SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Ways and Means Committee

BILL: CS/CS/SB 1980

INTRODUCER: Ways and Means Committee, Banking and Insurance Committee and Senator Garcia

SUBJECT: Property Insurance

DATE: April 17, 2006 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	BI Committee Staff	Deffenbaugh	BI	**Fav/CS**
2.			JU	**Withdrawn**
3.	Goelzhauser	Coburn	WM	**Fav/CS**
4.				
5.				
6.				

I. Summary:

CS/CS/SB 1980 makes the following major changes:

Citizens Property Insurance Corporation ("Citizens")
Assessment Reduction; Rates for Coverage; Depopulation

- Appropriates $750 million in non-recurring funds from the General Revenue Fund to the Department of Financial Services to be transferred to Citizens, to be applied to reduce the amount of the regular assessment for the 2005 deficit (currently estimated at $1.7 billion).
- Requires a 25 percent rate surcharge for personal lines residential property valued at $1 million or more, effective January 1, 2007, and makes these properties ineligible for coverage with Citizens, effective July 1, 2011.
- Requires a 25 percent rate surcharge for "nonhomestead" property. If Citizens incurs a deficit, nonhomestead property owned by a nonresident of Florida would be subject to an additional 25 percent policy surcharge. "Homestead property" is broadly defined to include certain properties in addition to those that qualify for a homestead tax exemption.
- Makes the current requirement that Citizens' rates not be competitive with authorized insurers inapplicable in a county or area for which OIR determines that no authorized insurer is offering coverage.
- Requires use of the public hurricane model as the minimum benchmark for determining windstorm rates for Citizens after the Florida Commission on Hurricane Loss Projection Methodology finds the method accurate and reliable.
- Requires that deficit assessments against insurers (and recouped from their policyholders) be reduced by amounts to be collected from surcharges on Citizens' policyholders.
- Requires a 10-day waiting period (with exceptions) for coverage applications and that the applications be made available for review by agents and insurers. If an authorized insurer offers coverage during this period, the applicant is not eligible for coverage in Citizens regardless of whether the insurer appoints the agent who submitted the application.

Oversight and Internal Controls

- Requires the Financial Services Commission (Governor and Cabinet), rather than the Office of Insurance Regulation (OIR), to approve Citizens' plan of operation.
- Requires the Executive Director of Citizens to be confirmed by the Senate.
- Requires Citizens to have an internal auditor who submits an annual report to the board, the Financial Services Commission, and the Legislature.
- Requires OIR to do a market conduct examination of Citizens every two years.
- Requires the Auditor General to conduct an operational audit of Citizens every three years.
- Requires competitive bidding on contracts, with exceptions, and board approval of contracts of $100,000 or more.
- Requires OIR background checks of applicants for senior management positions.

Standards of Conduct

- Subjects board members and senior managers to the code of ethics and financial disclosure requirements applicable to public officials and specified state employees.
- Prohibits board members and employees from accepting any gift from any person or entity under contract with Citizens or under consideration for a contract.
- Prohibits Citizens from retaining lobbyists, but allows employees to register as lobbyists.
- Prohibits senior managers from representing any person or entity before Citizens for two years following termination of employment from Citizens.

Other Changes to Citizens

- Requires insurers writing the non-wind coverage to contract with Citizens to provide claims adjusting services for the wind coverage provided by Citizens in the high risk account.
- Requires Citizens to report to the Legislature on the feasibility of requiring insurers providing the non-wind coverage to issue and service Citizens' wind policies.
- Requires Citizens to offer quarterly and semiannual premium payment plans.
- Extends the requirement that the board reduce the boundaries of the high risk (wind-only) area for two years (until Feb. 1, 2009).
- Requires any take-out bonus paid to an insurer be conditioned on the insurer keeping the policy for five years. Requires Citizens to monitor whether such policies are later insured by Citizens.
- Requires Citizens to report to the Legislature on its recommendations for consolidating its three accounts and actions taken to minimize the cost of carrying debt.

Florida Hurricane Catastrophe Fund (FHCF)

- Requires a 25 percent rapid cash build-up factor in the premiums paid by insurers for coverage from the FHCF.
- Extends the exemption of medical malpractice premiums from assessments to fund bonds issued by the FHCF, for three more years, until June 1, 2010.
- Clarifies procedures for issuing bonds and collecting assessments, in order to facilitate the expected bond issue to cover the current deficit of the FHCF.

Hurricane Loss Mitigation

- Requires the Department of Community Affairs (DCA) to establish the Home Retrofit Hardening Program, as a competitive grant program administered by local governments or non-profit agencies, to fund improvements making homes less vulnerable to hurricane damage. Specifies priorities for homes and maximum funding limits. Appropriates $50 million in non-recurring funds from general revenue to DCA for this purpose.
- Requires DCA to provide wind certification and hurricane mitigation inspections to homeowners at no cost, pursuant to a request for proposals from providers who must meet criteria of prior experience or training. Appropriates $5.5 million in non-recurring funds from general revenue to DCA for this purpose.
- Exempts specified mitigation improvements from the assessed value of the home.

Approval of Insurance Rates

- Places the burden on the Office of Insurance Regulation (OIR) to establish that a rate is excessive for personal lines residential coverage with insured value at $1 million or more.
- Allows an insurer to recoup its costs of reinsurance in its rates unless OIR establishes that the costs are in excess of amounts consistent with prudent business practices and sound actuarial principles.
- Requires the public hurricane loss model to be submitted for review by the Florida Commission on Hurricane Loss Projection Methodology. Allows OIR to continue to use the public model in reviewing rate filings until the Commission determines it is not accurate or reliable.
- Requires the chief executive officer and chief financial officer of an insurer or its CPA to sign a sworn statement certifying the appropriateness of a rate filing.

Annual Report by Financial Services Commission of Assessment Burden

- Requires the Financial Services Commission to provide an annual report to the Legislature of the probable maximum losses, financing options, potential assessments of Citizens and the FHCF, and the assessment burden on Florida policyholders.

Sinkhole Claims

- Requires the Department of Financial Services to certify engineers and geologists to serve as “neutral evaluators” of sinkhole claims disputes. This process would be optional and nonbinding and the costs would be paid by the insurer. But, if the policyholder either declines to participate or declines to resolve the matter in accordance with the recommendation of the neutral evaluator, the insurer would not be liable for attorney’s fees or other extra-contractual damages related to a claim.
- Allows residential policies to provide a deductible for sinkhole losses equal to 1, 2, 5, or 10 percent of the dwelling limits.
- Allows the insurer to make payment directly to the persons selected by the policyholder to make the repairs, if approved by the policyholder and lienholder.
- Makes it unlawful for a contractor or business providing sinkhole remediation services to communicate with any attorney for the purpose of assisting the attorney in the solicitation of legal business.

