 2) 1 in 100 Yr PML represents single event distribution, does not include a factor for LAE, and does include special class risks.
- 3) The 1 in 100 Yr PML is computed using AIR CLASIC/2 v15 including demand surge, excluding storm surge, 50K Event Set Weighted 1/3 long-term & 2/3 Warm Sea catalog.
- 4) Data as of 09/30/2013

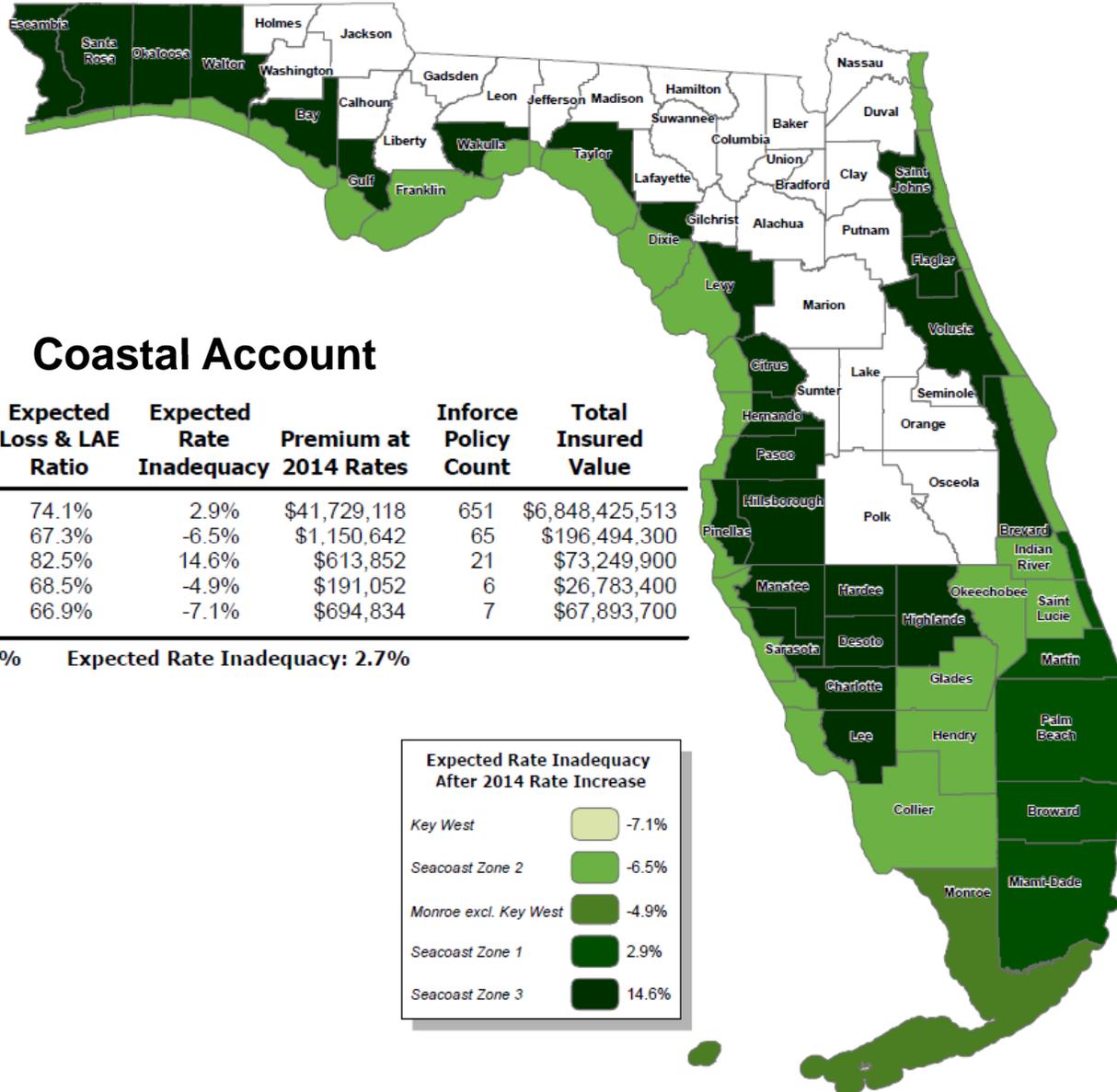
# Statewide (CLA) Commercial Residential Multi-Peril Rates are Generally Near Adequate...



**Notes:**

- 1) Excludes A-Rated Policies
- 2) Data as of 06/30/2013

# ...as are Coastal Account Commercial Residential Multi-Peril Rates



## Coastal Account

Territory	Expected Loss & LAE Ratio	Expected Rate Inadequacy	Premium at 2014 Rates	Inforce Policy Count	Total Insured Value
Seacoast Zone 1	74.1%	2.9%	\$41,729,118	651	\$6,848,425,513
Seacoast Zone 2	67.3%	-6.5%	\$1,150,642	65	\$196,494,300
Seacoast Zone 3	82.5%	14.6%	\$613,852	21	\$73,249,900
Monroe excl. Key West	68.5%	-4.9%	\$191,052	6	\$26,783,400
Key West	66.9%	-7.1%	\$694,834	7	\$67,893,700

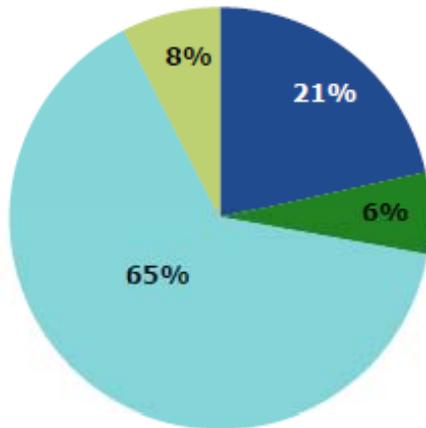
**Total: Loss & LAE: 73.9%      Expected Rate Inadequacy: 2.7%**

### Notes:

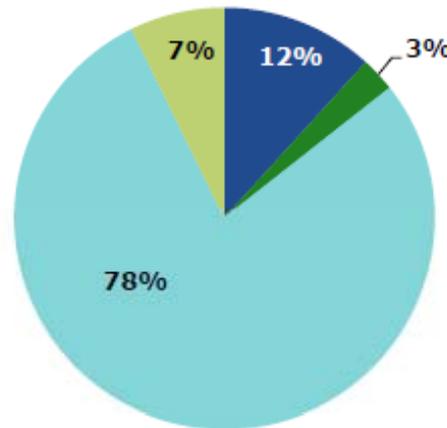
- 1) Excludes A-Rated Policies
- 2) Data as of 06/30/2013

