HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1495 Insurance
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Nelson
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	15 Y, 2 N, As CS	Callaway	Cooper
2)	General Government Policy Council		Callaway	Hamby
3)	Government Operations Appropriations Committee			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

The bill makes changes to the Florida Hurricane Catastrophe Fund (FHCF or fund) to reduce the exposure of the FHCF, to increase the cash reserves of the fund, and to provide liquidity to the fund. The FHCF's exposure reduction is accomplished by an extension of the fund's TICL coverage until December 31, 2013 but with a reduction each year and with an annual corresponding decrease in the percentage of reimbursement available from the fund under this option. The cost of TICL coverage and the fund mandatory coverage is increased too.

The bill also makes changes to Citizens Property Insurance Corporation (Citizens). The rate freeze currently in place by law for Citizens' rates is allowed to expire but the resulting rate increases are limited to 10 percent on average statewide or 20 percent per individual policy until Citizens' rates are actuarially sound. Ten percent of the revenue collected by Citizens due to the rate increase allowed by the bill must be used to fund mitigation grants for Citizens' policyholders under the My Safe Florida Home Program (MSFH Program or Program). Citizens is also allowed to raise rates to recoup the increased cost of the fund mandatory coverage.

The bill also makes the following major changes to property and casualty insurance:

- Allows insurers to recoup the cost of private reinsurance in specified instances, up to 10 percent.
- Allows insurers to vary rates up to 10 percent with limited oversight by the Office of Insurance Regulation.
- Expands mitigation improvements that can be installed with mitigation grants issued by the MSFH Program.
- Creates a condominium loan mitigation program under the MSFH Program.
- Requires a review and report on mitigation discounts by the Florida Commission on Hurricane Loss Projection Methodology.
- Expands who can offer debt cancellation products.
- Provides additional restrictions on the conduct of public adjusters.
- Discontinues the multi-policy discount for certain insurance policies on January 1, 2010.

Making Citizens' rates actuarially sound and decreasing the FHCF's exposure will reduce the likelihood of deficits and assessments. However, rates for Citizens' policyholders can increase by a maximum of 20 percent per policy per year until Citizens' rates are actuarially sound. Rates for residential property insured by Citizens can also increase because Citizens can recoup the cost increase for the mandatory FHCF coverage. Rates for all residential property insurance policyholders not insured by Citizens can increase up to 10 percent due to the graduated reduction in the TICL coverage option and the cost increase of TICL coverage. These rates can also increase due to the cost increase for mandatory fund coverage. All property insurance rates could increase another 10 percent maximum under the rate flex portion of the bill. Some Citizens' homeowners should have reduced property insurance premiums as a result of increased opportunities for home mitigation provided by the bill.

The bill is effective upon becoming a law.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Hurricane Catastrophe Fund

Background

The Florida Hurricane Catastrophe Fund (FHCF or "fund") is a tax-exempt trust fund created after Hurricane Andrew as a form of reinsurance for residential property insurers.[1] The fund reimburses (reinsures) insurers for a portion of their hurricane losses to residential property. For all residential property insurers, the FHCF must offer three options for reinsurance coverage. One of the three options is mandatory and thus must be purchased by all residential property insurers on their residential property exposure. One optional coverage, the Temporary Emergency Additional Coverage Options (TEACO), offers reinsurance for insurers below the mandatory coverage. The other, Temporary Increase In Coverage Limit Options (TICL) offers reinsurance for insurers above the mandatory coverage. In addition to these three coverage options, the fund must offer specified insurers $10 million of additional reinsurance coverage. Also, the State Board of Administration (SBA) can offer another $4 billion of optional reinsurance for insurers above the TICL option of coverage.

The FHCF is administered by the SBA. Participating insurers choose a percentage level of reimbursement by the FHCF. By statute, insurers can select 45, 75, or 90 percent coverage reimbursement for losses that exceed its deductible/retention for each hurricane.[2] Most insurers choose the 90 percent reimbursement percentage.[3] This means once an insurer triggers FHCF coverage, 90 percent of its losses will be reimbursed by the FHCF, up to the insurer's limit of coverage. Insurers may purchase additional reinsurance in the private market to reimburse them for their hurricane losses in amounts not covered by the FHCF. Reinsurance in the private market can also be purchased for the coinsurance amount (e.g., 10 percent) that is the insurer's responsibility for the coverage provided by the FHCF.

Because the FHCF provides insurers an additional source of reinsurance to what is available in the private market, insurers are generally able to write more residential property insurance in the state than could otherwise be written. Because most reinsurance purchased through the FHCF is significantly less expensive than private reinsurance, the FHCF also acts to lower residential property insurance premiums for consumers.

---

[1] s. 215.555, F.S. (2008).
[2] s. 215.555(2)(e)2., F.S.
[3] http://fhcf.paragonbenfield.com/pdf/08fin_pre.pdf. (last viewed January 15, 2009).

The FHCF generally operates on a "contract year." The contract year runs from June 1st to May 31st of the next calendar year. The start of hurricane season coincides with the start of the fund's contract year.

Mandatory Coverage

For the fund mandatory coverage, the FHCF must charge insurers the "actuarially indicated" premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. Each insurer's "reimbursement premium" for this coverage is different, based on the insured value of the residential property it insures, their location, construction type, deductible amounts, and other factors.

Under current law, the maximum amount the FHCF must pay (the capacity) in any one year for the mandatory coverage is $15 billion, adjusted annually based on the percentage growth in fund exposure, but not to exceed the dollar growth in the cash balance of the fund.[4] The total industry retention for the mandatory coverage is $4.5 billion per hurricane, also adjusted annually based on the FHCF's exposure (regardless of any change in the FHCF's cash balance).[5]

For the current 2008-09 contract year (June 1, 2008 – May 31, 2009), the insurance industry as a whole has an aggregate retention of $6.88 billion for mandatory coverage, meaning the total of all individual insurer retentions/deductibles will hypothetically total to $6.88 billion per event, assuming all participating insurers reached their retention.[6] Although the insurance industry's aggregate deductible/retention totals $6.88 billion, loss recovery from the FHCF is based on an individual insurer meeting its own retention for mandatory coverage prior to losses being reimbursed. The industry aggregate retention for mandatory coverage is expected to grow to $7.23 billion for the 2009-2010 contract year.

As with the FHCF retention/deductible levels, every insurer participating in the FHCF has coverage based on its FHCF reimbursement premium. This is the maximum amount of property insurance claims the fund will reimburse the insurer for under the mandatory coverage. For mandatory coverage, the maximum amount of coverage is different for each insurer because it is linked directly to the amount of premiums the insurer pays to the FHCF. Thus, insurers that pay higher premiums to the FHCF have more mandatory coverage than those that pay lower premiums. For the current contract year (2008-2009), the insurance industry as a whole is covered for losses up to $16.53 billion by the mandatory coverage.[7] The mandatory coverage limit for the fund for the 2009-2010 contract year is expected to grow to $17 billion.

For the 2008-2009 fund contract year 196 insurers purchased the FHCF mandatory coverage. Consequently, the fund collected $996 million in premiums for providing $16.53 billion in mandatory coverage.[8]

Temporary Increase In Coverage Limit Options (TICL)[9]

In 2007, ch. 2007-1, L.O.F., increased the coverage limits of the fund for the 2007, 2008, and 2009 hurricane seasons by adding the Temporary Increase In Coverage Limit (TICL) options that allow an insurer to purchase its share of up to $12 billion in coverage, in $1 billion increments, above the mandatory fund coverage. For the 2008-2009 fund contract year, 132 insurers purchased the optional TICL coverage. Consequently, the fund provided $11.143 billion of the $12 billion maximum coverage in TICL coverage in return for $220 million in premiums. This coverage option expires by operation of law on May 31, 2010.

---

[4] s. 215.555(4)(c)1., F.S.
[5] s. 215.555(2)(e)1., F.S.
[6] The retention is larger than the $4.5 billion prescribed by statute because the statute allows the retention to increase yearly as the FHCF's exposure increases.
[7] The capacity is larger than the $15 billion prescribed by statute because the statute allows the capacity to increase yearly as the FHCF's exposure increases, but limited by the FHCF's cash balance.
[8] http://fhcf.paragonbenfield.com/pdf/08fin_pre.pdf. (last viewed January 15, 2009).
[9] s. 215.555(17), F.S.