Florida Insurance Guaranty Association (FIGA)

- Authorizes FIGA to impose annual emergency assessments on insurers of up to 2 percent of written premium for specified lines of property and casualty insurance to fund revenue bonds issued by a municipality or county to pay claims of an insurer rendered insolvent due to a hurricane.
- Increases the maximum amount of FIGA's liability for a covered homeowners insurance claim against an insolvent insurer from $300,000 to $500,000.
- Provides that FIGA covers claims of a business (as a policyholder or claimant of an insolvent insurer) that has its principal place of business in Florida, rather than incorporated in Florida.
- Allows FIGA to pay claims of unearned premium refunds, under certain conditions, without requiring the policyholder to file a proof of claim form.

Direct Payment to Policyholder for Dual-Interest Property

- Requires property insurers to issue separate checks payable to the primary policyholder only, to pay claims for contents, living expenses, and the lesser of $20,000 or the first 20 percent of the estimated total covered claim amount for the replacement or repair of dual interest (mortgaged) property.

Emergency Orders; Rules

- Authorizes the Commissioner of Insurance Regulation to issue orders to temporarily modify or suspend provisions of the Insurance Code to expedite recovery of communities affected by a disaster, when the Governor declares a state of emergency.
- Requires the Financial Services Commission to adopt rules standardizing requirements that may be applied to insurers after a hurricane, addressing claims reporting requirements, grace periods for payment of premiums, and temporary postponement of cancellations and nonrenewals.

Other Provisions

- Allows insurers to make electronic payment of insurance claims, under certain conditions, without written authorization.
- Permits alien surplus lines insurers to use letters of credit meeting certain criteria to fund the required minimum $5.4 million trust fund.
- Clarifies that if a property insurer does not obtain a written rejection from the policyholder for law and ordinance coverage, the policy is deemed to include such coverage limited to 25 percent of the dwelling limit (and not the alternative 50 percent limit that must also be offered).

This bill has a substantial fiscal impact on the General Revenue Fund.

This bill substantially amends the following sections of the Florida Statutes: 193.155; 215.555, 626.918, 627.062, 627.06281, 627.351, 627.3511, 627.3517, 627.4035, 627.7011, 627.706, 627.707, 627.7072, 627.7073, 627.727, 631.181, 631.54, 631.55, 631.57, and 877.02. The bill creates the following sections of the Florida Statutes: 215.558, 215.5586, 252.63, 627.3519, 627.6121, 627.7019, 627.7074, and 631.695. The bill repeals s. 215.559(3), Florida Statutes.

II. Present Situation:

The 2004 & 2005 Hurricane Season

The 2004 and 2005 hurricane seasons were particularly destructive to Florida, with four hurricanes hitting Florida each year. In total, insurers have reported nearly $39 billion in estimated gross losses in Florida for these eight hurricanes. This includes amounts estimated to be covered by the insureds' deductibles, estimated to be $3.82 billion, resulting in approximately $35 billion remaining as the insurers' estimated loss. The last of these eight hurricanes, Hurricane Wilma, resulted in the greatest total losses in Florida. The estimated losses, amounts paid by deductibles, claims payments made, and estimated net retention of insurers not covered by reinsurance, are summarized in the table below.

Insurers' Reported Hurricane Losses in Florida for 2004 and 2005

Hurricane	**Adjusted Estimated Gross Loss***	**Claims Payments**	**Projected Net Retention**	**Amounts Paid by Residential Insureds' Deductibles**
Charley (2004)	$9.43 bil.	$7.85 bil.	$4.11 bil.	$0.49 bil.
Frances (2004)	8.27 bil.	7.24 bil.	2.62 bil.	0.65 bil.
Ivan (2004)	4.11 bil.	3.26 bil.	1.86 bil.	0.24 bil.
Jeanne (2004)	4.33 bil.	3.59 bil.	2.12 bil.	0.43 bil.
Dennis (2005)	1.24 bil.	0.29 bil.	0.35 bil.	0.12 bil.
Katrina (2005)	1.52 bil.	0.74 bil.	0.47 bil.	not collected
Rita (2005)	0.07 bil.	0.01 bil.	0.06 bil.	not collected
Wilma (2005)	9.91 bil.	8.44 bil.	4.13 bil.	1.89 bil.
Total	**$38.88 bil.**	**$31.42 bil.**	**$15.72 bil.**	**$3.82 bil.**

Source: Office of Insurance Regulation (OIR), Hurricane Reporting Summaries. The summary report for the 2004 hurricanes are as of December 31. 2005 The summary report for the 2005 hurricanes are as of March 21, 2006.

*For each reporting company/group for the 2004 hurricanes, in cases where reported actual payment made exceeded reported estimated gross loss, the reported actual payment amount was used in this total. (OIR note.)

"Projected Net Retention" is the estimated amount of loss retained by the insurer that has not been ceded to a reinsurer (i.e. amount for which the insurer does not have reinsurance covering the loss).

Total amounts may not equal the sum of amounts for individual hurricanes due to rounding.

Citizens Property Insurance Corporation -- Background; Impact of 2004 and 2005 Storms

In 2002, the Florida Legislature created Citizens Property Insurance Corporation (Citizens) which, combined the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). A property is eligible for coverage with Citizens only if there is no other offer from an authorized insurer.

Citizens operates under the direction of an 8-member Board of Governors and offers three types of property and casualty insurance in three separate accounts:

- Personal Lines Account (PLA): a statewide account covering homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
- Commercial Lines Account (CLA): a statewide account covering condominium associations, apartment buildings and homeowners associations; and
- High-Risk Account (HRA): covering only the risk of windstorms, for both personal lines residential and commercial (residential and non-residential) policyholders, and offered only in those coastal areas eligible under the HRA.

As of February 28, 2006, Citizens provided coverage to 815,482 policyholders, making them the second largest insurer in Florida. The number of policies insured by Citizens, the written premium, and the exposure or amount of insured property value in each of its three accounts is summarized below.

Policies Issued by Citizens Property Insurance Corp.
(as of Feb. 28, 2006)

Account	Policies in Force	Premium	Exposure*
High Risk Account	366,802	$767.8 mil.	$135.9 bil.
Personal Lines Acct.	445,513	$587.7 mil.	$65 5 bil.
Comm'l Lines Acct.	3,167	$71.9 mil.	$13.8 bil.
Total	**815,482**	**$1,427.4 mil.**	**$215.1 bil.**

* Exposure = insured value of dwelling and contents
Source: Citizens Prop. Ins. Corp. (presented at 4/6/06 meeting of Sen. Banking and Insurance Committee)

Citizens processes more than 2,000 new applications for coverage each work day. In 2004, Citizens processed an average of 31,985 new applications per month; that number grew to 37,957 per month in 2005, and, through January and February 2006, the average is 36,825 per month.