# Commercial Residential Wind-Only is About Half of Citizens Total C-R Exposure...

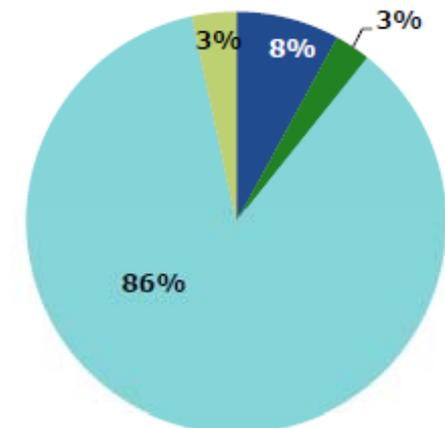
Building Count



Inforce Premium



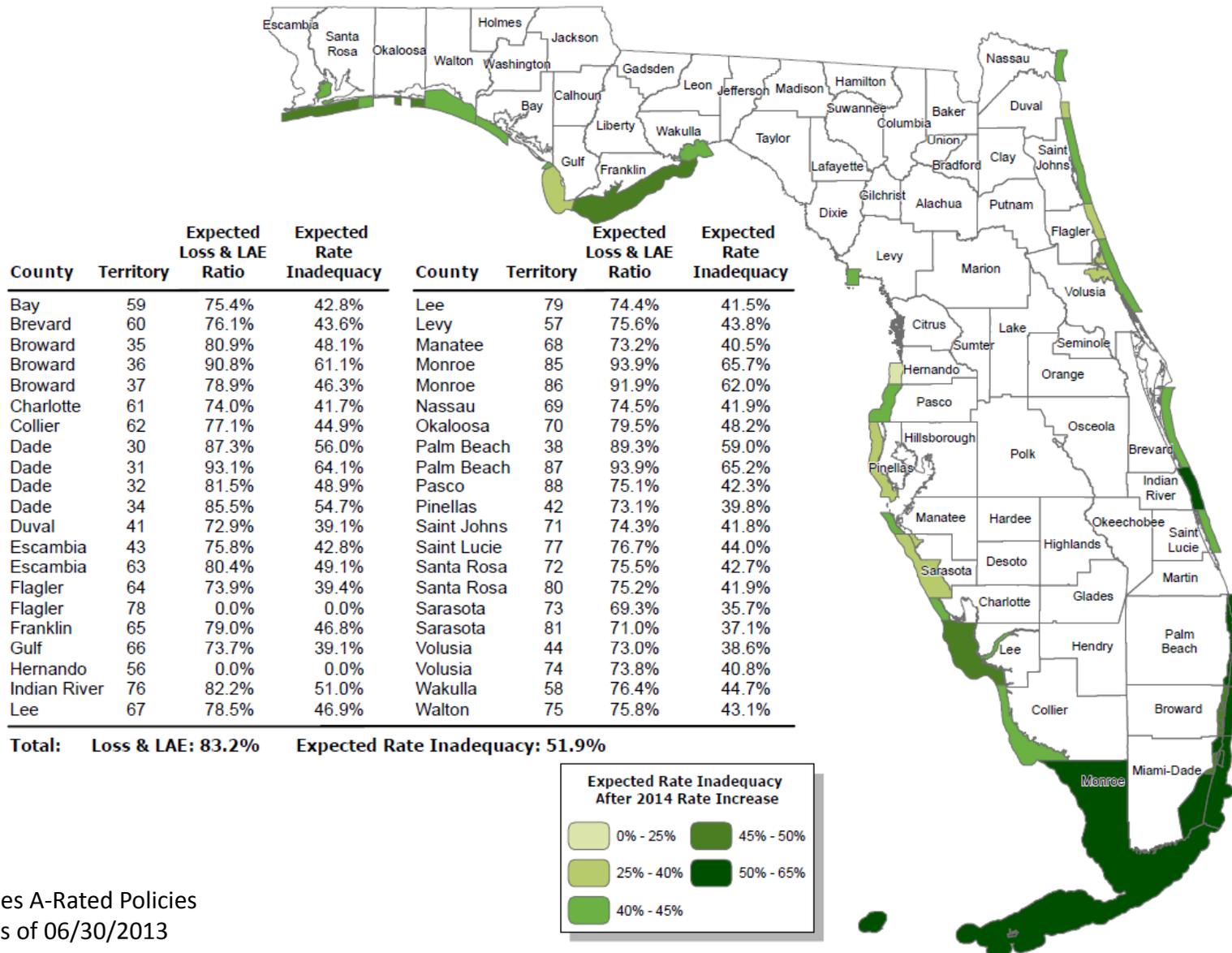
Total Insured Value



■ Apartment Bldg. ■ Homeowners Assn. ■ Condo Assn. ■ Other Comm. Res.

	Apartment Bldg.	Homeowners Assn.	Condo Assn.	Other Comm. Res.	Total
Policy Count	3,750	300	5,320	741	10,111
Building Count	6,301	1,847	18,932	2,214	29,294
Inforce Premium	\$23,469,666	\$5,309,149	\$156,859,097	\$14,572,063	\$200,209,975
Total Insured Value	\$3,531,037,871	\$1,229,858,896	\$37,969,999,599	\$1,513,491,738	\$44,244,388,104

# ...And Commercial Residential Wind-Only Rates are Severely Inadequate All Over Florida



**Notes:**

- 1) Excludes A-Rated Policies
- 2) Data as of 06/30/2013

# Commercial Residential Wind-Only Rate Adequacy Breakdown

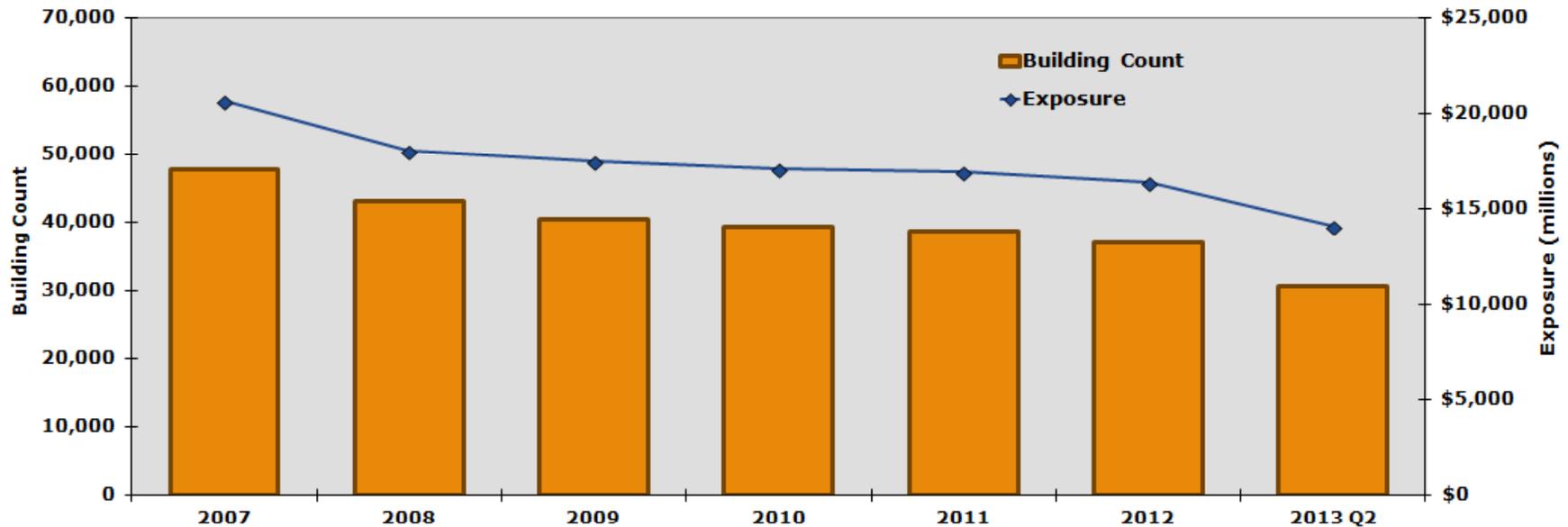
Indicated Total Rate Change Range		Inforce Policy Count	Inforce Premium (at 2014 Rate Level)	Average Inforce Premium (at 2014 Rate Level)	Expected Projected Loss & LAE Ratio	Expected Rate Need Using 2014 Rates	Total Insured Value
Minimum	Maximum						
Below	20%	699	\$721,336	\$1,032	62.3%	17.9%	\$ 129,550,274
20%	30%	3,074	\$4,856,162	\$1,580	67.3%	26.8%	\$ 794,437,350
30%	40%	3,432	\$26,649,362	\$7,765	70.4%	34.5%	\$ 5,111,567,162
40%	50%	3,354	\$46,582,327	\$13,889	77.7%	45.0%	\$ 11,412,261,468
50%	60%	630	\$11,635,300	\$18,469	83.0%	52.9%	\$ 2,744,327,760
60%	70%	2,787	\$60,221,905	\$21,608	93.5%	65.5%	\$ 12,827,736,991
70%	Above	1,490	\$702,230	\$471	177.7%	189.7%	\$ 73,364,888
<b>TOTAL</b>		<b>15,466</b>	<b>\$151,368,621</b>	<b>\$9,787</b>	<b>83.2%</b>	<b>51.9%</b>	<b>\$ 33,093,245,893</b>