Temporary Emergency Additional Coverage Options (TEACO)[10]

The fund generally does not offer coverage below the industry retention (currently $6.88 billion) that an insurer must pay before being reimbursed, but the 2007 legislation required the fund to offer to insurers a total of $3 billion in Temporary Emergency Additional Coverage Options (TEACO) coverage below the retention, also limited to 2007, 2008, and 2009.[11] For the 2008-2009 fund contract year, no insurers purchased the optional TEACO coverage. This is the second consecutive year no insurers have purchased such coverage. This coverage option expires by operation of law on May 31, 2010.

Additional $10 Million Coverage Option for Specified Insurers[12]

The law also permits specified insurers to purchase an additional $10 million in coverage from the fund. The insurer's retention level for this coverage is different for each insurer as it is a percentage of the insurer's surplus. For the 2008-2009 contract year, this coverage reimburses the insurer for up to $10 million in losses from each of two hurricanes. For the 2008-2009 contract year, 22 qualifying insurers purchased the additional $10 million coverage option. Consequently, the fund provided $324 million in coverage for these companies in return for $81 million in premium. This coverage option expires by operation of law on May 31, 2010.

State Board of Administration Coverage Option[13]

The State Board of Administration (SBA) is authorized to offer insurers an additional $4 billion of coverage in excess of the TICL coverage. If this coverage is offered, it must be offered in $1 billion increments and provides reimbursement of up to $4 billion to insurers for losses in excess of the $12 billion TICL coverage. The SBA has never offered this coverage. This coverage option expires by operation of law on May 31, 2010.

Assessments

If the cash balance of the fund is not sufficient to cover losses, the law allows the issuance of revenue bonds, which are funded by emergency assessments on property and casualty policyholders.[14] The FHCF is authorized to levy emergency assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation, accident and health, federal flood and, until May 31, 2010, medical malpractice), including surplus lines policyholders, when reimbursement premiums and other fund resources are insufficient to cover the fund's obligations.[15] Annual assessments are capped at 6 percent of premium with respect to losses from any one year and a maximum of 10 percent of premium to fund hurricane losses from multiple years.[16] Revenue bonds issued by the FHCF may be amortized over a term up to 30 years. Thus, the FHCF may levy assessments for as long as 30 years. As of April 2008, the FHCF assessment base was $36.6 billion.

To date, the fund has reimbursed insurers $9.15 billion for property claims resulting from the 2004 and 2005 hurricane seasons, a third of the total property losses from the two hurricane seasons.[17] The fund had sufficient funds to reimburse insurers $3.95 billion due to the 2004 hurricanes. However, the fund had a deficit due to the 2005 hurricanes where the fund reimbursed insurers $5.20 billion for property claims. This deficit resulted in a 1% assessment for eight years against all property and casualty insurance policyholders subject to the assessment. The assessments were paid by insurers beginning January 1, 2007 and were passed through to policyholders. This is the first time the fund had to bond to cover a deficit since its creation in 1993.

---

[10] s. 215.55(16), F.S.
[11] Insurers who purchase the TEACO coverage option can reinstate the coverage once so the coverage option actually totals $6 billion.
[12] s. 215.555(4)(a)4., F.S.
[13] s. 215.555(17)(h), F.S.
[14] s. 215.555(6)(a)1., F.S.; s. 215.555(6)(b)1., F.S.
[15] s. 215.555(6)(b)1., F.S.; s. 215.555(6)(b)(10), F.S.
[16] s. 215.555(6)(b)2., F.S.
[17] Presentation by the FHCF to the Insurance, Business & Financial Affairs Policy Committee on February 3, 2009.

Financial Status

2008-2009 Contract Year Financial Status[18]

The fund's **potential** liability for the 2008-2009 contract year which runs from June 1, 2008 to May 31, 2009 is the maximum amount the fund would have to reimburse insurers if all coverage options were purchased by insurers in the maximum amount and hurricane losses to insurers were large enough for the fund to have to reimburse the maximum amount for each coverage option. For the 2008-2009 contract year, the fund's maximum potential liability is $39.130 billion. This consists of $.600 billion for the $10 million coverage for specified insurers, $6 billion for the TEACO coverage option, $16.53 billion for the mandatory coverage, $12 billion for the TICL coverage option, and $4 billion for the SBA coverage option. Because the fund has $2.786 billion in cash, the fund would have to bond for $36.344 billion if it had to pay its maximum potential obligations in the 2008-2009 contract year.

Because insurers have already purchased coverage from the fund for the 2008-2009 contract season, the fund's **actual** liability can be calculated based on the coverages purchased by insurers. The maximum amount the fund would actually have to reimburse insurers during the 2008-2009 contract year is $27.997 billion. This consists of $.324 billion for the $10 million layer for specified insurers, $0 billion for the TEACO coverage option because no insurer bought this coverage, $16.530 billion for the mandatory coverage, $11.143 billion for the TICL coverage option, and $0 billion for the SBA coverage option because the SBA did not offer this coverage. Because the fund has $2.786 billion in cash, the fund would have to bond for $25.211 billion if it had to pay its maximum actual obligations in the 2008-2009 contract year.

To fund its actual obligations of approximately $28 billion for the 2008–2009 contract year, the fund has $6.3 billion in liquidity to reimburse insurers for claims. This liquidity consists of $2.8 billion in cash[19] and $3.5 billion in pre-event bonds. Losses above $6.3 billion ($2.8 billion cash plus $3.5 billion pre-event bonds) are intended to be financed through the issuance of revenue bonds. However, instability in the worldwide financial markets has greatly reduced the fund's ability to raise money through bonding. The October 2008 bonding estimates by the fund indicate the ability to borrow a maximum of only $3 billion via bond issues over the next year, assuming market conditions do not change.

Therefore, the fund has a maximum projected shortfall of approximately $6.7 billion for the mandatory coverage layer. For the TICL coverage option, the fund has a shortfall of $7.8 billion for the 2008-2009 contract year. The only source of funding for this coverage option is a $4 billion "put option" agreement with Berkshire Hathaway, Inc. that requires Berkshire Hathaway to purchase $4 billion of FHCF bonds paying 6.5 % interest if a hurricane causes losses exceeding $16 billion (essentially the mandatory layer of fund coverage). The fund paid $224 million for the put option, which expires on May 15, 2009. Because no insurer purchased TEACO coverage for the 2008-2009 contract year, the fund is not obligated to reimburse any monies for this coverage. Thus, the fund's obligation for the TEACO coverage is not calculated in the shortfall calculation. Additionally, the SBA did not offer the SBA coverage option thus the fund's obligations for this layer of coverage are not included in the shortfall calculation. In sum, for both the mandatory coverage and TICL coverage combined, the maximum projected shortfall is at least $14.5 billion. Thus, for the 2008-2009 contract year the fund has obligations that it likely cannot pay of at least $14.5 billion. The shortfall will only be realized, however, if hurricanes hit Florida before May 31, 2009 causing the fund to reimburse insurers in the maximum amount available from the fund.

2009-2010 Contract Year Financial Status[20]

Because insurers have not yet purchased coverage from the fund for the 2009-2010 contract year, only the fund's **potential** liability can be calculated. The fund would have to reimburse insurers $41.46 billion if all coverage options were purchased by insurers in the maximum amount and hurricane losses to insurers were large enough for the fund to have to reimburse its maximum amount. This maximum potential liability consists of $0 billion for the $10 million layer for specified insurers because this option

---

[18] Information about the fund's financial status was obtained from the fund's presentation to the Insurance, Business & Financial Affairs Policy Committee on February 3, 2009.

[19] The FHCF estimates it will collect $1.29 billion in premium for the 2008-2009 contract year.

[20] Information about the fund's financial status was obtained from the fund's presentation to the Insurance, Business & Financial Affairs Policy Committee on February 3, 2009.

expires on May 31, 2009 and thus is not available for the 2009-2010 contract year, $8.46 billion for the TEACO coverage option, $17 billion for the mandatory coverage, $12 billion for the TICL coverage option, and $4 billion for the SBA coverage option. Because the fund estimates it will have $4.07 billion in cash, the fund would have to bond for $37.39 billion if it had to pay its maximum potential obligations in the 2009-2010 contract year.

To fund its obligations for the 2009 - 2010 contract year which runs from June 1, 2009 through May 31, 2010, the fund expects to have $4.1 billion in cash, consisting of $2.8 billion carried over from the prior contract year and $1.3 billion in fund premiums from the 2009-2010 contract year. The fund also has $3.5 billion in pre-event revenue bonds available for use in 2009 to pay claims. The fund estimates it can bond for another $3 billion (post-event bond) if additional funds are needed to pay claims. Thus, the fund estimates it will have $10.6 billion available to pay claims from June 1, 2009 through May 31, 2010.