Citizens reports 124,674 claims for hurricanes in 2004 and 168,377 claims in 2005. Citizens estimates its total losses for the 2004 and 2005 storms at $2.92 and $2.7 billion respectively.[1] Hurricane Wilma resulted in the largest estimated loss at over $2.3 billion.[2]

Citizens' Deficits; Assessments

If Citizens cannot pay its claims, it may levy regular assessments for each account against property insurers, including surplus lines insurers, up to 10 percent of each insurer's net written premium from the prior year for subject lines of business.[3] The entire regular assessment is levied against property insurers, who may recoup such amounts from their policyholders in subsequent rate filings. Currently, Citizens' assessment base has about $8.3 billion in premium, so a one-time regular assessment would generate about $830 million.

[1] As reported by Citizens at the meeting of the Senate Banking and Insurance Committee on April 6, 2006.
[2] Data from Citizens as of March 13, 2006.
[3] Lines of business that are subject to Citizens' deficit assessment include insurance for: fire, industrial fire, allied lines, farm owners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and includes liability coverage on all such insurance except for inland marine and certain vehicle insurance other than the insurance on mobile homes used as permanent dwellings.

An insurer must pay a regular assessment within 30 days of receipt of notification from Citizens. If the regular assessment is not sufficient to cover the deficit, Citizens may issue revenue bonds funded by multi-year emergency assessments collected by insurers as premium surcharges on all property insurance policyholders in the state, generally limited to 10 percent of premium or 10 percent of the deficit, whichever is greater.

However, "limited apportionment companies" (and their policyholders) are exempt from a substantial portion of the regular assessment. These are insurers with a surplus of $25 million or less, writing 25 percent or more of their total countrywide property insurance premiums in Florida. These insurers are exempt from regular assessments for any amount of the deficit in excess of $50 million. However, if a deficit is high enough to require multi-year emergency assessments in order to fund bonds, the policyholders of limited apportionment companies are subject to emergency assessments at the same amount as other property insurance policyholders.

After imposing a regular assessment on insurers, Citizens must impose a "market equalization surcharge" on its own policyholders equal to the same percent of premium assessment that is imposed on property insurers. This is intended to keep the Citizens' rates from being non-competitive, but it also acts to increase revenues to Citizens above the amount of the deficit, which is fully funded by the regular assessment (if the deficit is equal to or less than 10 percent of premium).

Prior to 2004, Citizens had a surplus of about $1.1 billion for its HRA and $700 million for the PLA/CLA combined. Citizens had more than $2.4 billion in losses in 2004, though, depleting its HRA surplus. Thus, Citizens incurred a $516 million deficit in the HRA. The other two accounts did not incur deficits. The $516 million deficit translates into a statewide average 6.8 percent assessment on all non-Citizens insured homeowners in Florida. Citizens policyholders will also pay a 6.8 percent assessment (a "market equalization surcharge") when renewing their policy.

Citizens started the 2005 hurricane season without a surplus in the HRA due to losses incurred in 2004. HRA sustained losses again as a result of the 2005 hurricanes, as well as worsening loss development for the 2004 hurricanes (which are booked to the 2005 financial statements), leading to a deficit for the second year in a row. HRA's estimated 2005 deficit is $1.7 billion,[4] including $590 million in worsening loss development for 2004.[5] Citizens started the 2005 hurricane season with an estimated $162 million surplus in the PLA and $25.7 million surplus in the CLA,[6] but project a 2005 deficit of $82 million in the PLA and $4 million in the CLA.[7] These deficits are expected to result in a regular assessment of about 11 percent of premium (the full 10 percent for the HRA and about 1 percent for the PLA/CLA) plus an 8 percent emergency assessment.[8] The 11 percent regular assessment is to be billed at one time and will presumably be passed on to policyholders in rate filings by insurers. The 8 percent emergency assessment could be spread out over a period of years depending on the terms of the board approved financing.

[4] As reported by Citizens at the meeting of the Senate Banking and Insurance Committee on April 6, 2006.
[5] Personal communication from representative of Citizens to committee staff.
[6] *Id.*
[7] *Id.*
[8] As reported by Citizens at the meeting of the Senate Banking and Insurance Committee on April 6, 2006.

Rate Standards for Citizens

Current law requires that PLA rates be actuarially sound and that the average rate for each county be no lower than the average rate charged by the insurer with the highest average rate in that county among the 20 insurers (5 insurers for mobile home coverage) with the greatest direct written premium in the state for that line of business. The law requires that HRA (wind-only policies) rates be actuarially sound and not competitive with approved rates charged by authorized insurers. Citizens and OIR were required to jointly develop a wind-only ratemaking methodology to meet this purpose for rates effective on or after July 1, 2004. The developed wind-only rate methodology uses a variation of the "Top 20" approach mandated for personal residential multi-peril policies.

Citizens' Operations

Chapter 2005-111, L.O.F., directs the Auditor General to audit Citizens. On December 7, 2005, the Auditor General released an operational audit of Citizens (report number 2006-096), which included findings in the areas of administration, policy eligibility determination and depopulation, customer service, claims handling, actuarial soundness of rates, and financing options. The report included the following recommendations related to the administration of Citizens:

- Documentation to show that Citizens had conducted an enterprise-wide evaluation of the effectiveness of operational and financial controls was not available.
- Statutes governing Citizens do not require the OIR to conduct background investigations, which are required for voluntary insurers, of Citizens' management or officers.
- Additional steps should be taken to strengthen the standards of conduct.
- Citizens had not implemented a comprehensive written procurement of policies and procedures.

In response to concerns expressed by the Auditor General, the Legislature, and the Office of Insurance Regulation, Citizens' board of governors approved the following amendments to the plan of operation on October 20, 2005 to strengthen standards of conduct (these amendments were subsequently approved by the OIR on November 30, 2005):

- A requirement that senior management be subject to the background investigation provisions of ss. 624.404(3) and 628.261, F.S.
- A requirement that the Division of Insurance Fraud of the Department of Financial Services be notified within 48 hours of any suspected fraud or compromise of public trust by a quasi-governmental employee.
- A code of ethics that includes detailed provisions regarding conflicts of interest, dual-employment and post-employment restrictions. Gifts of more than $100 are prohibited. Financial and other interests that conflict with the interests of Citizens are prohibited. Senior management is required to file a financial disclosures form substantially similar to the form required for state employees under s. 112.3145, F.S., with the OIR and the internal auditor of Citizens. Senior management is prohibited from doing business before the board of Citizens for a period of 2 years following termination from Citizens.
- Prior to entering into a procurement relationship, employees involved in the procurement process and vendors are required to disclose any conflict of interest. Purchases with an

estimated cost of more than $25,000 are generally subject to the competitive bid process. Employees engaged in the purchasing process are prohibited from accepting any gifts other than advertising novelties of nominal value.

Code of Ethics and Financial Disclosure; Procurement of Goods and Services

Part III of ch. 112, F.S., establishes the code of ethics for public officers and employees—mandating that employees comply with financial disclosure and reporting requirements. Public officers and specified employees are required to submit a financial disclosure to the Commission on Ethics each year. Noncompliance with these provisions may result in civil penalties and forfeiture of public retirement benefits. [s. 112.317, F.S.] Any contract executed in violation of this part may be voided by any party to the contract, the Commission on Ethics, the Attorney General, or any citizen materially affected by the contract that resides in the jurisdiction of the agency entering into the contract. [s. 112.3175, F.S.]