**Notes:**

- 1) Excludes A-Rated Policies
- 2) Data as of 06/30/2013

**Commercial Non-Residential:  
A Questionable Market for Citizens**

# Commercial Non-Residential Building Count and Exposure Has Been Stable in Recent Years

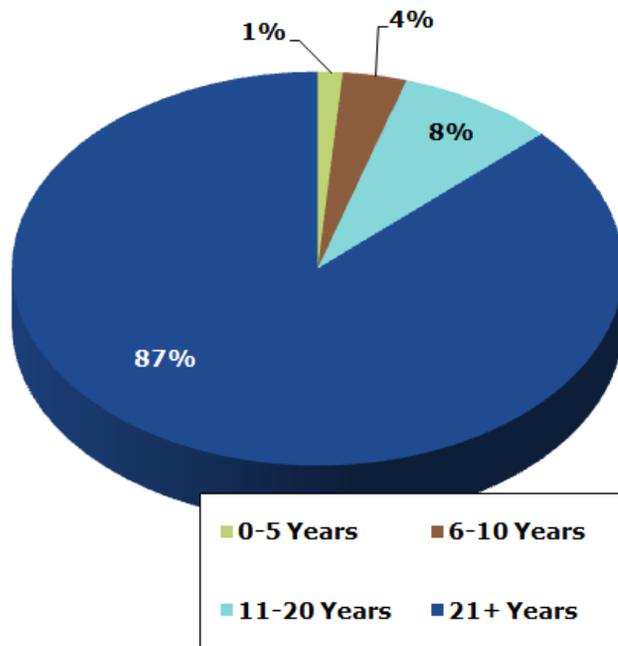


	Coastal Account			Commercial Lines Account			Total		
	Number of Policies	Number of Buildings	Exposure (millions)	Number of Policies	Number of Buildings	Exposure (millions)	Number of Policies	Number of Buildings	Exposure (millions)
2007	35,397	45,919	\$19,665	1,750	1,750	\$1,018	37,147	47,669	\$20,683
2008	32,166	42,227	\$17,675	760	760	\$323	32,926	42,987	\$17,998
2009	29,539	39,149	\$16,552	771	1,194	\$921	30,310	40,343	\$17,473
2010	28,248	37,585	\$15,794	1,130	1,659	\$1,312	29,378	39,244	\$17,105
2011	27,042	36,473	\$15,230	1,413	2,041	\$1,656	28,455	38,514	\$16,885
2012	25,455	34,675	\$14,537	1,544	2,262	\$1,790	26,999	36,937	\$16,327
2013 Q2	19,910	28,193	\$12,327	1,557	2,287	\$1,755	21,467	30,480	\$14,082
<b>% Change from 2012 to 2Q 2013</b>	<b>-21.8%</b>	<b>-18.7%</b>	<b>-15.2%</b>	<b>0.8%</b>	<b>1.1%</b>	<b>-2.0%</b>	<b>-20.5%</b>	<b>-17.5%</b>	<b>-13.7%</b>

# Commercial Non-Residential Buildings Are Generally Older, Wind-Only Policies

Age Range	Building Count
0-5 Years	401
6-10 Years	1,033
11-20 Years	2,556
21+ Years	26,490
<b>Total</b>	<b>30,480</b>

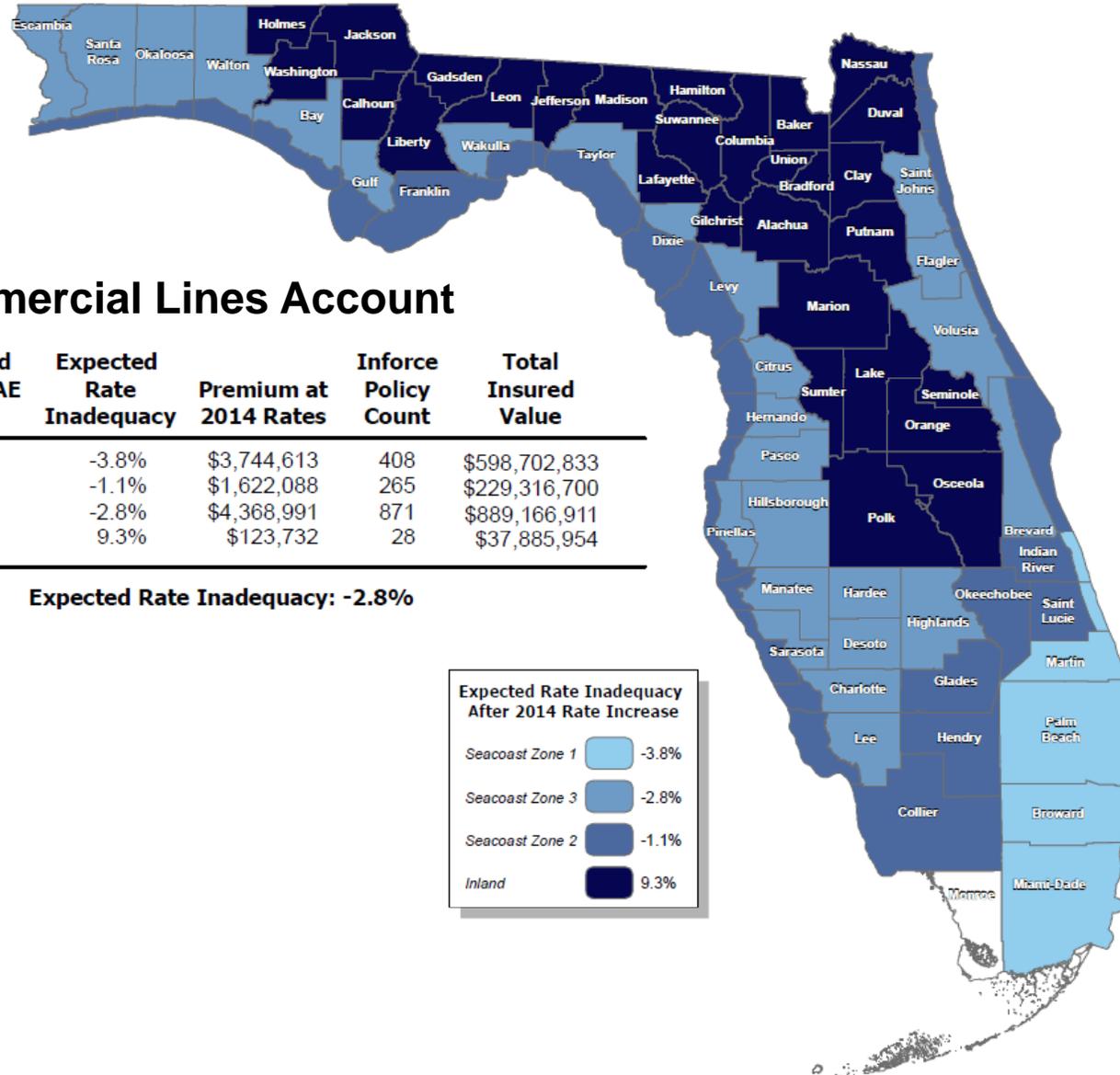
Building Count by Age Range



		Structure Coverage Range		
		\$1,000,000 and Less	\$1,000,001 to \$2,500,000	TOTAL
Commercial Non-Residential MULTI-PERIL	Building Count	1,986	622	2,608
	Exposure	\$908,345,298	\$1,193,058,100	\$ 2,101,403,398
Commercial Non-Residential WIND-ONLY	Building Count	27,869	3	27,872
	Exposure	\$11,928,910,853	\$5,800,000	\$ 11,934,710,853
Commercial Non-Residential TOTAL	Building Count	29,855	625	30,480
	Exposure	\$ 12,837,256,151	\$ 1,198,858,100	\$ 14,036,114,251

