

## Committee on Banking and Insurance

### **CS/CS/CS/SB 408 — Property and Casualty Insurance**

by Rules Committee, Budget Subcommittee on General Government Appropriations, Banking and Insurance Committee and Senators Richter and Hays

CS/CS/CS for SB 408 makes numerous changes to laws related to property insurance, primarily residential property insurance.

#### ***Time Limits for Claims and Statute of Limitations***

The bill places time limits for bringing a hurricane or sinkhole claim and also creates a statute of limitations for bringing a breach of contract property insurance action in court. A claim, supplemental claim, or reopened windstorm or hurricane claim must be given to the insurer within 3 years after the hurricane first makes landfall or the windstorm causes covered damage. An initial, supplemental or reopened sinkhole claim must be given to the insurer within 2 years after the policyholder knew or reasonably should have known about the sinkhole loss. The bill also enacts a 5 year statute of limitations for bringing an action for the breach of a property insurance contract that runs from the date of loss.

#### ***Florida Hurricane Catastrophe Fund***

The bill requires the Florida Hurricane Catastrophe Fund (Cat Fund) to provide reimbursement for all incurred losses, including amounts paid as fees on behalf of the policyholder. However, the bill also specifies a number of losses that are excluded from payment.

#### ***Insurance Capital Build-Up Incentive Program***

The bill authorizes the State Board of Administration (Board) and private market insurers to renegotiate the terms of a surplus note issued pursuant to the Insurance Capital Build-Up Incentive Program before January 1, 2011. If the insurer agrees to accelerate the payment period of the note by at least 5 years, the Board must agree to exempt the insurer from the premium-to-surplus ratios required by statute. If the insurer agrees to accelerate the payment period for less than 5 years, the Board may agree to an appropriate revision of the premium-to-surplus ratios after consulting with the Office of Insurance Regulation, subject to a minimum writing ratio of net premium to surplus of at least 1 to 1 or of gross premium to surplus of at least 3 to 1.

#### ***Surplus Requirements***

The bill raises the surplus requirements for insurers transacting residential property insurance that are not a wholly owned subsidiary of an insurer domiciled in another state. For a new insurer, the bill raises the surplus requirement from \$5 million to \$15 million. An existing insurer that holds a certificate of authority before July 1, 2011, must have a surplus of at least \$5 million until June 30, 2016; from July 1, 2016 until June 30, 2021, a surplus of at least \$10 million; and on or after July 1, 2021, a surplus of at least \$15 million.

### ***Public Adjusters***

The bill limits public adjuster fees related to reopened or supplemental claims to a maximum of 20 percent of the reopened or supplemental claim payment. The bill also limits public adjuster fees to 20 percent of an insurance claim payment made by the insurer more than one year after events that are the subject of a declaration of a state of emergency by the governor. A public adjuster fee related to a policy issued by Citizens Property Insurance Corporation may not exceed 10 percent of the additional amount actually paid in excess of the amount originally offered by Citizens on the claim.

Public adjusters are prohibited from making deceptive or misleading advertisements or solicitations. Written solicitations must include a disclaimer notifying the consumer that a solicitation is being made. A public adjuster contract related to a property and casualty insurance claim must contain the full name of the public adjuster and public adjusting firm, the business address, license number, and other specified information.

Public adjusters must give prompt notice of a property loss claim to the insurer and include with the notice the public adjuster's employment contract. The public adjuster must also ensure that the insurer has access to inspect the property, can interview the insured directly about the loss and claim, and allow the insurer to obtain information necessary to investigate and respond to the claim. The insurance company's adjuster or other persons acting on the insurer's behalf must provide at least 48 hours notice before scheduling an inspection of the property or a meeting with the claimant. The insurer also must allow the public adjuster to be present during the insurer's in-person meetings with the insured.

The bill requires licensed contractors to be licensed as a public adjuster in order to adjust a claim on behalf of the insured.

### ***Rate Standards***

The bill requires property insurance rate filings to be submitted via the "file and use" method until May 1, 2012. In a "file and use" rate filing the insurer must receive approval from the Office of Insurance Regulation before implementing the insurer's proposed rate.