The Legislature, in December 2005, prohibited the acceptance of gifts or expenditures by agency officials and members and employees of the Legislature. [ch. 2005-359, L.O.F.]

The provisions of part I of ch. 287, F.S., govern the procurement of goods and services by state agencies. By law, state agencies are generally required to procure goods and services valued over $25,000 through a competitive selection process. Exceptions to this process are authorized for exempted services (e.g., legal and auditing), sole sourcing, and emergency purchases. Section 287.059, F.S., provides guidelines and criteria for determining whether staff attorneys or outside attorneys should be used and the factors to be used in selecting outside firms.

Pursuant to s. 11.062, F.S., an executive branch agency is prohibited from using state funds to retain a lobbyist to represent it before the executive or legislative branch. However, full-time employees of the agency may register as lobbyists and represent that employer before the executive or legislative branch.

Florida Hurricane Catastrophe Fund

The Florida Hurricane Catastrophe Fund (FHCF or "fund") is a tax-exempt trust fund created after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers.[9] All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The FHCF is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention/deductible.

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

[9] s. 215.555, F.S. (2005).

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" is based on the insured value of the residential property each insurer insures, their location, construction type, deductible amounts, and other factors. The "actuarially indicated" premium is the average annual amount expected to be reimbursed to the insurer based on the hurricane loss models plus administrative costs of the Fund, amounts expected to be appropriated for mitigation funding, and discounted for investment income. Law authorizes the SBA to include a rapid cash build-up factor in the premium formula, but the SBA had not done so, as explained below, until its recent approval for 2006-07 premiums.

FHCF operates on a "contract year" that 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.

By law the maximum amount the FHCF must pay in any year 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.[10] Due to the reduction in cash balance of the fund in 2004 and 2005, the cap has remained at $15 billion for 2005-06 and 2006-07. A maximum coverage amount is calculated for each insurer based on that insurer's share of the total premiums paid to the fund. For example, an insurer that pays 10 percent of total fund premiums has its maximum coverage limited to $1.5 billion (10 percent of $15 billion) for all hurricanes occurring during the contract year.

Insurers must first pay hurricane losses up to their "retention" for each hurricane, similar to a deductible, before being reimbursed by the FHCF. In 2005, the Legislature lowered the total industry retention from an estimated $4.96 billion to $4.5 billion per hurricane and addressed multiple storm seasons by reducing the retention to one-third of this amount ($1.5 billion) for a third hurricane and each additional hurricane.[11] The full retention is applied to the two hurricanes causing the greatest losses to the insurer. The retention is adjusted annually based on FHCF's exposure, but unlike the limitation on adjusting the $15 billion cap on fund payments, the retention is adjusted regardless of any change in the FHCF's cash balance.[12] For the 2006-07 contract year, the retention is estimated to be adjusted from $4.5 billion to $5.3 billion, meaning that insurers must absorb a greater amount of losses before being reimbursed. Like the maximum recovery amount, a retention is calculated for each insurer based on its share of fund premiums. For example, an insurer paying 10 percent of total fund premiums will have a retention of $530 million (10 percent of $5.3 billion) for the 2006-07 contract year.

Insurers also choose a percentage level of reimbursement by the FHCF. By statute, an insurer can select 45, 75, or 90 percent coverage reimbursement for losses that exceed its retention for each hurricane.[13] The vast majority of insurers choose the 90 percent reimbursement option.[14] Thus, once an insurer triggers FHCF coverage, 90 percent of its losses will be covered by the FHCF up to the insurer's limit of coverage. Insurers may purchase additional reinsurance in the

[10] s. 215.555((4)(c)1., F.S. (2005).
[11] s. 215.555(1)(e)4., F.S. (2005).
[12] s. 215.555(1)(e)1., F.S. (2005).
[13] s. 215.555(1)(e)2., F.S. (2005).
[14] Florida Hurricane Catastrophe Fund, Fiscal Year 2003-2004 Annual Report 23.

private market to cover their hurricane losses for amounts below the retention, above their reimbursement limit, or for the coinsurance amount (e.g., 10 percent) that is the insurer's responsibility for the layer of coverage provided by the FHCF.

The law allows the issuance of revenue bonds, which are funded by emergency assessments on property and casualty policyholders, if the cash balance of the fund is not sufficient to cover losses.[15] The FHCF is authorized to levy emergency assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation and, until June 1, 2007, medical malpractice), including surplus lines policyholders, when reimbursement premiums and other fund resources are insufficient to cover the fund's obligations.[16] Notably, this assessment base includes auto insurance, which is not included in the assessment base for Citizens. The assessment base for the FHCF is approximately $31 billion and is expected to grow to about $33 billion for premiums written at year end 2005. Annual assessments (which have never been levied) 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.[17]

The FHCF is expected to pay out $3.8 billion to insurers as a result of the 2004 hurricanes; to date, the fund has already paid $3.5 billion to insurers. Because the amount paid in 2004 was less than FHCF's cash balance, bonding was not necessary. However, as losses develop, the actual payments may exceed the current estimates.

Based on April 2006 data, representatives from FHCF estimate that the fund will experience a cash shortfall of $697 million dollars. Additionally, it is expected that the cash shortfall will grow substantially due to adverse loss development, perhaps resulting in a cash deficit of up to $1.297 billion. The FHCF paid $3.5 billion of $3.8 billion in reported losses stemming from the 2004 hurricanes. The reported losses from the 2005 hurricanes are currently at $3.7 billion, of which $2.4 billion have been paid. However, the loss estimates for the FHCF from the 2005 storms are subject to adverse loss development and have continued to increase from earlier estimates.

Because the FHCF is not likely to have cash to carry over to fund claims resulting from the 2006 hurricane season, it will have to rely solely on premiums collected in 2006 to reimburse insurers for losses. This makes bonding more likely if the fund has to pay claims as a result of 2006 hurricanes. The fund's anticipated premium revenue for 2006 is $800 million. On April 4, 2006, the Trustees of the SBA approved the 2006 FHCF premium formula to include a 25% increase known as a rapid cash buildup factor. This increase equates to $200 million in additional premium bringing the total FHCF premium to $1 billion. Premiums to the FHCF are paid by insurers in three installments, on June 1, October 1, and December 1, 2006. Thus, should an early season hurricane occur, it may be necessary for the FHCF to borrow money to cover its losses. This could be done with a simple loan for small losses; for larger losses revenue bonds would need to be issued. The addition of a rapid cash buildup factor will allow the FHCF to reduce its potential shortfall.