Data as of 06/30/2013

# Commercial Non-Residential Multi-Peril Rates Are Generally Close to Adequate, Except Along Coast

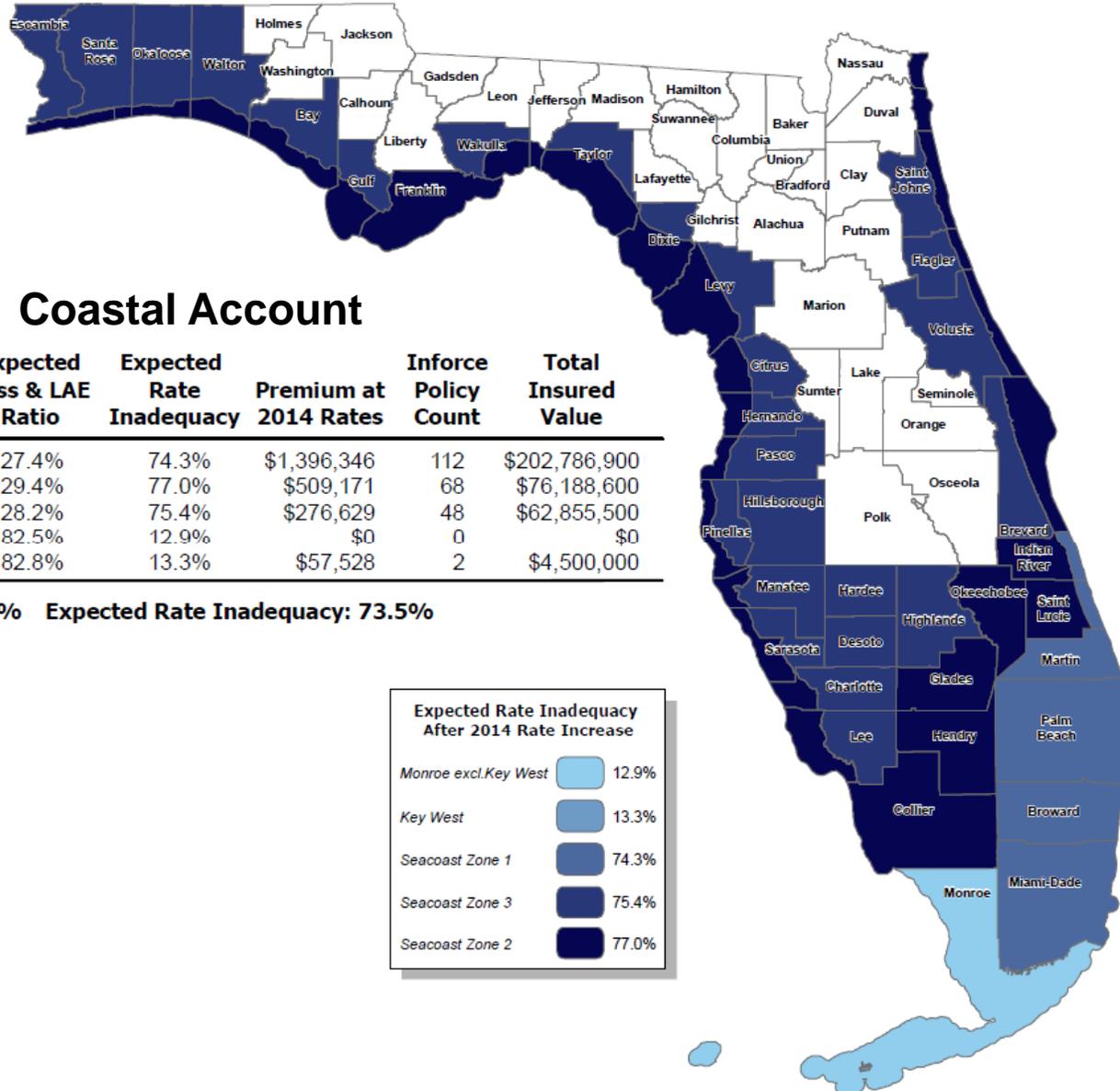


## Commercial Lines Account

Territory	Expected Loss & LAE Ratio	Expected Rate Inadequacy	Premium at 2014 Rates	Inforce Policy Count	Total Insured Value
Seacoast Zone 1	70.3%	-3.8%	\$3,744,613	408	\$598,702,833
Seacoast Zone 2	72.3%	-1.1%	\$1,622,088	265	\$229,316,700
Seacoast Zone 3	71.1%	-2.8%	\$4,368,991	871	\$889,166,911
Inland	79.9%	9.3%	\$123,732	28	\$37,885,954

**Total: Loss & LAE: 71.1%    Expected Rate Inadequacy: -2.8%**

# Commercial Non-Residential Coastal Multi-Peril Rates Should be 70-80% Higher (ex-Monroe)

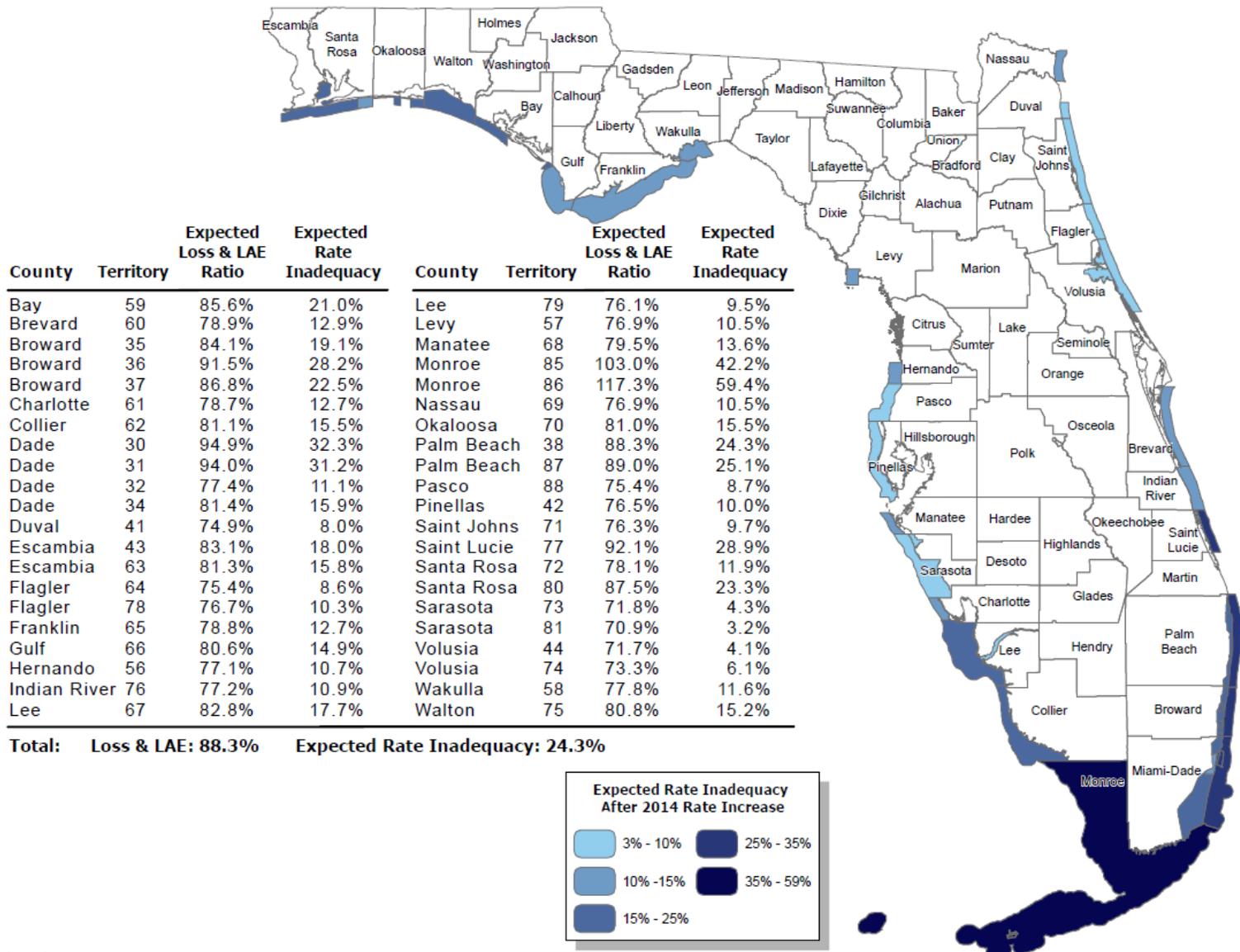


## Coastal Account

Territory	Expected Loss & LAE Ratio	Expected Rate Inadequacy	Premium at 2014 Rates	Inforce Policy Count	Total Insured Value
Seacoast Zone 1	127.4%	74.3%	\$1,396,346	112	\$202,786,900
Seacoast Zone 2	129.4%	77.0%	\$509,171	68	\$76,188,600
Seacoast Zone 3	128.2%	75.4%	\$276,629	48	\$62,855,500
Monroe excl. Key West	82.5%	12.9%	\$0	0	\$0
Key West	82.8%	13.3%	\$57,528	2	\$4,500,000