Residential property insurers are authorized to make a separate rate filing limited solely to an adjustment of its rates for reinsurance and financing products used as a replacement for reinsurance. The rate filing may not result in a premium increase of more than 15 percent for an individual policyholder and must be approved or disapproved by the Office of Insurance Regulation within 45 days. The OIR retains the authority to deny the filing if the proposed rate is excessive, inadequate, or unfairly discriminatory. An insurer may make only one such filing per 12-month period. The procedure created by the bill expands a provision in current law that authorizes a 10 percent rate increase per policyholder that is solely based on reinsurance that replaces Temporary Increase in Coverage Limits reinsurance from the Florida Hurricane Catastrophe Fund.

The bill specifies that that the sworn certification of a property insurance rate filing is not rendered false if the insurer provides the Office of Insurance Regulation with additional information pursuant to a request from the Office. The insurer's actuary responsible for providing the additional information must provide an additional sworn certification.

### ***Citizens Property Insurance Corporation***

The bill renames the Citizens "high risk" account the "coastal" account.

Under current law, Citizens is authorized to offer policies that provide coverage only for the peril of wind for risks located within the coastal account. The high risk area of the coastal account consists of areas that were eligible for coverage in the Florida Windstorm Underwriting Association, essentially coastal areas at high risk for a hurricane. The bill repeals the requirement to reduce the high-risk area after December 1, 2010, if necessary to reduce the probable maximum loss attributable to wind-only coverages to 25 percent below the "benchmark" for the high-risk area, which is defined in statute as the 100-year probable maximum loss for the Florida Windstorm Underwriting Association based on its November 30, 2000 exposures. The bill also repeals a requirement to reduce the high-risk area after February 1, 2015, by 50 percent below the benchmark. The requirement that the Citizens board issue an annual report showing the reduction or increase in the 100-year probable maximum loss attributable to wind only coverages and the quote share program is also repealed.

The bill specifies that Citizens may not levy regular assessments until the full Citizens policyholder surcharge has been levied. The bill also specifies that the Citizens policyholder surcharge must be paid upon cancellation, termination, or renewal of an existing policy or upon issuance of every new policy issued within 12 months after the surcharge is levied or the time needed to fully collect the policyholder surcharge.

As of January 1, 2012, Citizens must require agents to obtain from applicants for coverage a signed Acknowledgment of Potential Surcharge and Assessment Liability form. The form details that Citizens policyholders are subject to a Citizens policyholder surcharge of up to 45 percent of premium and emergency assessments.

Citizens policies issued or renewed on or after January 1, 2012, which cover sinkhole loss may not include coverage for losses to appurtenant structures, sidewalks, decks, or patios that are caused by sinkhole activity. Citizens must exclude such coverage using a notice of coverage change, which may be included with the policy renewal.

Citizens Board of Governors must commission an independent third-party consultant with insurance company management expertise to prepare a report and make recommendations on the costs and benefits of outsourcing policy issuance and service functions to private servicing carriers. The report must be completed and submitted to the Citizens board by July 1, 2012. The board must subsequently develop a plan to implement the consultant's report and submit the plan to the Financial Services Commission for review, modification, and approval. Upon the

commission's approval of the plan, the Citizens board must begin implementing the plan by January 1, 2013.

Members of the Citizens Board of Governors with insurance experience are deemed to be within the exception in s. 112.313(7)(b), F.S., that allows a public officer to practice a particular profession or occupation when required or permitted by law or ordinance. The bill also provides procedures for board members who have a conflict of interest regarding a particular matter. A Citizens board member may not vote on any measure that would inure to the gain or loss of the board member; the board member's corporate principal or the parent or subsidiary of the corporate principal; or the relative or business associate of the board member. A board member with a conflict must publicly state his or her interest in the matter prior to the vote being taken. The board member must also provide written disclosure of the conflict within 15 days after the vote, and the disclosure must be included in the minutes of the board meeting and available as a public record.