The fund's maximum reimbursement obligation for the 2009-2010 contract year for the mandatory layer alone is $17 billion. Thus, the fund is facing a potential shortfall of almost $7 billion for the mandatory layer. The fund will also have a shortfall of $12 billion for the TICL coverage. It is unlikely, however, that the fund will have any obligations at the TEACO level because it is anticipated no insurer will purchase this coverage as no insurer has purchased the coverage the past two years. It is also unlikely the fund will have any obligations for the SBA coverage as it is improbable the SBA will offer this coverage because the fund cannot fund the coverage with its current assessment authority. Accordingly, the fund's projected shortfall for the 2009-2010 contract year is the almost $7 billion in the mandatory coverage and $12 billion in the TICL coverage, for a total of approximately $19 billion.

If the financial markets improve in 2009 and 2010, the fund may be able to issue more post-event revenue bonds to alleviate more of the shortfall. The fund can also purchase risk transfer products, such as the put option purchased for the 2008-2009 contract year, to alleviate some of the shortfall. However, the fund's financial advisors do not believe it will be possible for the fund to issue revenue bonds or purchase risk transfer products to completely overcome the projected shortfall.

Effect of Proposed Changes to the Florida Hurricane Catastrophe Fund

The bill changes the contract year of the FHCF from June 1st through May 31st to January 1st through December 31st (a calendar year), starting January 1, 2011. To implement the contract year date change, the bill creates a six month transitional contract year in 2010 which will run from June 1, 2010 through December 31, 2010.

The bill makes numerous changes to the FHCF to reduce the exposure of the FHCF and to make insurers less reliant on the FHCF for their reinsurance needs and more reliant on the private reinsurance market. The TICL option offered by the FHCF is reduced $2 billion a year for six years, starting June 1, 2009. The TICL option will end on December 31, 2013. In conjunction with the TICL option reduction each year, the bill decreases the reimbursement percentage of losses paid by the FHCF to insurers for TICL coverage. This increases the copayments insurers must make to the FHCF for losses incurred at the TICL coverage level. The reimbursement percentage decrease is as follows:

- Contract year from June 1, 2009-May 31, 2010: insurers are reimbursed 75 or 45 percent
- Contract year from June 1, 2010-December 31, 2010: insurers are reimbursed 65 or 45 percent
- Contract year from January 1, 2011-December 31, 2011: insurers are reimbursed 55 or 45 percent
- Contract year from January 1, 2012-December 31, 2012: insurers are reimbursed 45 percent
- Contract year from January 1, 2013-December 31, 2013: insurers are reimbursed 30 percent.

The price of TICL coverage is increased yearly in the bill for five years, starting June 1, 2009. TICL coverage costs two times the statutorily calculated price for the 2009-2010 contract year, three times the price in the 2010 transition contract year, four times the price in 2011, five times the price in 2012, and six times the price in 2013, the last year TICL coverage is available.

Citizens Property Insurance Corporation is prohibited from purchasing TICL coverage.

To further reduce the exposure of the FHCF, the bill eliminates the State Board of Administration coverage option which provides $4 billion of FHCF exposure in excess of the $12 billion TICL coverage. The bill extends until December 31, 2011, the $10 million coverage option and allows it to be purchased by those insurance companies that purchased it in 2008 in addition to the companies authorized to purchase this coverage under current law. Once an insurer qualifies for fund reimbursement for this coverage, the bill requires the FHCF to reimburse the insurer as soon as practicable.

To increase the cash balance of the fund in order to increase liquidity of the fund, the bill increases the cost for the reinsurance from the FHCF for the mandatory coverage. The FHCF must increase the price it charges insurance companies for reinsurance for the mandatory coverage by five percent each year. This five percent cash build up factor is to be charged starting June 1, 2009. Once the factor reaches 25 percent, on January 1, 2013, the factor will remain at 25 percent for all future contract years.

If the fund incurs a future deficit, the bill allows the SBA to purchase post-event revenue bonds issued by the FHCF as long as the investment is consistent with sound investment policy. Previously, the SBA has purchased pre-event bonds from the FHCF. The SBA purchased $150 million of pre-event FHCF bonds in 2006 and $50 million in 2007.

Citizens Property Insurance Corporation

Background

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[21] It is not a private insurance company.[22]

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

Citizens' book of business is divided into three separate accounts[23]:

1. Personal Lines Account (PLA) – Multiperil Policies
   Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies. Fifty-six percent of the policies in the PLA are for property in Miami-Dade, Pinellas, Broward, Palm Beach, and Pasco counties.

2. Commercial Lines Account (CLA) – Multiperil Policies
   Consists of condominium association, apartment building and homeowner's association policies.

3. High-Risk Account (HRA) – Wind-only and Multiperil Policies
   Consists of personal lines wind-only policies, commercial residential wind-only policies and commercial non-residential wind-only policies issued in limited eligible coastal areas. In addition, in 2007, Citizens began offering personal and commercial residential multiperil policies in the limited coastal areas. Sixty-seven percent of the policies in the HRA are for property in Miami-Dade, Broward, Palm Beach, Sarasota, and Monroe counties.

As of February 28, 2009, Citizens provides property insurance to almost 1.1 million Florida homeowners and is the largest property insurer in Florida. Citizens writes 27 percent of the residential property insurance market in Florida. The number of policyholders in the three accounts are: PLA –

---

[21] Admitted market means insurance companies licensed to transact insurance in Florida.
[22] s. 627.351(6)(a)1., F.S.
[23] s. 627.351(6)(b).2., F.S.

623,792, CLA – 9,697, and HRA – 432,815.[24] The number of polices written by Citizens declined in 2008 in all three accounts.[25]

Each Citizens' account is a separate statutory account and therefore has separate calculations of surplus and deficits. By statute, assets of each account may not be commingled or used to fund losses in another account.[26]

As originally created, applicants for coverage with Citizens were limited to those "applicants who are in good faith entitled, but are unable to procure insurance through the voluntary market," meaning if a homeowner could find property insurance coverage in the private market at any cost, the homeowner could not be insured by Citizens.[27] This eligibility rule for coverage with Citizens has been statutorily amended over time in response to availability and affordability of property insurance issues. Under current law, an applicant for coverage with Citizens is eligible even if the applicant has an offer of coverage from an insurer in the private market at its approved rates if the premium for that offer of coverage is more than 15% than the premium Citizens would charge for comparable coverage.[28]

Assessments
In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute.[29] The three Citizens' accounts calculate deficits and resulting assessment needs independently.

Citizens Policyholder Assessments:[30] If Citizens incurs a deficit, Citizens will first levy assessments on its policyholders of up to 15% of premium per account in deficit for a maximum total of 45%. This assessment can be collected for twelve months. As with each of the assessments, this assessment only applies at the time a new policy is written or at renewal of existing Citizens policy. Thus, a policyholder that is insured by Citizens at the time of a hurricane loss causing a deficit in Citizens would be subject to the Citizens Policyholder Assessment only if the policyholder renewed with Citizens.

Regular Assessments:[31] Upon the exhaustion of the Citizens Policyholder Assessment for a particular account, Citizens may levy a regular assessment of up to 6% of premium or 6% of the deficit per account, for a maximum total of 18%. The regular assessment is levied on virtually all property and casualty policies in the state but is not levied on Citizens' policies. The assessment is also not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. The assessment base for a regular assessment is approximately $33 billion, meaning the total premium of policies subject to the regular assessment is about $33 billion.[32] Mechanically, property casualty insurers with policies subject to the regular assessment "front" the assessment to Citizens and recover it from their policyholders at the issuance of a new policy or at renewal of existing policies. Thus, Citizens will collect funds raised by a regular assessment quickly after the assessment is levied, usually within 30 days after levy.

Emergency Assessments:[33] Upon the exhaustion of the Citizens Policyholder Assessment and regular assessment for a particular account, Citizens may levy an emergency assessment of up to 10% of premium or 10% of the deficit per account, for a maximum total of 30%. This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies. However, this assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. The assessment base for an emergency assessment is approximately

[24] https://www.citizensfla.com/ (last viewed on March 20, 2009).
[25] Presentation by Citizens to the Insurance, Banking, & Financial Services Policy Committee on February 3, 2009.
[26] s. 627.351(6)(b)2.b., F.S.
[27] s. 627.351(6)(a)1., F.S. (2002).
[28] s. 627.351(6)(c)5.a., F.S.
[29] s. 627.351(6)(b)3.a.,d., and i ., F.S.
[30] s. 627.351(6)(b)3.i., F.S.
[31] s. 627.351(6)(b)3.a. and b., F.S.
[32] Presentation by Citizens to the Insurance, Banking, & Financial Services Policy Committee on February 3, 2009.
[33] s. 627.352(6)(b)3.d., F.S.