**Total: Loss & LAE: 126.8% Expected Rate Inadequacy: 73.5%**

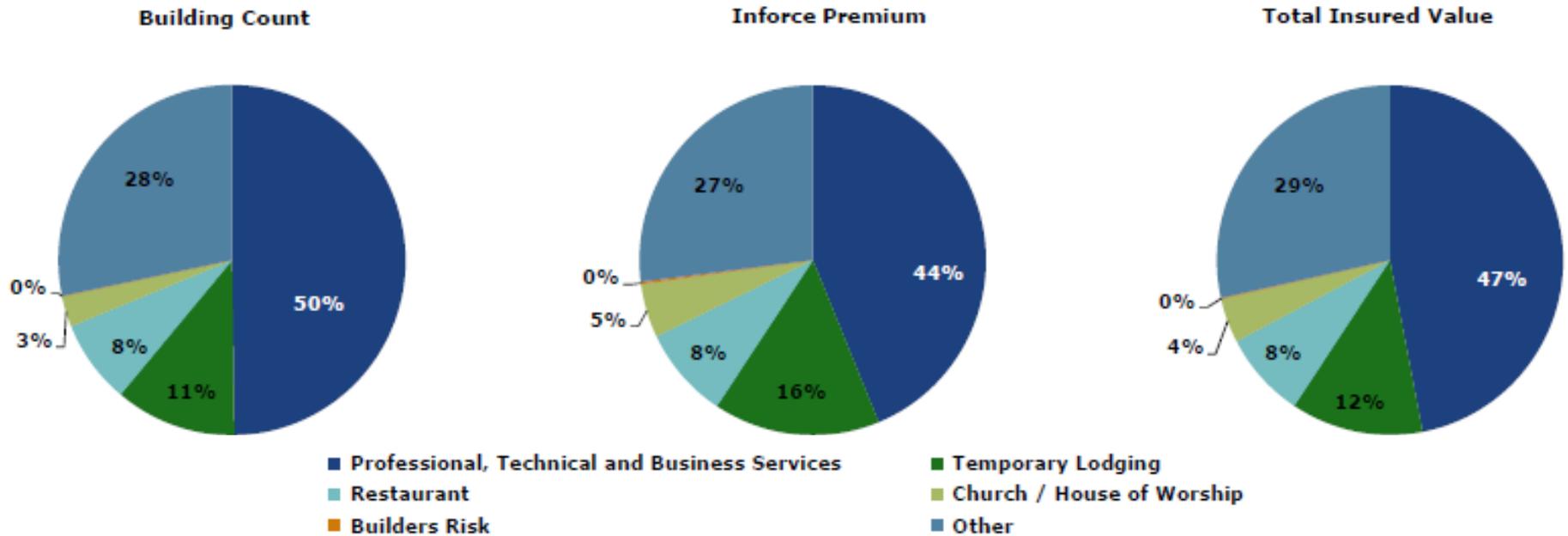
# Commercial Non-Residential Wind-Only Rates Should be 5-30% Higher in Most Areas



# Commercial Non-Residential Wind-Only Rate Adequacy Breakdown

Indicated Total Rate Change Range		Inforce Policy Count	Inforce Premium (at 2014 Rate Level)	Average Inforce Premium (at 2014 Rate Level)	Expected Projected Loss & LAE Ratio	Expected Rate Need Using 2014 Rates	Total Insured Value
Minimum	Maximum						
Below	0%	0	\$0	\$0	0.0%	0.0%	\$ -
0%	10%	2,529	\$6,778,856	\$2,680	72.0%	4.5%	\$ 1,512,484,851
10%	20%	7,963	\$31,434,606	\$3,948	81.1%	15.6%	\$ 4,763,095,338
20%	30%	6,742	\$27,582,561	\$4,091	88.2%	24.2%	\$ 3,768,310,375
30%	40%	1,074	\$6,548,505	\$6,097	94.7%	32.1%	\$ 686,431,935
40%	50%	787	\$6,904,024	\$8,773	103.0%	42.2%	\$ 610,478,457
50%	Above	621	\$6,861,080	\$11,048	117.3%	59.4%	\$ 593,909,897
<b>TOTAL</b>		<b>19,716</b>	<b>\$86,109,630</b>	<b>\$4,368</b>	<b>88.3%</b>	<b>24.3%</b>	<b>\$ 11,934,710,853</b>

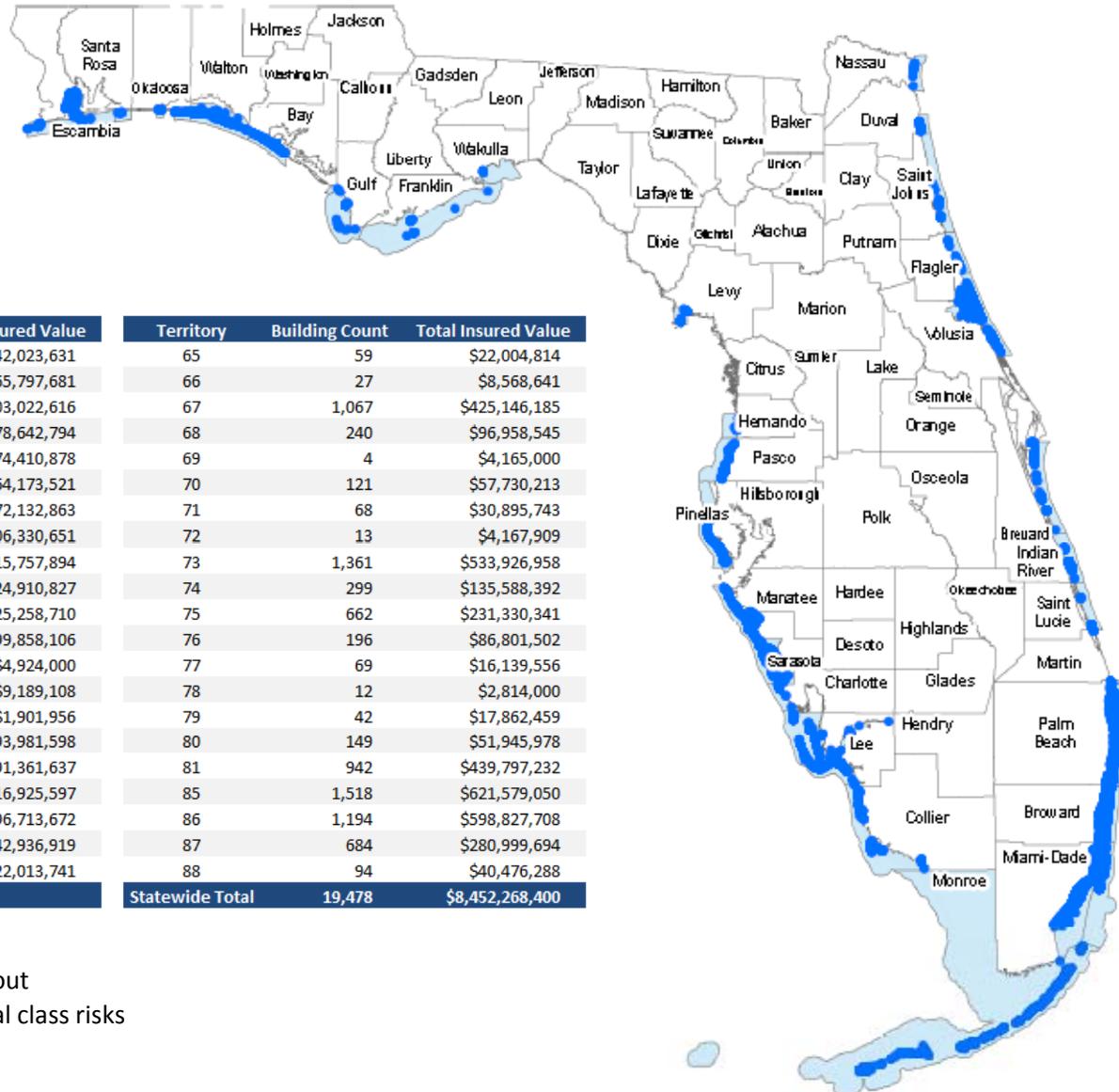
# Commercial Non-Residential Wind-Only Counts, Premium and Insured Value