[15] s. 215.555(6)(a)1., F.S. (2005); s. 215.555(6)(b)1., F.S. (2005).
[16] s. 215.555(6)(b)1., F.S. (2005); s. 215.555(6)(b)(10), F.S. (2005).
[17] s. 215.555(6)(b)2., F.S. (2005).

In summary, from its inception in 1993 until the 2004 hurricane season, the fund paid insurers on claims for only two hurricanes (Erin and Opal in 1995). Until 2004, the amount FHCF paid to insurers totaled approximately $13 million. Thus, going into the 2004 hurricane season FHCF had accumulated over $6 billion in cash. As a result of the 2004 hurricanes, expected expenditures from the fund to reimburse insurers for hurricane losses approaches $3.85 billion. Going into the 2005 hurricane season, cash in the fund decreased to $3 billion. With reimbursement to insurers for 2005 hurricane losses expected to be $3.7 billion, bonding may be needed to pay claims and there will be no cash in the fund to start the 2006 hurricane season. The $6 billion it took the FHCF to accumulate over ten years has been depleted in two years.

Hurricane Loss Mitigation Funding

Section 215.559, F.S., directs the Legislature to appropriate at least $10 million annually from the FHCF, but not more than 35 percent of investment income from the prior fiscal year for hurricane loss mitigation programs.[18] Actual legislative appropriations have ranged from the $10 million to $30 million annually.

Created in 1999, the Hurricane Loss Mitigation Program (Mitigation Program) within the Department of Community Affairs (DCA) has an annual appropriation of $10 million from the FHCF to fund programs for improving the wind resistance of residences and mobile homes to prevent or reduce losses or reduce the costs of rebuilding after a disaster.[19] Three ($3) million from the Mitigation Program is statutorily directed to retrofitting public facilities to be used as hurricane shelters; the remaining $7 million is appropriated for the Residential Construction Mitigation Program (RCMP) administered by DCA and is statutorily allocated as follows:

- 40 percent ($2.8 million) to inspect and improve tie-downs for mobile homes;
- 10 percent ($700,000) to the Type I Center of the State University System dedicated to hurricane research (e.g., Florida International University); and
- The remainder (50 percent or $3.5 million) to programs developed by the DCA with advice from an Advisory Council to help prevent or reduce losses to residences and mobile homes or to reduce the cost of rebuilding after a disaster.

One of the programs funded by the $3.5 million allocation directs grants targeting homes in the Governor's designated Front Porch communities to provide hazard mitigation upgrades to low-to-moderate income homes.

Hurricane Loss Models

In 1995 the Legislature established the Florida Commission on Hurricane Loss Projection Methodology (Commission) to serve as an independent body within the State Board of Administration.[20] The Commission is to adopt findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. Members of the Commission include experts in insurance finance, statistics, computer system design, and meteorology who are full-time faculty members in the State University System and appointed by the CFO, an actuary member from the FHCF Advisory Council, an actuary

[18] s. 215.555(7), F.S. (2005).
[19] s. 215.559, F.S. (2005).
[20] Section 627.0628, F.S.

employed with a property and casualty insurer appointed by the CFO, an actuary employed by OIR, the Executive Director of Citizens, the senior employee responsible for FHCF operations, the Insurance Consumer Advocate, and the Director of Emergency Management of DCA. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards.

Law provides that an insurer may use hurricane loss models that the Commission deems accurate or reliable in its rate filings and that such determinations are admissible and relevant in consideration of the rate filing by OIR or on any arbitration or administrative or judicial review. However, legislative changes in 2005 made the findings admissible and relevant only if OIR and the consumer advocate appointed by the Department of Financial Services have access to all of the assumptions and factors used in developing the model and are not precluded from disclosing the information in a rate proceeding. The Legislature enacted a separate public records bill to provide a public records exemption for a trade secret, as defined in s. 812.081, F.S., provided by a private company to the Commission, OIR, or the consumer advocate, that is used in designing and constructing a hurricane loss model.

Public Hurricane Loss Model -- The state authorized and initially funded the development of a public hurricane loss projection model pursuant to the 2000 General Appropriations Act.[21] The model is required to be designed in accordance with standards set by the Commission. The Department of Insurance received an appropriation of $2.5 million to contract with the State University System (subsequently made with the International Hurricane Research Center at Florida International University). Annual appropriations of about $300,000 per year have since been made to further the development of the public model, which is currently being used by OIR in its review of rate filings. However, the model has not been submitted for review by the Commission.

Florida Insurance Guaranty Association (FIGA)

The Florida Insurance Guaranty Association (FIGA) pays unpaid property or casualty insurance claims, other than workers' compensation, of insolvent insurance companies licensed in Florida.[22] FIGA does not cover the first $100 of a claim or amounts in excess of $300,000 per claim, except with respect to policies covering condominium associations.[23]

FIGA is divided into three accounts and funding is provided by assessments against authorized insurers, as needed for the payment of covered claims and costs of administration. The maximum annual assessment against each insurer is 2 percent of the insurer's net direct written premiums in the state in the prior year, for the types of insurance in each account. The three accounts are: 1) auto liability, 2) auto physical damage, and 3) all other property and casualty insurance other than workers' compensation.[24] This "all other" account includes property insurance (such as claims resulting from hurricane-related insolvencies), personal liability, commercial liability, commercial multi-peril, professional liability, and all other types of property and casualty insurance other than automobile and workers' compensation.

[21] Section 2226 of ch. 2000-166, L.O.F.
[22] Part II of chapter 631, F.S.
[23] Section 631.57(1)(a), F.S.
[24] Section 631.55, F.S.

In general, assessments against insurers may be passed on to their policyholders. Specifically, the law provides that the assessments "shall be included as an appropriate factor in the making of rates."[25] This indicates that these costs may be included in the insurer's rate filing subject to approval by the Office of Insurance Regulation.

The last FIGA assessments occurred in 2002. According to documents provided by FIGA in December 2002, member insurers writing policies covered by the auto liability account were assessed 1.125 percent of their net direct premiums collected in 2001. FIGA made an assessment for the auto physical damage account in 2002 at a rate of 0.75 percent. There was no assessment in 2002 for the all-other account. According to FIGA, it has assessed the maximum of 2 percent only once in the past 11 years.

FIGA Bonds after Hurricane Andrew

On August 24, 1992, Hurricane Andrew devastated much of Dade County. Ten insurers were declared insolvent due to their inability to settle claims received following Hurricane Andrew. FIGA did not have sufficient assets to cover the estimated $400 million to $500 million in unpaid claims of the insolvent insurers. The regular 2 percent assessment for the "all other" account generated only about $65 million in addition to other recoveries available to FIGA.