$37 billion, meaning the total premium of policies subject to the assessment is about $37 billion.[34] Mechanically, property and casualty insurers with policies subject to the emergency assessment collect the assessment from policyholders at the issuance of a new policy or at renewal of existing policies and then remit the assessments periodically to Citizens. Thus, Citizens will not collect funds raised by an emergency assessment immediately after the assessment is levied.

Citizens paid losses of over $5.7 billion and handled over 310,000 claims as the result of the 2004 and 2005 hurricane seasons when eight hurricanes hit Florida in a two year period.[35] Citizens levied three assessments as a result of the 2004 and 2005 hurricanes.[36] Prior to the 2004 hurricane season, Citizens had a surplus of about $1.8 billion. Citizens' claims losses related to the 2004 hurricane season amounted to more than $2.4 billion, depleting its entire surplus and causing Citizens to incur a $516 million deficit. Thus, as a result of the 2004 hurricanes Citizens levied a one-time 6.8% regular assessment on property and casualty insurance companies and Citizens' policyholders.

Citizens started the 2005 hurricane season with approximately $187.7 million in surplus. Due to the 2005 hurricanes, Citizens sustained a deficit of almost $1.8 billion. In the 2006 Legislative Session, the Legislature appropriated $715 million to defray the Citizens' deficit associated with the 2005 hurricanes, making the deficit amount passed on to property owners in Florida over $887 million. As a result of the 2005 hurricanes, Citizens levied a one-time 2.04% regular assessment on insurance companies and Citizens' policyholders and an emergency assessment 1.4% for 10 years starting July 1, 2007.

Rates

The rates charged by Citizens for coverage have been frozen by law since January 2007.[37] The rates Citizens is currently charging for most types of coverage are based on the rates in effect in 2005 and are at least as high as the highest rate charged in 2005 by the Top 20 largest writers of residential property insurance in Florida, the rate standard in effect prior to January 2007.

Current law requires Citizens to make a rate filing for each line of insurance that it writes by July 15, 2009, for implementation no earlier than January 1, 2010.[38] The rate filing must reflect "actuarially sound" rates for Citizens. Upon receipt of Citizens' rate recommendations the Office of Insurance Regulation will set Citizens' rates within 45 days of the rate filing.[39]

According to Citizens' estimates, in order to achieve actuarially sound rates for personal residential property insured by the corporation, personal residential multi-peril policies will have an overall average statewide increase in excess of 40 percent, meaning individual policyholders will experience increases higher or lower than the statewide average estimate. These policies are written in the PLA and HRA accounts. Personal residential wind-only policies are estimated to have an overall average statewide increase in excess of 55 percent, meaning individual policyholders will experience increases higher or lower than the statewide average estimate.[40] These policies are written in the HRA account only.

According to Citizens' estimates, in order to achieve actuarially sound rates for commercial residential properties insured by the corporation, commercial residential multi-peril policies will have an overall average statewide increase in excess of 10 percent, meaning individual policyholders will experience

---

[34] Presentation by Citizens to the Insurance, Banking, & Financial Services Policy Committee on February 3, 2009.
[35] Presentation by Citizens to the Insurance, Banking, & Financial Services Policy Committee on February 3, 2009.
[36] These assessments were levied in accordance with prior law prescribing the mechanism and amount of Citizens' assessments.
[37] s. 627.351(5)(m)4., F.S.
[38] s. 627.351(6)(m)5., F.S.
[39] The Office of Insurance Regulation does not set rates of insurers in the private market. Rather, an insurer files its rates and the Office reviews them and approves or disapproves the submitted rates.
[40] Information received from Citizens on March 17, 2009 on file with the Insurance, Business & Financial Affairs Policy Committee. The rate information are based only on data through 2007, are preliminary in nature, and are anticipated to change by the time the rate filing is made in July 2009. The rate indication was calculated using the RMS Model 6.0b because the results from the public hurricane model were not final even though the law requires Citizens to use the public model results as the minimum benchmark for determining the windstorm potion of Citizens' rates. In addition, the rate indication does not include non-catastrophe loss data and final loss development from 2008. This data will be included in the rate indication filed with the OIR in July 2009. The rate indication does not include the actual cost of private reinsurance that Citizens may purchase in 2009.

increases higher or lower than the statewide average estimate. Commercial residential wind-only policies are estimated to have an overall average statewide increase in excess of 60 percent.[41]

According to Citizens' estimates, in order to achieve actuarially sound rates for commercial nonresidential properties insured by the corporation, these policies will have an overall average statewide increase in excess of 140 percent, meaning individual policyholders will experience increases higher or lower than the statewide average estimate.[42]

Financial Status

As of February 28, 2009, Citizens has almost 1.1 million policies for Florida property. Their exposure for these policies is almost $415 billion. Citizens collected a little over $2.2 billion in premium for these policies and exposure. The Citizens' account with the most exposure is the HRA with almost twice the exposure as the PLA, however, the account with the highest policy count is the PLA.

2009 Hurricane Season[43]

Citizens estimates it will have $2.63 billion in surplus in the PLA/CLA to pay claims that may occur during the 2009 hurricane season. This surplus is comprised of $2.27 billion in surplus carried over from 2008 and $353 million in projected net income for 2009. Citizens does not currently have any pre-event bonding in place to meet their needs for 2009 in the PLA/CLA. The maximum FHCF recoveries would total $3.48 billion. Citizens does not project the purchase of private reinsurance for the PLA/CLA for the 2009 hurricane season. Thus, for the 2009 hurricane season Citizens anticipates having a maximum of $6.103 billion to pay claims in the PLA/CLA before assessments would have to be levied. This translates into a one in 65-year probable maximum loss. For losses from $6.103 billion to $7.003 billion (1 in 65 year PML and 1 in 81 year PML), Citizens would levy a Citizens policyholder assessment of 30 percent against its policyholders, resulting in a cash influx of $.900 billion. In order for Citizens to have resources to pay losses that would result from a one in 100-year hurricane, regular assessments against most property and casualty policyholders, excluding Citizens' policyholders, would have to be levied for losses from $7.003 billion to $8.016 billion, the one in 81-year to 100-year probable maximum loss level.[44] This would bring in $1.013 billion to Citizens.

In the HRA, Citizens estimates it will have $1.69 billion in surplus to pay claims that may occur during the 2009 hurricane season, $1.33 billion in surplus carried over from 2008 and $364 million in projected net income for 2009. Citizens anticipates it will purchase private reinsurance for part of the HRA exposure so reinsurance recoveries in 2009 would include recoveries from private reinsurance and the Florida Hurricane Catastrophe Fund. The maximum FHCF recoveries in 2009 would be $6.68 billion and the maximum private reinsurance recovery would be $547 million. Thus, for the 2009 hurricane season Citizens has a maximum of $8.92 billion to pay claims in the HRA. The HRA's one in 100-year probable maximum loss is $14.867 billion. Thus, the HRA has funding to pay losses from a one in 48-year hurricane before assessments would have to be levied. For losses between $8.921 billion and $9.371 billion (1 in 48 year PML and 1 in 51 year PML), Citizens' policyholders would be surcharged 15 percent. This surcharge would result in $ 450 million. For losses between $9.371 billion and $11.391 billion (1 in 51 year PML and 1 in 67 year PML), regular assessments of 6 percent against most property and casualty policyholders would be levied, resulting in a cash influx of $2.02 billion for Citizens. For losses between $11.391 billion and $14.867 billion (1 in 67 year PML and 1 in 100 year PML), emergency assessments against most property and casualty policyholders, including Citizens' policyholders, would be levied. This would result in a $3.476 billion cash influx for Citizens and would require a .75% annual emergency assessment for 30 years.

---

[41] Information received from Citizens on April 2, 2009. The caveats and qualifications on the data are the same as for the data relating to personal lines residential policies set forth in note 40.

[42] Information received from Citizens on April 2, 2009. The caveats and qualifications on the data are the same as for the data relating to personal lines residential policies set forth in note 40.

[43] Information on Citizens' financial status for the 2009 hurricane season is obtained from the presentation by Citizens to the Insurance, Business, & Financial Affairs Policy Committee on February 9, 2009 and from meeting materials for the Citizens' Board of Governors meeting on January 29, 2009.