	Professional, Technical and Business Services	Temporary Lodging	Restaurant	Church / House of Worship	Builders Risk	Other	Total
Policy Count	11,418	1,074	1,890	500	14	4,785	19,681
Building Count	13,873	3,158	2,151	793	14	7,883	27,872
Inforce Premium	\$33,906,906	\$12,041,372	\$6,582,487	\$3,839,240	\$174,281	\$20,889,799	\$77,434,085
Total Insured Value	\$5,629,419,562	\$1,479,176,562	\$956,106,633	\$492,180,700	\$12,835,776	\$3,411,311,280	\$11,981,030,513

# Commercial Non-Residential Wind-Only

## Where are the Buildings Located?



Territory	Building Count	Total Insured Value	Territory	Building Count	Total Insured Value
30	1,014	\$542,023,631	65	59	\$22,004,814
31	431	\$165,797,681	66	27	\$8,568,641
32	1,467	\$703,022,616	67	1,067	\$425,146,185
34	1,977	\$878,642,794	68	240	\$96,958,545
35	2,561	\$1,074,410,878	69	4	\$4,165,000
36	565	\$264,173,521	70	121	\$57,730,213
37	2,474	\$1,072,132,863	71	68	\$30,895,743
38	4,523	\$1,906,330,651	72	13	\$4,167,909
41	43	\$15,757,894	73	1,361	\$533,926,958
42	762	\$324,910,827	74	299	\$135,588,392
43	1,199	\$525,258,710	75	662	\$231,330,341
44	707	\$299,858,106	76	196	\$86,801,502
56	13	\$4,924,000	77	69	\$16,139,556
57	40	\$9,189,108	78	12	\$2,814,000
58	7	\$1,901,956	79	42	\$17,862,459
59	546	\$193,981,598	80	149	\$51,945,978
60	477	\$191,361,637	81	942	\$439,797,232
61	35	\$16,925,597	85	1,518	\$621,579,050
62	460	\$196,713,672	86	1,194	\$598,827,708
63	108	\$42,936,919	87	684	\$280,999,694
64	69	\$22,013,741	88	94	\$40,476,288
<b>Statewide Total</b>			<b>19,478</b>		<b>\$8,452,268,400</b>

### Notes:

- 1) Excludes risks tagged for takeout
- 2) Building Count excludes special class risks
- 3) Data as of 09/30/2013

# **Personal Lines Occupancy and Residency Issues**

# Personal Lines Policies Occupancy Types

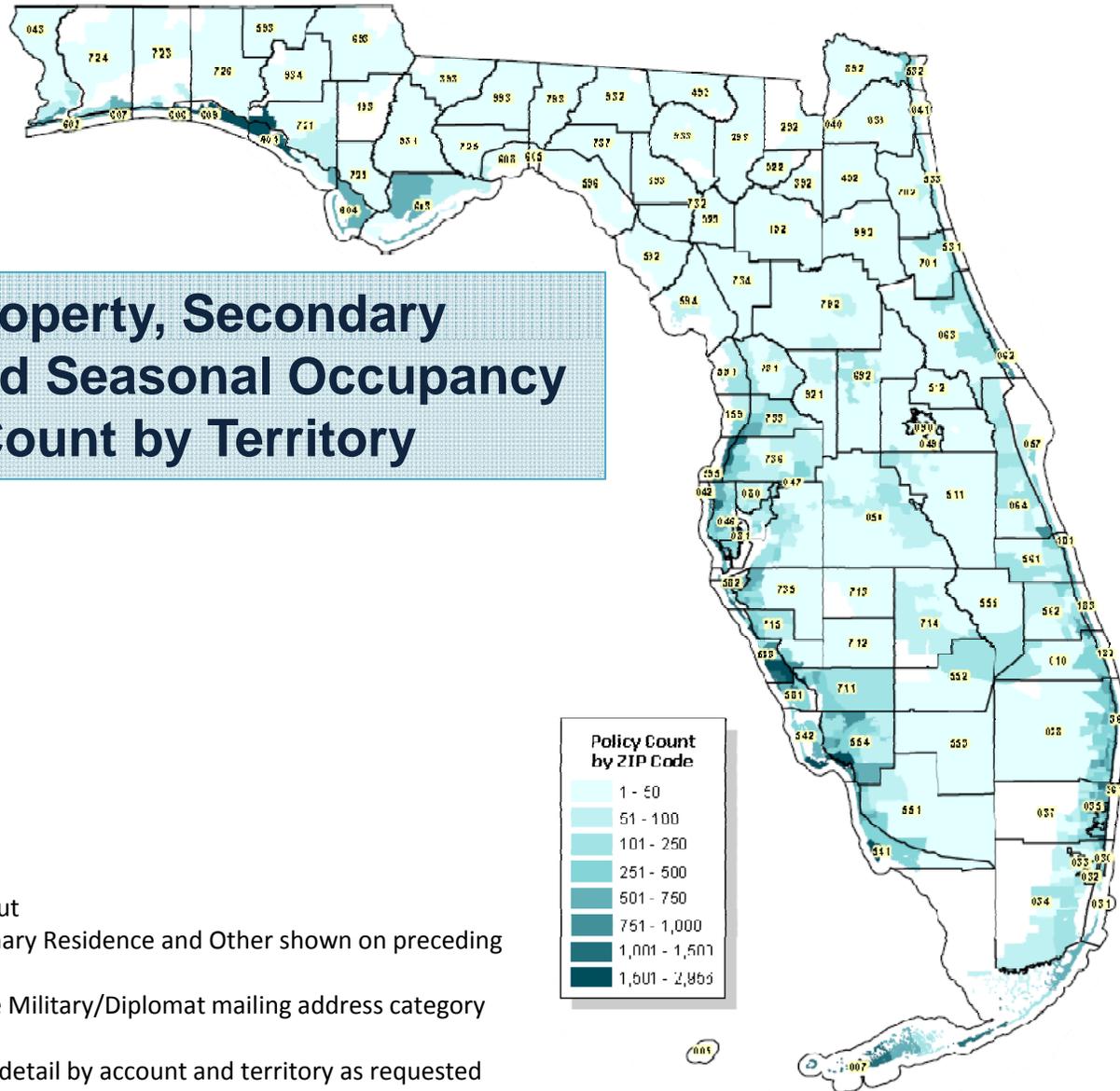
Citizens could adjust Seasonal surcharge or institute surcharges by occupancy type as written

Personal Lines Owner Occupied and Not Owner Occupied as of 8/31/13												
Policy Form	Primary Residence		Rental Property		Secondary Residence		Seasonal		Other		Total	
	Policy Count	Rate Need at 2014 Rates	Policy Count	Rate Need at 2014 Rates	Policy Count	Rate Need at 2014 Rates	Policy Count	Rate Need at 2014 Rates	Policy Count	Rate Need at 2014 Rates	Policy Count	Rate Need at 2014 Rates
Dwelling (DP1, DP3, and DW2)	6,139	6.0%	280,950	9.9%	3,224	7.5%	15,530	12.2%	97	0.1%	305,940	9.9%
Homeowners (HO3, HO8, and HW2)	551,528	11.5%	0	N/A	11,703	8.3%	13,745	32.5%	11	-8.0%	576,987	11.9%
Renters (HO4, HW4, MHO4, and MHW4)	18,738	N/A	0	N/A	116	N/A	124	N/A	0	N/A	18,978	N/A
Condo Owners (HO6 and HW6)	76,716	14.6%	40,478	12.3%	16,589	-0.7%	24,515	24.8%	0	N/A	158,298	14.3%
Mobile Home (MDP1, MHO3, MD1, and MW2)	65,106	N/A	21,114	N/A	6,572	N/A	35,758	N/A	34	N/A	128,584	N/A
<b>Total for all Forms</b>	<b>718,227</b>	<b>11.6%</b>	<b>342,542</b>	<b>10.0%</b>	<b>38,204</b>	<b>5.7%</b>	<b>89,672</b>	<b>26.0%</b>	<b>142</b>	<b>-0.3%</b>	<b>1,188,787</b>	<b>11.6%</b>
<b>% of Total</b>	<b>60.4%</b>		<b>28.8%</b>		<b>3.2%</b>		<b>7.5%</b>		<b>0.0%</b>		<b>100.0%</b>	