In the December 1992 special session, legislation was enacted to address FIGA's shortfall, in order to pay claims of policyholders of insolvent insurers.[26] Under the law, the city of Homestead was authorized to issue municipal revenue bonds of up to $500 million to fund FIGA obligations resulting from the multiple insolvencies that resulted from Hurricane Andrew claims. The revenue bonds issued by the city of Homestead did not pledge any assets or taxing authority of Homestead. Rather, the Legislature authorized FIGA to charge its member insurers a special 2 percent assessment of premiums written in the "all other" account in addition to the regular assessment of up to 2 percent. The additional assessment served as the revenue stream pledged to retire the bonds issued by Homestead. The full 2 percent special assessment was levied each year from 1993 until 1996, and at a 0.75 percent rate in 1997. In addition, the 2 percent regular assessment was levied in 1993 and at much lower rates in 1994, 1996, and 1997. By 2000, FIGA had sufficient funds to pay off the Homestead bonds, although those funds were reserved to make the regular annual payments until the bonds expired in 2003.

Sinkhole Claims

Property insurance policies nationwide typically exclude coverage for "earth movement." But every authorized insurer in Florida must make coverage available for insurable sinkhole losses on any structure and the personal property contained within it.[27] Despite this requirement, insurers wish to exclude sinkhole coverage in their policies because of adverse selection concerns (i.e., those in sinkhole prone areas would be more likely to elect coverage).

Sinkhole costs in some areas of the state have grown exponentially in recent years. As a result, there have been policy cancellations due to paying policy limits on sinkhole claims and insurers

[25] Section 631.57(3)(c), F.S.
[26] Chapter 92-345, L.O.F.
[27] Section 627.706, F.S.

are refusing to issue new policies in sinkhole prone areas. Citizens Property Insurance Corporation has had a significant increase in policies from the Tampa Bay area (Hernando, Hillsborough, Pasco, and Pinellas counties)—from 1,012 policies at the end of 2001 to 140,171 policies (an increase of 13,751 percent)[28]—primarily due to private insurance companies refusing or limiting coverage in this area due to sinkhole exposure. In comparison, policies increased by 104 percent in Dade, Broward, and Palm Beach counties during the same period. Not only must more homeowners seek coverage from Citizens, but policyholders are facing rising premium costs. The average Citizens premium in Pasco County more than doubled from $1,006 on March 1, 2003 to $2,368 on April 1, 2006. If a pending Citizens actuarial rate filing for homes is approved, the average premium will rise to $3,605 on August 1, 2006.

In 2004 the Legislature commissioned a study by Florida State University, under the direction of OIR, on the feasibility and cost/benefits of a Florida Sinkhole Insurance Facility and other matters related to affordability and availability of sinkhole insurance. Submitted on April 1, 2005, the study reported that the number of paid sinkhole claims increased from 348 in 1999 to 1,108 in 2003, while total claims payments for sinkholes increased from $22.4 million in 1999 to $65 million in 2003. For this five-year period (which had no hurricane claims), there were a total of 2,509 paid sinkhole claims, representing 1 percent of all claims paid by insurers, but the $219.2 million paid for sinkhole claims accounted for 16.2 percent of total claims payments.

In 2005 the Legislature substantially amended the laws on sinkhole claims:

- Specifying that sinkhole coverage includes the costs to stabilize the land and building and to repair the foundation.
- Allowing an insurer to deny a sinkhole claim if the insurer determines there is no sinkhole loss; but the insurer must provide written notice to the policyholder of the right to demand testing.
- If the policyholder demands testing, the insurer must engage an engineer or a geologist to conduct testing.
- Testing must be conducted in compliance with specified standards and a report must be issued as to the cause of the loss, with recommendations for stabilization and repair.
- The findings and recommendations of the engineer and geologist are presumed correct and the insurer must pay the costs of stabilization and repair in accordance with the recommendations.
- The insurer may limit its payment to actual cash value of the sinkhole loss until such time as expenses related to land and building stabilization and foundation repairs are incurred, including underpinning and grouting. But, the insurer cannot require the policyholder to advance payments. The insurer must pay the expenses after a policyholder enters into a contract for stabilization or foundation repairs, and pay amounts necessary to begin and perform repairs as the work is conducted.

[28] Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market-Final Report, pg. 41 (March 6, 2006).

- If the engineer selected or approved by the insurer determines that the repair cannot be completed within the policy limits after repair begins, the insurer must either complete the engineer's recommended repair or tender the policy limits to the policyholder without a reduction for the repair expenses incurred.
- If an insurer pays a sinkhole claim, it must file a copy of the professional report with the county property appraiser.
- Establishing a sinkhole database to track sinkhole insurance claims.
- Requiring the seller of real property to disclose to the buyer that a sinkhole claim has been paid and whether the insurance proceeds were used to repair the sinkhole damage.

Other Present Law issues affected by this bill are discussed in Effects of Proposed Changes, below.

III. Effect of Proposed Changes:

Section 1 amends s. 215.555, F.S., related to the Florida Hurricane Catastrophe Fund ("Fund"). The major change is to require that the Fund add a charge of 25 percent of the actuarially indicated premium in order to provide a faster cash buildup in the fund. The State Board of Administration (SBA) recently approved this same percentage amount for the 2006-07 premium formula, but the bill mandates this each year. The current estimated Fund premiums for 2006 is $800 million without the rapid cash build up amount. The 25 percent rapid cash build up factor adds $200 million to the premium (resulting in a $1 billion total). Representatives of SBA have stated that current bonding documents prohibit the Fund from utilizing premium income from the actuarially indicated premium for 2006 to pay for claims incurred in 2005. However, the portion attributable to the rapid cash buildup factor can be used to pay claims associated with the 2005 hurricane season and, therefore, reduce the cash shortfall and amount of bonding needed for the 2005 season losses.

The bill also makes changes recommended by SBA to facilitate its issuance of bonds to cover its current deficit. The changes include deleting the requirement that bonds be validated pursuant to chapter 75, F.S., and that the validation be appealed to the Supreme Court. The SBA met this requirement in 1996 and deleting the language removes any ambiguity that it must be done again. The bill also clarifies that premiums are subject to assessment for funding bond obligations and the procedures for insurers to collect and transmit these assessments.

The bill continues and extends the exemption from assessments for medical malpractice premiums to fund bond obligations of the fund. The current three-year exemption is scheduled to be repealed on June 1, 2007, but the bill extends this exemption three years.

The bill also deletes apparently obsolete language requiring a preference in reimbursement to limited apportionment companies when the cash balance is below $2 billion. This language was in the law when the Fund was designed to make payments at year end due to each insurer's maximum share not being known until that time. Changes in 1995 established recovery limits for each insurer, which has enabled the Fund to reimburse insurers within 2 to 7 days. The current language could bring into question whether the Fund should reserve cash for limited apportionment companies even if other insurers have claims owing, which could result in delaying payment or earlier or unnecessary bonding.

The bill also clarifies that:

- the reference to "cash balance" for purposes of determining the annual growth factor for the Fund's $15 billion limit refers to the Fund balance as of December 31, as defined by rule;
- the Fund does not reimburse insurers for claims for loss of rent or rental income, rather than "loss of use," to further clarify that the Fund does reimburse insurers for claims for additional living expenses paid under their policies; and
- any annual assessments that are necessary to fund bonding obligations continue "for as long as" (rather than "until") the revenue bonds are outstanding.