[44] The percentage of regular assessments that would have to be levied is unknown, but would be less than the 12 percent maximum allowed regular assessment.

Effect of Proposed Changes to Citizens Property Insurance Corporation

The bill requires Citizens to implement the actuarially sound rates that are effective as of January 1, 2010 in a graduated manner. Citizens cannot implement annual rate increases over 10 percent statewide average or 20 percent per single policy. Rate decreases in greater percentages, however, can be implemented. Citizens is confined to the 10 percent or 20 percent rate increases until those rate increases make Citizens' rates actuarially sound. At that time, Citizens must implement actuarially sound rates in accordance with current law.

The bill makes numerous changes to the operation of Citizens. The bill allows Citizens to recoup the cost of paying the FHCF cash build up factor in its rates. It increases the Citizens Policyholder Assessment from 15 percent per account to 25 percent per account. The bill staggers the terms for the Citizens' Board of Governors starting July 1, 2009 so that the entire Board does not have to be reappointed at the same time. The current law requiring Citizens to reduce the high risk account area because the Citizens' probable maximum loss has not been reduced sufficiently since 2002 is repealed. Finally, the bill provides a two year extension on the effective date of current law requiring Citizens' homeowners with homes insured for $500,000 or more and located in the wind borne debris region to disclose the home's windstorm mitigation rating upon sale. This provision will not take effect until January 1, 2012, rather than January 1, 2010.

The My Safe Florida Home Program

In 2006, the Legislature created the Florida Comprehensive Hurricane Damage Mitigation Program and appropriated $250 million to provide financial incentives to encourage residential property owners in Florida to retrofit their properties, making them less vulnerable to hurricane damage and helping decrease the cost of residential property and casualty insurance.[45] The program is now called "My Safe Florida Home (MSFH program or Program) [46] and is administered by the Department of Financial Services (DFS). The intent of the program is to:

- Provide free home inspections for a least 400,000 site-built, single-family, residential properties; and
- Provide grants to at least 35,000 applicants before June 30, 2009.[47]

The DFS has established a three-prong approach to delivering mitigation to homeowners under the My Safe Florida Home Program: direct service through DFS, partnership with non-profit organizations, and partnership with local governments.

Inspections

The DFS, through the MSFH program, provides free home-retrofit inspections of site-built, single family, residential properties which are offered throughout the state. These inspections determine what mitigation measures are needed, what insurance premium discounts may be available and what improvements to existing properties are needed to reduce the property's vulnerability to hurricane damage. The DFS must contract with wind certification entities to provide the hurricane mitigation inspections.

After a home is inspected, inspectors generate a report that summarizes the results and identifies recommended improvements a homeowner may take to mitigate hurricane damage. The report also provides a range of cost estimates regarding recommended mitigation improvements; insurer-specific information regarding premium discounts correlated to the current mitigation features and recommended improvements; and a hurricane-resistance rating scale specifying the home's current and projected wind resistance.[48]

[45]Chapter 2006-12, L.O.F. (CS/CS/SB 1980; s. 215.5586, F.S.) The unused funds appropriated to the program revert back to the state on June 30, 2009.
[46] The Program began operation on August 15, 2006.
[47] These goals were established in legislation enacted in 2007. (Chapter 2007-126, L.O.F.)
[48] Chapter 2007-1, L.O.F., directed the Financial Services Commission to adopt a uniform home grading scale to grade the ability of a home to withstand the wind load from a sustained severe tropical storm or hurricane. The FSC adopted the home grading scale and worked in collaboration

As of February 3, 2009, the MSFH program has processed 425,193 inspection applications and completed 391,103 free home inspections.[49] Over the life of the program, 400,000 inspections will be completed at a cost of $61.8 million.

Mitigation Grants

The DFS, through the MSFH Program, also provides mitigation grants to homeowners. Financial mitigation grants are used to encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage. To be eligible for a matching grant of up to $5,000 for persons who have obtained a completed inspection after May 1, 2007, a residential property must:

- Have a homestead exemption under chapter 196, F.S.;
- Be a dwelling with an insured value of $300,000 or less; homeowners who are low-income persons, as defined in s. 420.0004(10), F.S., are exempt from this requirement;
- Have undergone a hurricane mitigation inspection;
- Be located in the wind-borne debris region as defined in s. 1609.2, International Building Code (2006);[50] and
- Be a home for which the building permit application for initial construction was made before March 1, 2002.

When recommended by a hurricane mitigation inspection, grants may only be used for opening protections; exterior doors, including garage doors and brace gable ends. The DFS may require that improvements be made to all openings, including exterior doors and garage doors, as a condition of approving a grant application if DFS determines that improvements to less than all openings would not improve the structure's ability to withstand hurricane damage. Grants may also be used on previously inspected existing structures or a rebuilt home, however, the homeowner must be a low-income homeowner, must have a homestead exemption for that home prior to the hurricane, and must intend to rebuild the home as that homeowner's homestead. Further, low-income homeowners, as defined in s. 420.0004(10), F.S., are eligible for a grant of up to $5,000 and are not required to provide a matching amount to receive the grant.

As of February 3, 2009, the MSFH program has received 42,164 grant applications and awarded 31,229 grants for hurricane mitigation. Over the life of the program, MSFH program anticipates it will award a total of 36,100 grants. The total amount of grants awarded is estimated to be $147 million. No further grant money is available as all funding for the MSFH Program is encumbered.

Effect of Proposed Changes to the My Safe Florida Home Program

Starting April 1, 2010, the bill requires Citizens to quarterly transfer 10 percent of the funds it receives from the graduated rate increases described above to the My Safe Florida Home Program for use as mitigation grants only to Citizens' policyholders. Mechanically, Citizens will transfer the required funds each quarter to the General Revenue Fund which will transfer the funds to the Department of Financial Services for use by the MSFH Program. Citizens will stop transferring funds for use by the MSFH Program when the rates it charges are actuarially sound.

The bill expands the mitigation improvements available to be installed with mitigation grants provided by the My Safe Florida Home Program. Under current law, mitigation grants can only be used for opening protections; exterior doors, including garage doors; and bracing gable ends. In addition to these improvements, the bill allows mitigation grants to be used to reinforce roof-to-wall connections, for improving the strength of roof-deck attachments; for upgrading the roof covering from code to code plus; and for installing secondary water barriers for roofs. The expansion of the mitigation improvements eligible for grant monies should maximize federal funding opportunities for the Program.

---

with the Office of Insurance Regulation, Department of Financial Services and Department of Community Affairs. It was effective on November 1, 2007. (Rule 69O-167.015, Fla. Administrative Code).

[49] Presentation by the Florida Department of Financial Services to the Government Operations Appropriations Committee on February 3, 2009.

[50] The "wind-borne debris" region is where the Florida Building Code requires new homes to have opening protections (shutters, etc.) and is where sustained winds of 120 mph or greater are likely to occur.

The bill makes some operational changes to the My Safe Florida Home Program. Specifically, the bill repeals the no interest loan program provided under current law because DFS could not find a vendor to implement the loan program. Program contracts valued at $1 million or more, rather than $500,000 or more, are required to be reviewed and approved by the Legislative Budget Commission.

The bill creates a new loan program available to condominium associations wanting to mitigate their condominium units. Condominium associations must be insured by Citizens and located in the wind borne debris region in order to be eligible to participate in the condominium mitigation loan program. Under this program, DFS would contract with banks or credit unions, who then loan funds to condominium associations for approved mitigation work. The DFS would pay the bank or credit union a subsidy equal to an agreed-upon rate of interest calculated on a per-unit loan amount of up to $5,000 multiplied by three (years). Thus, the condominium association would pay no interest for three years and would hopefully have a low rate of interest on the remainder of the loan years.

Florida's Insurance Rating Law

Property Insurance Rate Filings

Section 627.062, F.S., specifies the rate filing process for property and casualty insurers and provides the rating standards for these insurers. Prior to 2007, property and casualty insurers filing rates for approval with the OIR had the option of utilizing two procedures: "file and use" or "use and file." Under file and use, insurers are required to file rates 90 days *before* the proposed effective date while under the use and file provision, insurers can file their rates 30 days *after* the rate filing is implemented. Under the file and use option, the OIR must finalize its review by issuing a notice of intent to approve or disapprove within 90 days after receipt of the filing; otherwise the filing is deemed approved. Under the use and file option, an insurer may implement the filing prior to approval, but may be ordered by the OIR to refund to the policyholder that portion of the rate found by the OIR to be excessive.