## Notes:

- 1) Excludes risks tagged for takeout and DP1 rate need
- 2) "Other" category includes Farms, Ranches, and properties under construction
- 3) Seasonal category includes seasonal 3-6 months, seasonal > 6 months, and seasonal rental

# Personal Lines Policies Occupancy Types Around Florida for Non-Florida Mailing Addresses



## Rental Property, Secondary Residence, and Seasonal Occupancy Policy Count by Territory

### Notes:

- 1) Excludes risks tagged for takeout
- 2) Excludes the categories of Primary Residence and Other shown on preceding exhibit
- 3) Excludes the 435 policies in the Military/Diplomat mailing address category
- 4) Data as of 08/31/2013
- 5) Supplemental exhibit provides detail by account and territory as requested

# Personal Lines Policies Mailing Address

Issues with using policyholder's mailing address to determine if customer is a FL resident

- Mailing address is not indicative of FL residency
- Post office boxes distort results and are difficult to exclude
- Premium can be paid by someone else other than the insured

Mailing Address Categories	8/31/13 Policy Count	Percent of Total	Rate Need at 2014 Rates
Florida Mailing Address	998,601	84.0%	10.8%
<i>Mailing Matches Property Address</i>	728,970	73.0%	10.3%
<i>Mailing Does Not Match Property Address</i>	269,631	27.0%	12.8%
US Mailing Address (not FL)	163,979	13.8%	19.0%
Outside of US (not Military/Diplomat)	25,772	2.2%	13.2%
Military/Diplomat	435	0.0%	8.9%
<b>Total</b>	<b>1,188,787</b>	<b>100.0%</b>	<b>11.6%</b>

# Personal Lines Policies by Insured Value (\$'s in 000's)

Total Insured Value Ranges	PLA PRM			Coastal PRM			Coastal PRW		
	Policy Count	Total Insured Value	Premium (with surcharges)	Policy Count	Total Insured Value	Premium (with surcharges)	Policy Count	Total Insured Value	Premium (with surcharges)
\$100,000 and Less	594	\$53,651,342	\$673,009	94	\$8,461,088	\$124,157	54	\$4,889,386	\$42,891
\$100,001 to \$200,000	87,099	\$14,831,580,436	\$152,024,971	14,963	\$2,564,603,379	\$33,414,889	13,617	\$2,331,341,421	\$17,501,248
\$200,001 to \$300,000	161,268	\$39,718,391,088	\$348,640,404	25,987	\$6,378,007,869	\$72,871,714	37,656	\$9,447,471,595	\$61,727,413
\$300,001 to \$400,000	77,790	\$26,651,150,221	\$200,744,794	12,030	\$4,132,879,304	\$43,100,793	30,928	\$10,754,770,523	\$64,606,670
\$400,001 to \$500,000	26,113	\$11,495,166,450	\$80,357,499	5,013	\$2,212,099,392	\$22,726,531	19,856	\$8,821,622,066	\$51,477,994
\$500,001 to \$600,000	9,126	\$4,954,607,934	\$33,895,151	2,157	\$1,175,805,691	\$12,041,619	11,423	\$6,236,963,341	\$35,538,900
\$600,001 to \$700,000	4,269	\$2,754,985,218	\$18,504,260	1,186	\$769,788,683	\$7,766,685	7,688	\$4,980,637,911	\$27,883,911
\$700,001 to \$800,000	1,755	\$1,303,366,052	\$9,079,951	521	\$386,751,907	\$3,760,292	4,276	\$3,185,302,060	\$17,393,642
\$800,001 to \$900,000	964	\$814,726,531	\$5,470,087	333	\$281,951,220	\$2,562,879	3,285	\$2,787,958,488	\$14,765,019
\$900,001 to \$1,000,000	629	\$596,809,039	\$4,027,090	210	\$200,102,775	\$1,896,927	2,846	\$2,705,904,132	\$13,706,868
\$1,000,001 to \$1,100,000	395	\$410,404,240	\$2,804,485	169	\$176,664,576	\$1,651,658	2,058	\$2,145,030,107	\$10,315,395
\$1,100,001 to \$1,200,000	175	\$201,481,838	\$1,309,302	103	\$118,729,868	\$956,972	1,274	\$1,463,184,546	\$6,376,755
\$1,200,001 to \$1,300,000	121	\$150,800,832	\$919,773	78	\$97,036,251	\$743,836	1,320	\$1,649,696,061	\$6,825,278
\$1,300,001 to \$1,400,000	90	\$120,868,256	\$730,477	67	\$89,876,190	\$688,870	1,287	\$1,730,929,831	\$7,016,591
\$1,400,001 to \$1,500,000	29	\$41,845,008	\$237,973	14	\$20,304,828	\$196,932	154	\$220,381,414	\$906,480
\$1,500,001 +	16	\$25,304,776	\$126,235	5	\$8,222,620	\$59,838	120	\$200,881,608	\$785,143
<b>Total</b>	<b>370,433</b>	<b>\$104,125,139,261</b>	<b>\$859,545,461</b>	<b>62,930</b>	<b>\$18,621,285,641</b>	<b>\$204,564,592</b>	<b>137,842</b>	<b>\$58,666,964,490</b>	<b>\$336,870,198</b>

## Notes:

- 1) Excludes risks tagged for takeout
- 2) The total insured value is the sum of coverages A through D. Policies where the primary structure (coverage A) is valued over \$1 Million are in the process of being non-renewed.
- 3) Data as of 09/30/2013

# Wind-Only vs. Multi-Peril

# Non-Wind Loss Ratios for HO-3 Multi-Peril Policies are Highest in South Florida and Sinkhole Alley

## Loss Ratio Excluding Hurricane and Sinkhole Perils

Territory	County Name	Territory Description	Personal Lines Account		Coastal Account	
			Calendar Year Non-Sinkhole Loss Ratio	Policy Count (inforce as of 09/30/13)	Calendar Year Non-Sinkhole Loss Ratio	Policy Count (inforce as of 09/30/13)
30	<b>Miami-Dade</b>	Miami Beach	23%	82	29%	522
31		Coastal Region	45%	56	19%	441
32		Miami	52%	7,579	31%	1,674
33		Hialeah	<b>84%</b>	<b>10,212</b>	n/a	0
34		Remainder of County excluding Hialeah, Miami, and Miami Beach	66%	76,384	56%	18,725
595	<b>Pasco</b>	Coastal Region	62%	354	18%	5,937
736		Remainder of County	23%	27,530	0%	22
35	<b>Broward</b>	Hollywood & Ft. Lauderdale	50%	5,984	24%	4,403
361		Coastal Region	14%	31	17%	347
37		Remainder of County excluding Hollywood and Ft. Lauderdale	51%	44,994	33%	7,784
542	<b>Lee</b>	Coastal Region	29%	71	7%	591
554		Remainder of County	43%	2,925	9%	303
<b>Statewide Total</b>			<b>41%</b>	<b>370,433</b>	<b>33%</b>	<b>62,930</b>

### Notes:

- 1) Calendar Year Loss Ratio includes bulk reserves
- 2) Calendar Year Non-Sinkhole Loss Ratio excludes hurricane and sinkhole claims; includes wind portion of premium but excludes sinkhole portion of premium
- 3) Losses from 01/01/2011 to 09/30/2013
- 4) Territories with the largest loss ratios are in bold text; other territories within each county are shown for perspective

# Average Premium for Wind-Only Policies

Homeowners (HW-2) average premium = \$2,045

- 60% of HW-2 policy premiums are between \$895 and \$2,895

Condominium Unit Owner (HW-6) average premium = \$703

- 60% of HW-6 policy premiums are between \$236 and \$928

Dwelling (DW-2) average premium = \$1,522

- 60% of DW-2 policy premiums are between \$633 and \$2,175

**Notes:**

- 1) Average premium does not include surcharges
- 2) Data as of 09/30/2013
- 3) Supplemental exhibit contains data by territory

# Citizens Writes New Wind-Only Policies at a Pace Consistent with Real Estate Market Activity

<b>Personal Residential Wind Only</b>		
<b>Calendar Year</b>	<b>New Business Policy Count</b>	<b>% Change</b>
2011	26,730	
2012	28,399	6%
2013	28,028	-1%



# Depopulating Commercial Coastal Risks from Citizens

Presented by Michael Lyons  
President & CEO  
Weston Insurance Company

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# About Weston Insurance Co

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- Weston Insurance Company (“**Weston**”) is an admitted, Florida-domiciled property insurance company, located in Coral Gables, Florida.
- Weston’s initial surplus was \$50 million, raised entirely from private sources.
- Weston focuses specifically on wind-only insurance, insuring losses from windstorms (i.e. hurricanes, tropical storms, tornadoes) and hail.
- Weston began writing insurance in Florida on December 21, 2012.
- Primarily through take-outs from Citizens’ Coastal Account, Weston has rapidly achieved a meaningful market presence in Florida:
- Weston currently has 24,500 policyholders in Florida, in-force premium of approx. \$105 million and insures approx. \$20 billion of exposure:
  - Commercial Residential: 62.0%
  - Personal Residential: 28.6%
  - Commercial Non-Residential: 9.4%
- Weston’s rates match those of Citizens’ Coastal Account wind-only program.