Section 2 creates s. 215.558, F.S., to require the Department of Community Affairs to establish the Home Retrofit Hardening Program as a competitive grant program administered by local governments, regional planning councils, or private nonprofit agencies. The program is designed to fund improvements to homes to make them less vulnerable to hurricane damage. The order of priority is: 1) low-income homeowners who live in wind-borne debris regions as defined in the Florida Building Code, who are eligible for up to 100 percent funding; 2) homestead dwellings insured at $500,000 or less and located in high-risk areas of Citizens, with priority for homes insured by Citizens, eligible for up to 50 percent funding; and 3) all other homestead dwellings insured at $500,000 or less, eligible for up to 25 percent funding. The maximum grant for an individual home is $10,000. The program must include an inspection to determine mitigation measures, a means for verifying that the improvements have been demonstrated to reduce hurricane damage and that the proceeds were spent on such improvements. (Section 31 of the bill appropriates $50 million from general revenue for this program.)

Section 3 creates s. 215.5586, F.S., to provide wind certification and hurricane mitigation inspections to homeowners at no cost, pursuant to a request for proposals to the DCA from providers who must meet specified criteria of prior experience or specialized training. (Section 32 of the bill appropriates $5.5 million from general revenue for this purpose.)

Section 4 amends s. 193.155, F.S., to provide that specified mitigation improvements are not to be included or otherwise increase the assessed value of a home for tax purposes.

Section 5 creates s. 252.63, F.S., authorizing the Commissioner of Insurance Regulation to issue orders temporarily modifying or suspending provisions of the Insurance Code to expedite recovery of communities affected by a disaster, when the Governor declares a state of emergency. This provision is modeled on s. 252.62, F.S., which provides similar powers to the Director of the Office of Financial Regulation relative to the laws for financial institutions.

Section 6 amends s. 626.918, F.S., to allow alien surplus lines insurers to fund trust funds with letters of credit meeting certain criteria issued or confirmed by a qualified United States financial institution, as defined. Alien surplus lines insurers (i.e., formed under the laws of another country) must maintain a trust fund in the United States for the protection of U.S. policyholders of at least $5.4 million, in addition to the minimum $15 million minimum surplus requirement.

Section 7 amends s. 627.062, F.S., to revise the rate standards for property and casualty insurance rates, as follows:

The bill gives OIR the burden to establish that a rate is excessive for personal lines residential coverage with a dwelling replacement cost of $1 million or more, or for a condominium unit with a combined dwelling and contents replacement cost of $1 million or more. These are the same properties that are subject to a 25 percent surcharge for coverage with Citizens and that are made ineligible for coverage in Citizens effective July 1, 2011, pursuant to Section 9 of the bill.

The bill also revises current law that allows an insurer writing residential property insurance to recoup the premiums paid to the Florida Hurricane Catastrophe Fund and the "reasonable" costs of other reinsurance. The new standard allows an insurer to recoup its costs of other reinsurance "consistent with prudent business practices and sound actuarial principles," but gives OIR the burden of establishing that costs are in excess of this standard. Currently, when an insurer makes a rate filing it has the burden to prove by a preponderance of the evidence that a rate is not excessive, inadequate, or unfairly discriminatory (s. 627.062(1)(g), F.S.). The bill's provision would shift this burden to OIR only with regard to whether the costs of reinsurance the insurer is attempting to recoup exceed the statutory standard as revised.

The bill requires the chief executive officer and chief financial officer of an insurer or its CPA to sign a sworn statement certifying the appropriateness of a rate filing.

Section 8 amends s. 627.06281, F.S., related to the public hurricane loss projection model. The bill requires that the public model be submitted to the Florida Commission on Hurricane Loss Projection Methodology ("Commission") for review pursuant to s. 627.0628, F.S., (i.e., the same process and standards as the Commission uses for the review of other hurricane loss projection models). The bill allows OIR to continue to use the public model in its review of rate filings until the Commission determines that the public model is not accurate or reliable pursuant to the same process and standards the Commission uses for the review of other hurricane loss projection models.

Section 9 amends s. 627.651(6), F.S., related to Citizens Property Insurance Corporation.

Residential Structures Valued at $1 million or More

The bill requires that effective January 1, 2007, rates for coverage in HRA include a 25 percent surcharge for a personal lines residential structure with a dwelling replacement cost of $1 million or more, or a single condominium unit with combined dwelling and content replacement cost of $1 million or more. These same properties would no longer be eligible for coverage in Citizens, effective July 1, 2011. This affects the wind-only coverage currently offered by Citizens in the HRA, since Citizens currently excludes coverage for these policies in the personal lines account.

Citizens reported that its estimated 100-year probable maximum loss (PML) for the HRA would be reduced by approximately $800 million if it did not insure residential properties with values greater than $1 million. Citizens also reported in February of this year that the 100-year PML for the HRA was $7.8 billion as of December 31, 2005. However, Citizens reported new PML estimates in March that the 100-year PML of the HRA is now $10.3 billion.

In the February estimates, Citizens reported that it had 6,431 residential policies in force that were insured for values greater than $1 million, with a total insured value of $16.7 billion and a total premium of $64.3 million. In response to staff's inquiry for updated information, a representative of Citizens reported that as of December 12, 2005, it had 5,280 HRA residential policies with dwelling coverage in excess of $1million and a total in force premium of $64,238,090, resulting in an average premium of $12,166.

Rate Surcharge for Non-Homestead Property

The bill requires that for policies issued or renewed on or after January 1, 2007, Citizens must impose a 25 percent rate surcharge on "nonhomestead property." This reflects a legislative policy that there should be less reliance on assessments on non-Citizens policyholders to fund deficits for losses to nonhomestead property than for homestead property. The bill also requires an additional 25 percent surcharge be imposed on nonhomestead property if Citizens experiences a deficit, but this provision is limited to nonhomestead property owned by a nonresident of Florida.

However, the definition of "homestead property" that is not subject to these surcharges is broader than its use for tax purposes. The bill's definition includes (who would *not* be subject to the 25 percent surcharges):

- property granted a homestead exemption under chapter 196, F.S.
- property for which the owner has a current, written lease with a renter for a term of at least 6 months and for which the dwelling is insured by Citizens for $200,000 or less;
- an owner-occupied mobile home or manufactured home as defined in s. 320.01, F.S., permanently affixed to real property, is owned by a Florida resident, and has been granted a homestead tax exemption or, if the owner does not own the real property, the owner certifies that the mobile home or manufactured home is his or her principal place of residence;
- tenants coverage (i.e., the coverage purchased by a renter to cover the contents);
- commercial lines coverage, including both residential and nonresidential (i.e., condominium associations, apartment buildings, or commercial businesses. However, a condominium unit owner would not meet the definition of homestead unless he or she had a homestead exemption, or has a current 6-month lease with a renter and the insured value is $200,000 or less.)