During the 2007 Special Session A, the Legislature required property and casualty insurers, through December 31, 2008, to utilize only the file and use procedure to implement a rate change if the rate was *greater* than the rate most recently approved by the OIR.[51] If the rate change was *lower* than the rate most recently approved, insurers were allowed to continue to elect the use and file procedure. During the 2007 Regular Session, legislation was enacted which limited the applicability of the file and use requirement to property insurance.[52] In 2008, the Legislature extended the prohibition on the use of the "use and file" option for property rate filings for another year, until December 31, 2009.[53] This bill extends the "use and file" prohibition an additional year, until December 31, 2010.

Reinsurance Recoupment in Rates

Reinsurance is the transfer of risk initially underwritten by one insurer to another insurer. Direct writers of insurance purchase reinsurance to spread their possible exposure from losses to the reinsurance market. Reinsurance bought on property insurance safeguards the solvency of direct writers by ensuring they can withstand wind losses, thus enabling them to provide coverage for relatively high risk policies and to write more policies than they would otherwise be able. The OIR requires insurers to maintain sufficient reserves and reinsurance to withstand wind losses and ensure solvency. The cost of reinsurance is factored into the rates for property insurance, thus increases in reinsurance costs translate into increased premium costs for policyholders.

The FHCF provides property insurers with reinsurance for a portion of their losses. However, in order to obtain reimbursement from the FHCF for property losses, an insurer must meet a statutorily set deductible and must absorb a portion of the losses reimbursed by the FHCF (the FHCF copayment). In addition, an insurer has a statutorily set limit on the amount of reimbursement the FHCF will pay. Thus, to ensure solvency and liquidity many property insurers purchase reinsurance in the private market to reimburse the insurer for losses incurred prior to the FHCF deductible, for the FHCF copayment, and

[51] Chapter 2007-1, Laws of Florida.
[52] Chapter 2007-90, Laws of Florida. Casualty insurers are free to use the use and file option for all rate filings. Casualty insurance includes motor vehicle collision and comprehensive coverages, medical malpractice and workers compensation insurance.
[53] Ch. 2008-66, L.O.F.

for losses in excess of the FHCF limit of reimbursement. In addition, because the FHCF does not anticipate it will have sufficient funds or funds available through bonding this year or next year to reimburse insurers buying FHCF reinsurance for the TICL coverage, many property insurers have purchased private reinsurance to reimburse losses for the TICL coverage even if they also purchased reinsurance through the FHCF to reimburse losses for the TICL coverage. This ensures the insurer has sufficient funds to pay its property claims if losses reach this coverage amount.

The OIR does not allow property insurers that purchase private reinsurance for the TICL coverage and also purchase the TICL coverage from the FHCF to include the cost of the private reinsurance for the TICL coverage in their rates and thus pass the cost through to policyholders. Property insurers who do not purchase TICL coverage from the FHCF but purchase private reinsurance for the TICL coverage are only allowed by the OIR to include the cost of the TICL coverage in their rates, even if the cost of the private reinsurance purchased is higher. The bill allows property insurers to include the actual cost of private reinsurance, up to 10% above the insurer's base rates, in the insurer's rates if the private reinsurance purchased reimburses the insurer for losses in the same amount as the TICL coverage regardless of whether the insurer buys TICL coverage from the FHCF.

Flex Rating

Flex rating allows an insurer to vary their rates up or down from a rate approved by the regulator without obtaining approval by the regulator for the rate change; however, the rate variance must be within a specified range from the approved rate. Flex rating for various lines of insurance has been implemented in a number of states, such as Arkansas, Kentucky, New York and Pennsylvania.[54]

The National Conference of Insurance Legislator's adopted a model law regarding flex rating in 2004. The model law establishes a 12% flex band on overall statewide rate increases or decreases within which an insurer can file rate changes on an expedited basis during any 12-month period. The flex rating under the model law applies to personal lines insurance. The model law allows a Commissioner of Insurance to disprove a flex rating if the Commissioner finds the rating is inadequate or unfairly discriminatory.[55]

The bill implements flex rating as of January 1, 2010, for use in residential property insurance. Insurers will be allowed to implement rate changes of a 10% increase or decrease average statewide or 15% increase or decrease per rating territory without being subject to OIR's determination the rate is excessive or unfairly discriminatory. Insurers can only increase or decrease rates by these amounts once per year. The OIR maintains authority to disapprove a rate change as inadequate or for use of unfairly discriminatory rating factors. In order for the OIR to operate under this authority, the bill requires insurers changing their rates in accordance with the flex rating allowance to submit the proposed rate change to the OIR at least 30 days prior to the effective date of the rate change. The OIR then has 30 days to determine whether to disapprove the rate change based on inadequacy or use of unfairly discriminatory grounds. The rate change is automatically approved if the OIR does not make a finding on these grounds within the 30-day window. In order to provide safeguards for rate decreases allowed by flex rating, during the OIR's 30-day review period, the bill requires the OIR to suspend a rate decrease if it finds the decrease will result in inadequate premiums or solvency problems.

Hurricane Mitigation Discounts and Premium Credits

Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques had been installed which reduce the amount of loss in a windstorm. These discounts were initially given at 50% of the actuarial value of the discount. In 2006, the Legislature amended the mitigation discount law (s. 627.0629(1)(a), F.S.) to require the OIR to reevaluate the mitigation discounts and require insurers to give full actuarial value for them. Thus, the OIR enacted a rule to require insurers to reduce rates in an amount equal to 100% of the mitigation discount. The OIR also obtained a new study determining the appropriate discount amounts. Since enactment of the rule requiring discounts to be given at 100%, some insurers have

---

[54] http://www.iii.org/media/hottopics/insurance/ratereg/ (last viewed on April 6, 2009).

[55] *Property/Casualty Flex-Rating Regulatory Improvement Model Act*, National Conference of Insurance Legislators, Adopted February 27, 2004.

alleged they are not collecting enough premium to cover the risk insured due to the reduction in rates required by the mitigation discount.

The bill requires the Florida Commission on Hurricane Loss Projection Methodology to review the current mitigation discounts and report to the Governor, the Cabinet, and Legislature by October 1, 2009 with recommendations relating to the mitigation discounts.

Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify for a mitigation discount. The Financial Services Commission (Governor and Cabinet) adopted a uniform mitigation verification form in 2007 for use by all insurers to corroborate a home's mitigation features. The form must be certified by DFS (if completed as part of the My Safe Florida Home Program) or signed by a hurricane mitigation inspector participating in the My Safe Florida Home Program, a building code inspector, a general or residential contractor, a professional engineer, or a professional architect. The bill deletes current law allowing hurricane mitigation inspectors participating in the My Safe Florida Home Program to sign the mitigation verification form and adds a "building" contractor to the types of contractors allowed to sign the form. The bill also makes it a first degree misdemeanor to knowingly submit a false or fraudulent mitigation discount form in order to obtain a mitigation discount that a person is not entitled to.

In 2008, legislation was enacted requiring the OIR to develop, by February 1, 2011, a method for insurers to establish mitigation discounts that correlate to the numerical rating of a structure issued pursuant to the uniform home rating scale. The uniform home rating scale is an objective rating system rating a homes' ability to withstand wind load from a tropical storm or hurricane. The rating system scores homes on a scale of 1 to 100 and was promulgated by rule in November 2007. The primary factors used to calculate the home rating score include roof shape, secondary water resistance, roof cover, roof deck attachment, roof-to-wall connection, opening protection, number of stories, and roof covering type. General geographic features of wind zone location and local terrain are also used to calculate a home's score. The DFS implemented the home rating system through a pilot program in conjunction with the My Safe Florida Home Program. The bill makes the mitigation discounts given in accordance with the uniform home grading scale supersede the mitigation discounts provided under current law.

Public Adjusters

Chapter 626, F.S., regulates insurance field representatives and operations. Part VI of the chapter governs insurance adjusters. The law recognizes various types of adjusters, including public adjusters, independent adjusters, company employee adjusters, and catastrophe or emergency adjusters.[56] Adjusters can be further classified as resident or nonresident.[57] Resident adjusters are those who reside in Florida and are licensed in Florida, whereas, nonresident adjusters reside outside of Florida and are licensed by their home state.