### ***Notice of Cancellation***

The bill revises the notice of cancellation, nonrenewal or termination requirements for personal lines and commercial lines residential property insurance policies. At least 120 days notice must be given to a named insured whose residential structure has been insured by the insurer or its affiliate for at least 5-years. Under current law 180 days notice must be provided for the cancellation, nonrenewal, or termination of such policies. The bill authorizes the nonrenewal of a policy that covers both a home and a motor vehicle for any reason applicable to either the property or motor vehicle insurance, so long as the insurer provides 90 days notice of the nonrenewal. The notice of cancellation requirement for a Citizens policy that has been assumed by an authorized "take out" insurer is reduced to 45 days.

The bill also authorizes an insurer to cancel or nonrenew a property insurance policy if the Office of Insurance Regulation finds that the early cancellation is necessary to protect the best interests of the public or policyholders. The Office may base its finding upon the financial condition of the insurer, the insurer's lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The nonrenewal may be conditioned upon the insurer being placed under administrative supervision or to the appointment of a receiver.

### ***Notice of Change in Policy Terms***

The bill authorizes insurers to renew a property and casualty insurance policy under different policy terms by providing to the policyholder a written "Notice of Change in Policy Terms" instead of a written "Notice of Non-Renewal." The Notice must be titled "Notice of Change in Policy Terms," give the insured written notice of the change, and be enclosed with the written notice of renewal premium. The insured is deemed to have accepted the change in policy terms upon the insurer's receipt of the premium payment for the renewal policy. If the insurer fails to provide the Notice of Change in Policy Terms the original policy terms remain in effect.

### ***Replacement Cost Coverage***

The bill modifies how insurers must pay dwelling or personal property losses on a replacement cost basis. For a dwelling loss, the insurer must initially pay the actual cash value, minus the deductible. Subsequently the insurer must pay any amounts necessary to perform repairs as work is performed. If a total loss of a dwelling occurs, the insurer must pay the entire replacement cost coverage without holdback of depreciation in value pursuant to the Valued Policy Law.

For personal property losses insured on a replacement cost basis, the insurer must offer two claim payment options. The first option requires the insurer to pay the replacement cost without holdback of depreciation, regardless of whether the insured replaces the property. The second option allows the insurer to limit the initial payment to the actual cash value of the personal property to be replaced. To receive payment from the insurer for the full replacement value of the personal property, the insured must provide a receipt for the replaced property to the insurer. A policy authorizing the insurer to require replacement of personal property prior to paying the full replacement cost must provide the policyholder with a premium credit or discount and the insurer must provide clear notice of the payment process before the policy is bound.

### ***Sinkhole and Catastrophic Ground Cover Collapse Insurance***

The bill enacts numerous revisions and clarifications to ss. 627.706-627.7074, F.S., governing sinkhole and catastrophic ground cover collapse insurance. The bill authorizes insurers to restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building as defined in the insurance policy. The bill also allows an insurer to require a property inspection prior to issuing sinkhole loss coverage. The bill clarifies that additional living expense coverage is only available pursuant to a sinkhole loss if there is structural damage to the covered building.

The bill changes the definition of “sinkhole loss,” primarily by creating a statutory definition of “structural damage.” A sinkhole loss is defined in statute as structural damage to the covered building, including the foundation, caused by sinkhole activity. The bill creates a detailed definition of “structural damage” for purposes of determining whether a sinkhole loss has occurred. The definition specifies five distinct types of damage that constitute structural damage. Each type of damage is tied to standards contained in the Florida Building Code or used in the construction industry. Accordingly, in order for the policyholder to obtain policy benefits for sinkhole loss, the insured structure must sustain structural damage as defined by the bill that is caused by sinkhole activity.