# Citizens' CRM Program

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- Citizens Property Insurance Corporation (“**Citizens**”) writes coverage for commercial residential properties in the Coastal Account through 2 separate programs:
  - The Commercial Residential Wind-Only (“**CRW**”) program
  - The Commercial Residential Multi-Peril (“**CRM**”) program
- CRM program was formed in 2007 by the Florida state legislature, so Citizens could provide basic perils coverage (Group I: e.g. fire, lightning, sprinkler leakage) to commercial residential properties, in addition to windstorm & hail coverage.
- CRM program contains just 900 policies, but has \$12.7 billion exposure to loss.
- Average CRM policy is for a large condo assoc.: \$14.1 million replacement value
- 94% of the CRM program exposure is in Dade, Broward and Palm Beach counties.



# The Private Market

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- Through the CRM program, Citizens offers basic perils (Group I perils) coverage for commercial residential risks **despite** there being a robust and competitive private insurance market for these risks.
- Pricing in the private insurance market for commercial basic perils coverage is at or near an historical low point.
- Weston was able to identify 6 insurance carriers rated “A” or higher by AM Best **AND** with at least \$1.5 billion of surplus, actively quoting and offering basic perils coverage for large, coastal commercial residential properties in Florida.
- The private insurance market writes commercial basic perils (Group I) coverage at practically the same rates as Citizens.
- Weston writes commercial wind-only coverage at the **exact same rates** as Citizens, and has targeted for takeout and/or quoted in the open market up to 20% of the exposure currently in the CRM program.
- Why then are Citizens’ CRM policies not moving into the private insurance market?



# The CRM Program Issue

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- Citizens is effectively offering package discounts through its CRM program: adding coverage for additional perils to a commercial wind-only policy results in lower premiums.
- Weston's underwriters rated policies representing 13.6% of the Coastal Account CRM program's exposure, and found for those policies sampled, a CRM policy costs 16.5% less than the combination of a Weston wind-only policy (or a Citizens' CRW program wind-only policy) + a private market basic perils policy:
- Taking a Citizens CRW wind-only policy and **adding** coverage for sinkhole losses to the Group II perils coverage results in a 16.4% rate **decrease** (in the CRM program).

## **Citizens CRW Program**

Group II coverages: Windstorm & Hail

Group II premium: \$0.618 / \$100

## **Citizens CRM Program**

Group II coverages: Windstorm & Hail + **Sinkhole**

Group II premium: \$0.517 / \$100

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# Recommendation

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- Subsequent to a Technical Bulletin released November 6, 2013, the CRM program now offers 15%+ discounts for policies dropping sinkhole coverage, increasing the rate arbitrage between the CRW and CRM programs for Group II perils coverage:
- Therefore, taking the same sampled policies described previously and **dropping** coverage for sinkhole losses results in a further 15%+ rate **decrease**:

## **Citizens CRW Program**

Group II coverages: Windstorm & Hail

Group II premium: \$0.618 / \$100

## **Citizens CRM Program**

Group II coverages: Windstorm & Hail

Group II premium: \$0.439 / \$100

- Thus, private market insurers would need to offer basic perils (Group I) coverage for **negative** premium in order to be competitive with Citizens' CRM program.
- We believe it would be appropriate for the legislature to eliminate the CRM program.



# THANK YOU



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/14  
Meeting Date

Topic Citizens Property Ins Reform Bill Number \_\_\_\_\_  
(if applicable)

Name Barry Gilway Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title President / CEO - Citizens Property

Address 2312 Killearn Center Blvd - A Phone 850-513-3744  
Street

Tallahassee FL 32309 E-mail barry.gilway@citizens  
City State Zip fla.com

Speaking:  For  Against  Information

Representing Citizens Property Ins. Corp

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Topic Citizens Bill Number \_\_\_\_\_ (if applicable)

Name Michael Lyons Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title President & CEO Weston Insurance Company

Address 2525 Ponce de Leon Blvd Phone 888.800.5002  
*Street*

Coral Gables FL 33134 E-mail Michael.Lyons@Weston-Ins.com  
*City State Zip*

Speaking:  For  Against  Information

Representing Weston Insurance Company

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

# CourtSmart Tag Report

**Room:** EL 110  
**Caption:** Senate Committee on Banking and Insurance

**Case:**

**Type:**  
**Judge:**

**Started:** 2/4/2014 2:03:06 PM  
**Ends:** 2/4/2014 3:59:50 PM **Length:** 01:56:45

2:03:19 PM Sen. Clemens calls meeting to order.  
2:03:55 PM roll call -- quorum present  
2:04:02 PM Introduction of Staff Attorney  
2:04:40 PM sb 0570 --Title Insurance  
2:05:05 PM Explanation of bill by Senator Galvano  
2:06:05 PM Amd. 464906 -- adopted w/o objection  
2:07:59 PM Ashley Mayor, AIF  
2:08:36 PM Motion for CS by Sen. Richter--adopted  
2:09:03 PM Roll call on SB 0570--CS passed  
2:10:07 PM SB 0590 -Check Cashing Services  
2:10:37 PM Explanation of delete all amd. 101998 by Senator Richter  
2:11:37 PM Without objection -- delete all amd. adopted  
2:13:47 PM Sen. Richter closes on bill  
2:14:35 PM Motion for CS -- w/out objection  
2:15:01 PM Roll call on CS/S 590--Passed  
2:15:59 PM SB 0496 - Warranty Associations by Sen. Simpson  
2:16:57 PM Senator Aide presents bill  
2:18:59 PM Roll call on S 496 -- adopted  
2:20:34 PM Discussion of Citizens Property Insurance  
2:21:38 PM Presentation by Michael Lyons, President & CEO --tp'd  
2:22:11 PM Tab 1 - SB 0416 - Sinkhole Coverage  
2:23:20 PM Delete all amd. 300080 by Sen. Detert  
2:29:35 PM Amd. to Amd. 821536 by Sen. Detert--w/o objection --adopted  
2:30:37 PM Delete all amd. as amended -- w/o objection -- adopted  
2:40:50 PM Testimony by John Thompson representing self  
2:49:24 PM Testimony by John Thompson representing self  
2:49:37 PM Testimony by Kristin Demers-Crowell representing Ligori & Assoc (Law Firm)  
2:54:24 PM Testimony by Kristin Demers-Crowell representing Ligori & Assoc (Law Firm)  
2:54:59 PM Testimony by Jay Adams - VP Claims- Citizens Property Ins. Corp.  
3:00:26 PM Comments by Mr. Gilway  
3:05:49 PM Testimony by Greg Armsrong, Florida Realtors  
3:09:49 PM Testimony by Christopher Ligori - FL Justice Association  
3:20:05 PM Comments by Barry Gilway, President/CEO Citizens Property  
3:24:59 PM Testimony by Reggie Garcia, FL Justice Assoc.  
3:30:25 PM Senator Simpson recognized to close  
3:33:45 PM Motion for CS by Sen. Detert --Motion adopted  
3:34:01 PM Roll call on SB 416 -- Passed  
3:34:41 PM Tab 5 - Discussion of Citizens Property Insurance  
3:35:21 PM Presentation by Michael Lyons, President & CEO - Weston Insurance Company - Citizens Property  
Insuance  
3:45:07 PM Recording Paused due to a fire drill in the building  
3:56:30 PM Recording Resumed  
3:58:43 PM Adjourned