The Department of Financial Services (DFS) regulates resident and nonresident adjusters of all types. The DFS reports that currently Florida licenses almost 34,000 resident adjusters and over 37,000 non-resident adjusters.[58] Of these, 2,538 are resident public adjusters and 419 are non-resident public adjusters.[59]

The law, in s. 626.854, F.S., defines a public adjuster as any person, except a licensed attorney, who prepares or files an insurance claim for an insured or third-party claimant. Similarly, the law recognizes that a public adjuster represents an insured or third-party claimant in negotiations with the policyholder's insurance provider with the goal of settling a claim. A public adjuster is hired and paid by the insured to act on his or her behalf. The public adjuster fee is usually a percentage of the claim payment that the public adjuster is responsible for recovering. Public adjusters, unlike company

---

[56] s. 626.864, F.S. (2008).
[57] s. 626.858, F.S.
[58] Information received from the Department of Financial Services on March 16, 2009 on file with the Insurance, Business & Financial Affairs Policy Committee.
[59] According to DFS, there are 15,801 licensed resident independent adjusters (10,930 non-resident independent adjusters); 15,634 licensed resident company employee adjusters (25,933) non-resident company employee adjusters).

employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies and do not charge policyholders a fee. Public adjusters must present a $50,000 bond to DFS in order to be licensed. No bond is required of company employee or independent adjusters.

Administrative rules relating to public adjusters, in part, address public adjuster contract cancellation, a public adjuster's actions relating to business referrals, and a public adjuster's actions relating to engagement of services of other professionals to help with the claim. Public adjusters must also abide by the general ethical rules applicable to all types of adjusters.[60]

In 2008, the Legislature enacted legislation imposing new restrictions and regulations on public adjusters.[61] Generally, the legislation restricted public adjuster fees to 20% on non-hurricane claims and 10% on hurricane claims and prohibited a public adjuster from basing a fee for work on a supplemental claim on the amount paid to the policyholder on the previous claim.

The 2008 legislation also made numerous changes relating to public adjuster client solicitation and business practices in residential property and condominium association property insurance cases. The legislation prohibited public adjusters from soliciting directly or indirectly between the hours of 8:00 pm and 8:00 am Monday through Saturday and all day on Sunday and from soliciting or entering into a contract until at least 48 hours after occurrence of the loss, unless contacted by the policyholder. Public adjusters were prohibited from giving or offering to give a monetary loan or advance to a client or prospective client and were prohibited from giving or offering to give anything with a value in excess of $25 for advertising or as an inducement to enter into a contract with a public adjuster. In addition, the 2008 legislation enacted time periods during which a policyholder can cancel a public adjuster contract without penalty. The legislation also made it an unfair and deceptive insurance trade practice for a public adjuster or any other person to circulate or disseminate untrue, deceptive, or misleading information relating to insurance. The bill enacted in 2008 also made numerous changes relating to public adjusters licensure, created a public adjuster apprenticeship program and license, and amended continuing education requirements for public adjusters.

This bill makes further changes to the law governing the conduct of public adjusters. The bill prohibits a public adjuster from contacting a policyholder for 20 days after a residential property or condominium association property loss occurs. For these losses, the bill also prohibits a public adjuster or a public adjuster apprentice from providing a referral fee to someone who refers a client to the public adjuster. For all types of losses, public adjusters are required to provide a recorded statement and an examination under oath to an insurer upon request by the insurer as long as the statement and examination are to provide the insurer with information needed to evaluate the factual basis and validity of a claim and the public adjuster's actions.

<u>Property Insurance Policies Excluding Windstorm Coverage</u>

Unless a policyholder gives a written statement to the insurer expressing his/her desire not to have the property insurance policy cover damage from windstorm and obtains approval for the windstorm exclusion from the mortgage or lien holder, all insurers writing residential property insurance must provide coverage for windstorm damage in the property insurance policy.[62] Insurers are allowed by law to write a property insurance policy that does not cover windstorm damage for only one type of property - properties eligible for a wind-only policy with Citizens which are sold in the high risk account. The bill adds two additional types of properties on which an insurer can write a property insurance policy that does not cover windstorm damage: 1) properties located in the high risk account of Citizens and not eligible for coverage in Citizens only because the property is insured for $2 million or more and 2) properties located in the high risk account of Citizens that are not eligible for coverage in Citizens because the property is insured for $750,000 or more, is located in the wind borne debris region defined in the International Building Code, and does not have shutters or opening protections on all openings.

---

[60] s. 626.878, F.S.
[61] Ch. 2008-220, L.O.F.
[62] s. 627.712, F.S.

OIR Attorney-Client and Work-Product Privileges

In 2008, the Legislature limited the OIR's ability to assert attorney-client and work-product privileges in administrative and judicial proceedings. The provision enacted (s. 627.0621(3), F.S.) did not allow the OIR to claim these privileges for communications with OIR attorneys or records prepared by or at the direction of an OIR attorney unless the communication or record was prepared exclusively for litigation and reflected a mental impression, conclusion, litigation strategy, or legal theory of the OIR or the OIR attorney and was prepared after litigation began, after the OIR issues a notice of intent to deny a rate, or after the insurer files a request for hearing. The bill deletes this provision from current law.

Multi-Policy Discount

Multi-policy discounts allow an insurer to offer reduce a customer's insurance premium if the customer purchases multiple lines of insurance from the insurer. In 2008, the multi-policy discount statute (s. 627.0655, F.S.) was amended to allow insurers to offer a multi-policy discount to their policyholders if the policyholder was insured by the insurer for one line of insurance and was insured by Citizens for wind-only coverage or was insured for property insurance coverage by an insurer that removed a policy from Citizens (take-out insurer), as long as the same insurance agent serviced both policies. The bill allows insurers to continue to offer multi-policy discounts for these policyholders but only if the policy from Citizens or the take-out insurer is issued or renewed before January 1, 2010.

FIGA Disclosure by Insurance Agents

When a property and casualty insurance company becomes insolvent, the Florida Insurance Guaranty Association (FIGA) is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures policyholders that have paid premiums for insurance are not left without valid claims being paid. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others. It is a nonprofit corporation.

If a property and casualty insurance company has been declared insolvent, covered claims will be paid by FIGA. The maximum amount FIGA will cover is $300,000 with special limits applying to (1) damages to structure and contents on homeowners' claims and (2) on condominium and homeowners' association claims. For damages to structure and contents on homeowners' claims the FIGA cap is an additional $200,000, for a total of $500,000. For condominium and homeowners' association claims the cap will be the lesser of policy limits or $100,000 multiplied by the number of units in the association. All claims are subject to a $100 FIGA deductible in addition to any deductible identified in the insurance policy.

Section 631.65, F.S. prohibits any advertisement for insurance to use the existence of FIGA for the purpose of the sale of insurance. The bill allows insurance agents to provide explanations about FIGA to policyholders, prospective policyholders, or applicants for insurance coverage as long as the explanations are not made to entice the policyholder, prospective policyholder, or applicant to buy insurance.

Debt Cancellation Products

A debt cancellation agreement is a type of debt cancellation product frequently used by financial institutions when extending credit or issuing loans to their customers. When made in conjunction with motor vehicle loans or leases, the agreement is generally referred to as Guaranteed Asset Protection or "GAP" agreements. Simply put, a debt cancellation agreement is a lending transaction between the financial institution and the debtor/consumer wherein the financial institution agrees to cancel or suspend the debt upon the happening of specified events. Under a debt cancellation agreement the risk of default due to a specified event, normally death, disability, or unemployment, shifts from the debtor to the financial institution. In exchange for this shifting of risk, the creditor charges a fee and agrees to cancel or suspend the debt according to the terms of the agreement. To protect itself, the

bank either must set up reserves to cover the risk protected against or seek an insurance policy for debt cancellation products to indemnify the financial institution for the loss.

Section 624.605(r), F.S. authorizes insurance covering the risk of loss associated with the debt cancellation products. This insurance is purchased by a creditor to protect itself against the risk of financial loss from the use of debt cancellation products. The insurance is available for debt cancellation products associated with consumer loans or leases or retail installment contracts under which the creditor agrees to cancel or suspend all or part of the customer's contractual obligation to make payments under the loan.

The bill expands the type of businesses authorized to offer debt cancellation products to consumers. Under current law, only financial institutions, insured depository institutions, and other business entities specifically authorized by law can offer debt cancellation products to consumers. The bill deletes current law allowing debt cancellation products to be sold by business entities specifically authorized by law. It also allows business entities selling goods, services, real property, or interests in real property to offer debt cancellation products relating to the goods, services, real property or interests in real property sold to consumers under specified conditions.

OIR Regulation of Insurer Conduct

The bill prohibits the OIR from interfering with an insurer's right to solicit, sell, promote or otherwise acquire policyholders and implement coverage.

B. SECTION DIRECTORY:

Section 1: amends s. 215.47, F.S. relating to investments of the State Board of Administration.