***Investigation of Sinkhole Claims*** – The bill creates a substantially new process for an insurer’s investigation of a sinkhole claim. The process requires the insurer to determine whether: (1) the building has incurred structural damage that (2) has been caused by sinkhole activity. 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. 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 Initiated by the Insurer:* 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. If coverage is excluded under the policy even if sinkhole loss is confirmed, then the insurer is not required to conduct sinkhole testing.
- *Notice to the Policyholder:* The bill maintains the requirement that 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) and a statement of the circumstances under which the insurer must conduct sinkhole testing. 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.
- *Authorization to Deny Sinkhole Claim:* Insurers may continue to deny the claim upon a determination that there is no sinkhole loss.
- *Policyholder Demand for Sinkhole Testing:* The bill specifies that the policyholder may demand sinkhole testing in writing within 60 days after receiving a claim denial if the insurer denies the claim without performing sinkhole testing and coverage would be available if a sinkhole loss is confirmed (i.e. 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). However, if the policyholder requests such testing, it must pay the insurer 50 percent of the sinkhole testing costs up to \$2,500. If the requested testing confirms a sinkhole loss the insurer must reimburse the testing costs to the policyholder.

***Payment of Sinkhole Claims*** – The insurer continues to be required to pay to stabilize the land and building and repair the foundation upon the verification of a sinkhole loss. Payment shall be made to conduct such repairs in accordance with the recommendations of the professional engineer retained by the insurer under s. 627.707(2), F.S. The bill also clarifies that the insurer is required to give notice to the policyholder regarding payment of the claim.

The bill revises the statutory authorization specifying that 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. The bill requires the contract for below-ground repairs to be made in accordance with the recommendations set forth in the insurer's sinkhole report issued pursuant to s. 627.7073, F.S., and entered into within 90 days after the policyholder receives notice that the insurer has confirmed coverage for sinkhole loss. 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.

The bill specifies that 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. 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.

***Prohibition Against Rebates*** – The policyholder is prohibited from accepting a rebate from a person performing sinkhole repairs. If the policyholder does receive a rebate, coverage under the insurance policy is rendered void and the policyholder must refund the amount of the rebate to the insurer. Furthermore, a person who offers a rebate commits insurance fraud punishable as a third degree felony as provided in s. 775.082, F.S. (up to 5 years imprisonment), s. 775.083, F.S. (up to a \$5,000 fine), and s. 775.084, F.S. (for a habitual felony offender up to 10 years imprisonment with no eligibility for release for 5 years).

***Nonrenewal of Policy Due to Sinkhole Claims*** – The circumstances that allow an insurer to nonrenew a policy on the basis of filing a sinkhole claim are modified. The policy may only be nonrenewed if the insurer makes payments for sinkhole loss that equal or exceed policy limits for damage to the covered building or the policyholder does not repair the structure in accordance with the engineering recommendations.

***Sinkhole Testing Reports*** – The bill requires a sinkhole testing report to verify whether the structural damage to the covered building has been identified within a reasonable professional probability.

***Filing of Reports With The Clerk of Courts*** – In addition to filing the sinkhole testing report with the Clerk of Court after paying a sinkhole loss claim, the bill requires the insurer to also file the neutral evaluator's report (if any), a copy of the certification indicating that stabilization has been completed (if applicable), and the amount of the claim payment. The policyholder must file a copy of any sinkhole report prepared on behalf of the policyholder as a precondition to accepting a sinkhole loss payment.

***Certification of Proper Completion of Sinkhole Repairs*** – Once building stabilization or foundation repairs of a sinkhole loss are completed, the professional engineer responsible for monitoring the repairs must issue a report to the property owner detailing the repairs performed and certifying that the repairs were performed properly. The professional engineer must file with the Clerk of Court a copy of the report and certification, the legal description of the real property, and the name of the county clerk of court.

***Neutral Evaluation of Disputed Sinkhole Claims*** – The bill specifies that neutral evaluation must determine causation (whether a sinkhole loss has occurred and, if so, whether the observed damage was caused by sinkhole activity); all methods of stabilization and repair both above and below ground; the costs for stabilization and all repairs; and all information needed to determine whether a sinkhole loss has been verified and render an opinion on all matters at dispute in the neutral evaluation.