Section 2: amends s. 215.555, F.S. relating to the Florida Hurricane Catastrophe Fund.

Section 3: amends s. 215.5586, F.S., as amended by section 1 of chapter 2009-10, L.O.F. relating to the My Safe Florida Home Program.

Section 4: amends s. 624.605, F.S. relating to the definition of "casualty insurance."

Section 5: amends s. 626.854, F.S. relating to the prohibitions on public adjusters.

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

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

Section 8: amends s. 627.0628, F.S. relating to the Florida Commission on Hurricane Loss Projection Methodology.

Section 9: amends s. 627.0629, F.S. relating to rate filings for residential property insurance.

Section 10: amends s. 627.0655, F.S. relating to premium discounts.

Section 11: amends s. 627.351(6), F.S. relating to Citizens Property Insurance Corporation.

Section 12: amends s. 627.711, F.S. relating to premium discounts for hurricane loss mitigation and the uniform mitigation verification inspection form.

Section 13: amends s. 627.712, F.S. relating to the availability of exclusions for windstorm coverage.

Section 14: amends s. 631.65, F.S. relating the prohibited advertisement or solicitation relating to the Florida Insurance Guaranty Association.

Section 15: creates an unnumbered section of law requiring specified funds to be transferred from the General Revenue Fund to the Insurance Regulatory Trust Fund in the Department of Financial Services for use by the My Safe Florida Home Program for mitigation grants.

Section 16: provides an effective date of "upon becoming a law."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The My Safe Florida Home Program will receive funds for the Program from the rate increases of Citizens.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Following is the bill's potential rate impact for Citizens' residential policyholders:[63]

2009:	1% increase	due to FHCF mandatory coverage changes (statewide average)[64]
	10% max increase	due to reinsurance recoupment allowed for all insurers[65]
	20% max increase	due to glide path rate increase (per policy)
2010:	1.9% increase	due to FHCF mandatory coverage changes (statewide average)
	10% max increase	due to reinsurance recoupment allowed for all insurers
	20% max increase	due to glide path rate increase (per policy)
2011:	2.9% increase	due to FHCF mandatory coverage changes (statewide average)
	10% increase	due to reinsurance recoupment allowed for all insurers
	20% max increase	due to glide path rate increase (per policy)
2012:	3.8% increase	due to FHCF mandatory coverage changes (statewide average)
	10% increase	due to reinsurance recoupment allowed for all insurers
	20% max increase	due to glide path rate increase (per policy)
2013:	4.8% increase	due to FHCF mandatory coverage changes (statewide average)
	10% increase	due to reinsurance recoupment allowed for all insurers
	20% max increase	due to glide path rate increase (per policy)

[63] Rate impact is based on information obtained by Citizens on March 25, 2009 and April 2, 2009. The rate increases provided by the glide path should be the only rate impact for commercial nonresidential property insured by Citizens because commercial businesses do not participate in the FHCF. Thus, there will be no rate impact on commercial nonresidential property due to the FHCF mandatory coverage changes or allowance for reinsurance recoupment.

[64] The FHCF mandatory coverage change that should apply to Citizens and should lead to the possible rate increase is the increase in the cost of mandatory FHCF coverage.

[65] Policyholders of Citizens will only incur this rate increase if Citizens purchases private reinsurance to reimburse Citizens for losses incurred. Citizens cannot purchase TICL coverage from the FHCF under the bill so this possible rate increase cannot be due to the reduction of the TICL coverage, the decrease in the FHCF reimbursement percentage for the TICL coverage, or the increase in the cost of the TICL coverage.

Citizens' rates are allowed to increase and decrease an additional 10% statewide average under the rate flex provisions of the bill. The OIR can only disapprove a rate increase or decrease under rate flex if the rate is inadequate or uses unfairly discriminatory rating factors. However, Citizens asserts it will not increase rates under the rate flex provisions while the glide path rate increase is in effect.[66]

Although Citizens' property insurance premiums are expected to rise due to the rate increases delineated above, the potential for assessments levied by Citizens against most property and casualty insurance policyholders, including Citizens' policyholders, will decrease as Citizens' rates progress to actuarially sound rates as prescribed in the bill.

Rates for all residential property insurance policyholders not insured by Citizens can increase due to the graduated reduction in the TICL coverage option prescribed in the bill. TICL coverage is sold to insurance companies at a substantially lower rate than the rate charged by the private reinsurance market for the same coverage. Thus, as the TICL coverage is reduced and insurance companies buy private reinsurance to replace the TICL coverage, the insurance company's reinsurance costs will increase and can be passed through to policyholders in the form of higher rates and resulting premiums. However, the bill limits the rate increase associated with the recoupment for TICL coverage to a maximum of 10 percent. Policyholders insured by Citizens will not incur this rate increase as the bill precludes Citizens from purchasing TICL coverage.

Following is the bill's potential rate impact for residential policyholders not insured by Citizens:[67]

2009:	10% max increase	due to reinsurance recoupment for TICL coverage
	.5% increase	due to increase in cost of the FHCF mandatory coverage (statewide average)
2010:	10% max increase	due to reinsurance recoupment for TICL coverage
	.9% increase	due to increase in cost of the FHCF mandatory coverage (statewide average)
2011:	10% max increase	due to reinsurance recoupment for TICL coverage
	1.4% increase	due to increase in cost of the FHCF mandatory coverage (statewide average)
2012:	10% max increase	due to reinsurance recoupment for TICL coverage
	1.9% increase	due to increase in cost of the FHCF mandatory coverage (statewide average)
2013:	10% max increase	due to reinsurance recoupment for TICL coverage
	2.3% increase	due to increase in cost of the FHCF mandatory coverage (statewide average)

Rate increases are allowed to increase and decrease an additional 10% statewide average under the rate flex provisions of the bill. The OIR can only disapprove a rate increase or decrease under rate flex if the rate is inadequate or uses unfairly discriminatory rating factors.

Although property insurance premiums are expected to rise due to the rate increases delineated above, the potential for assessments levied by the FHCF against most property and casualty property insurance policyholders will decrease due to the bill's provisions reducing the FHCF's exposure.

Eligible homeowners will be able to obtain state matching grants for installation of hurricane mitigation measures through the My Safe Florida Home Program due to the transfer of 10 percent of Citizens' rate increase funds to the program. Citizens estimates $26 million will be transferred to the Program for use. Property insurance premiums for homeowners that install hurricane mitigation measures should

[66] Meeting with representatives of Citizens on April 2, 2009.
[67] Rate impact information on policyholders not insured by Citizens is based on information received from the FHCF on March 25, 2009.

decrease as a direct result of the installation. The amount of decrease will vary among homeowners and will depend, in part, on which mitigation measure is installed.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 3, 2009, the Insurance, Business, & Financial Affairs Policy Committee considered the bill, adopted a strike all amendment, nine amendments to the strike all amendment, and reported the bill favorably with a committee substitute. The amendments adopted made the following major changes to the bill:

- Changed provisions governing the FHCF to reduce the fund's exposure and to increase the fund's liquidity. The primary changes reduced the fund's TICL coverage, increased the cost of TICL coverage, and increased the cost of the mandatory coverage.
- Set the Citizens' glide path rate increase at 10 percent statewide average and 20 percent per single policy.
- Required transfer of 10 percent of the funds received from the Citizens' rate increase to the My Safe Florida Home Program to be used to fund mitigation grants for Citizens' policyholders.
- Increased the Citizens' policyholder assessment to 25 percent.
- Repealed current law requiring certain Citizens policyholders to disclose a home's windstorm mitigation rating upon sale.
- Allowed insurance companies to recoup reinsurance costs in rates, up to 10 percent.
- Expanded the types of mitigation improvements grants from the My Safe Florida Home Program can be used to install.
- Created a condominium loan mitigation program as part of the My Safe Florida Home Program.
- Required a review of the current mitigation discounts by the Florida Commission on Hurricane Loss Projection Methodology.
- Allowed insurers to vary property insurance rates by 10 percent with limited regulation by the OIR.
- Extended the prohibition on use of the "use and file" rating option for another year.
- Repealed current law relating to OIR's assertion of attorney-client and work product privileges.
- Expanded the types of business entities authorized to offer debt cancellation products to consumers.

- Discontinued the multi-policy insurance discount on January 1, 2010 for insurance policies meeting certain criteria.
- Provided restrictions on the conduct of public adjusters.
- Prohibited the OIR from certain regulation of insurer's conduct.

The staff analysis was updated to reflect the committee substitute.