The neutral evaluator must be provided with information necessary to perform his or her duties. The bill requires that the neutral evaluator must be allowed reasonable access to the interior and exterior of the insured structures to be evaluated or for which a claim has been made. The policyholder must provide the neutral evaluator with all reports initiated on behalf of the policyholder that confirm a sinkhole loss or dispute the insurer's sinkhole testing report. Such materials must be provided prior to the neutral evaluator's physical inspection of the property.

The bill revises the procedures and time frames for conducting the neutral evaluation. The parties are provided 14 business days to agree to a neutral evaluator. If an agreement cannot be reached, the Department of Financial Services (DFS) shall appoint a certified neutral evaluator. Each party may disqualify two neutral evaluators without cause; a reduction from 3 disqualifications under current law. The neutral evaluator has 14 business days after the referral to notify the parties of the date, time and place of the neutral evaluation conference; an increase from 5 business days in current law. The neutral evaluator must make a reasonable effort to hold the conference within 90 days after the DFS has received the request for neutral evaluation. Failure to conduct the conference within 90 days does not invalidate either party's right to neutral evaluation. Current law requires that the neutral evaluation conference be held within 45 days. The neutral evaluator's report must be provided to the parties within 14 days after the completion of the neutral evaluation conference. A court proceeding related to the neutral evaluation must be stayed until 5 days after the filing of the neutral evaluator's report with the court.

If the neutral evaluator is not qualified to determine a disputed issue, he or she may enlist the assistance of another certified neutral evaluator, a professional engineer or professional geologist who is not a certified neutral evaluator, or a licensed general contractor to provide an opinion on that issue. Such person may be disqualified for cause in the same fashion as a neutral evaluator. The neutral evaluator may also request that the entity that performed the sinkhole investigation perform additional and reasonable testing that the neutral evaluator deems necessary.

If the insurer agrees to comply with the neutral evaluator's report, payments shall be made in accordance with the terms of the applicable insurance policy and s. 627.707(5), F.S.

The bill also makes the following changes related to the neutral evaluation process:

- Specifies that neutral evaluation does not invalidate an insurance policy's appraisal clause.
- Allows the parties to disqualify a neutral evaluator for cause based on specified familial or professional relationships.



- Requires admission of the neutral evaluator's oral testimony and full report in any action, litigation or proceeding related to the claim.
- Specifies that the actions of the insurer in neutral evaluation are not a confession of judgment or an admission of liability.
- Deems neutral evaluators agents of the Department of Financial Services and grants them immunity from suit pursuant to s. 44.107, F.S.

**Legislative Intent** – The bill states that the clarifications and revisions to ss. 627.706-627.7074, F.S., are intended to reduce the number and cost of sinkhole claims and disputes, increase reliance on scientific or technical determinations relating to sinkhole claims, and ensure that repairs are made in accordance with scientific and technical determinations and insurance claims payments.

### **Other Provisions**

The bill:

- Repeals the consumer advocate report card for property insurers.
- Repeals an obsolete requirement that the Office of Insurance Regulation develop a standard rating territory plan for residential property insurance by January 15, 2006.
- Authorizes the public hurricane loss projection model to charge a private market insurer fees for use of the model related to the reasonable costs associated with the operation and maintenance of the model.
- Repeals a requirement that the Office of Insurance Regulation develop a method to directly correlate property insurance hurricane mitigation discounts and credits with the Uniform Home Grading Scale.
- Clarifies that the requirement that an insurer must pay property insurance claim within 90 days of receiving notice of the claim applies to reopened and supplemental claims.
- Clarifies that inquiries about coverage on a property insurance contract are not claim activity unless a claim is filed by the policyholder which results in an insurer investigation of the claim.
- Repeals the electronic database of sinkhole activity.
- Specifies that the insurer may request at its own expense the verification a uniform hurricane mitigation verification provided to the insurer by the policyholder or policyholder's agent in addition to forms provided by an authorized mitigation inspector.
- Provides that all provisions of the act are severable from any provision that is held invalid.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 26-11; House 85-33*