Calculation of Deficit Assessments

The bill requires that the amount of the regular assessment to be levied on insurers (and recouped from their policyholders), must be reduced by amounts estimated to be collected from surcharges on Citizens' policyholders. There are two such surcharges under the bill. One is the current "market equalization surcharge" that the bill re-names the "Citizens policyholder surcharge." Currently, this surcharge must be imposed by Citizens on its own policyholders, after the regular assessment has been levied, in an amount equal to the average percentage of premium that was recouped by insurers from their policyholders. The second surcharge is a new 25 percent surcharge on nonhomestead property owned by a nonresident of Florida. Citizens would be required to estimate the amount to be collected from both of these assessments and reduce the regular assessment by that amount. The bill makes a conforming change to enable Citizens to

cover the entire amount of the deficit, by requiring the Citizens policyholder surcharge to be calculated based on the full amount of the regular assessment, before deducting the estimated Citizens policyholder surcharge, thus shifting some of the assessment to Citizens policyholders.

The bill also requires, in calculating the amount of the regular assessment, a reduction for the estimated amount that will be collected from the new 25 percent "deficit surcharge" the bill requires to be imposed on premiums for nonhomestead property owned by a non-resident of Florida.

Ten-Day Waiting Period; Limited Exception to "Consumer Choice"

The bill requires, effective July 1, 2007, that applications for new coverage to Citizens are subject to a 10-day waiting period and must be made available for review by agents and insurers. However, the board is authorized to approve exceptions that allow for coverage to be effective during this time for coverage issued in conjunction with a real estate closing or other situations the board determines are necessary to prevent lapses in coverage.

Due to the change in Section 12 of the bill, if an authorized insurer offers coverage during this 10-day period, the applicant would not be eligible for coverage in Citizens regardless of whether the insurer appoints the agent who submitted the application. [Current law (s. 627.651(c)5., F.S.) provides that if an authorized insurer offers coverage at their approved rate, a property is not eligible for coverage by Citizens, but this is "subject to the provisions of s. 627.3517, F.S."] The statutory reference is to the "Consumer Choice" statute that provides that if a policyholder's current agent is unable or unwilling to be appointed with the insurer making the take-out or keep out offer, the policyholder is not disqualified from eligibility for coverage in Citizens. However, Section 12 of the bill amends this section to provide that it does not apply during the first 10 days after a new application for coverage has been submitted to Citizens. Therefore, an offer of coverage during this 10-day period would disqualify the applicant for coverage in Citizens, regardless of whether the agent who submitted that application is appointed. The law would still require, however, that the take-out insurer compensate the agent pursuant to s. 626.361(6)(c)5.a.(I), F.S., which requires paying the producing agent, for the first year, an amount that is the greater of the insurer's commission or Citizen's commission.

Rate Standards for Citizens

The bill provides that the current requirement that Citizens' rates not be competitive with authorized insurers does not apply in a county or area for which OIR determines that no authorized insurer is offering coverage.

The bill requires that after the public hurricane model has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, it shall serve as the minimum benchmark for determining windstorm rates for Citizens.

Oversight and Internal Controls

- Requires the Financial Services Commission (Governor and Cabinet), rather than the Office of Insurance Regulation (OIR), to approve Citizens' plan of operation.

- Requires Senate confirmation of the Executive Director of Citizens.
- Requires Citizens to have an internal auditor who must submit an annual report to the board, the Financial Services Commission, and the Legislature. [Since December 2004, Citizens' has had an internal auditor who has issued reports on the following areas: investments function, premiums and cash Receipts, and catastrophic claims (including hurricanes). Another audit on agency administration and compliance, which was part of the internal auditor's work plan, was conducted by external auditors.]
- Requires OIR to do a market conduct examination of Citizens every two years.
- Requires the Auditor General to conduct an operational audit of Citizens every three years.
- Requires competitive bidding of contracts, with exceptions, and board approval of contracts of $100,000 or more. [These requirements are similar to requirements that have been adopted by Citizens.]
- Requires OIR background checks of applicants for senior management positions. The OIR is responsible for conducting these background checks pursuant to ss. 624.404(3) and 628.261, F.S. [Currently, prospective officers and senior management of insurers in the voluntary market are subject to the same requirements. The background check includes a national fingerprint check. Effective, October 20, 2005, Citizens instituted background checks pursuant to these statutory provisions.]

Standards of Conduct

- Subjects board members and senior managers to the code of ethics and financial disclosure requirements applicable to public officials and specified state employees. [In October 2005, the board adopted financial disclosures similar to the forms required of senior management of state agencies. However, these forms are required to be submitted to the OIR and the Internal Auditor rather than the Commission of Ethics, as the bill requires.]
- Prohibits board members and employees from accepting any gifts from any person or entity under contract with Citizens or under consideration for a contract. [Currently, Citizens prohibits employees and board members of the corporation from accepting gifts valued over $100.]
- Prohibits Citizens from retaining lobbyists, but allows employees to register as lobbyists.
- Prohibits senior managers from representing any person or entity before Citizens for two years following termination of employment from Citizens.

Other Changes to Citizens

- Requires insurers writing the non-wind coverage to contract with Citizens to provide claims adjusting services for the wind coverage provided by Citizens in the high-risk account.
- Requires Citizens to report to the Legislature on the feasibility of requiring insurers providing the non-wind coverage to issue and service Citizens' wind policies.
- Requires Citizens to offer quarterly and semiannual premium payment plans.
- Extends for two years (until Feb. 1, 2009) the requirement that the board reduce the boundaries of the high risk area eligible for wind-only coverage.

- Requires that any take-out bonus paid to an insurer by Citizens must be conditioned on the insurer keeping the policy for five years. Also, requires Citizens to monitor whether such policies are later insured by Citizens.
- Requires Citizens to report to the Legislature its recommendations regarding consolidation of its three existing accounts and the actions taken to minimize the cost of carrying debt.
- Clarifies that any "debt obligations" rather than "bonds" issued by Citizens are exempt from state and local taxation.
- Clarifies that as long as Citizens has any bonds outstanding, that it does not have the authority to file a voluntary petition under chapter 9 of the federal Bankruptcy Code (modeled on current law that applies to the Florida Hurricane Catastrophe Fund).

Section 10 specifies that changes in Section 9 regarding the method for calculation and determining the assessments and surcharges that must be levied to fund deficits in Citizens apply to a deficit incurred in 2006 and thereafter.

Section 11 amends s. 627.3511, F.S., to conform to changes made in Section 9 regarding take-out bonuses paid by Citizens, requiring that any bonus be conditioned on the property being insured for at least 5 years. [Current s. 627.3511, F.S., provides for a maximum $100 per policy take-out bonus, under specified conditions, but this section has been effectively mooted due to broader authority in the statute that allows Citizens to adopt programs for the reduction of writings subject to the approval of OIR (s. 627.351(6)(g)3., F.S.), which has resulted in take-out bonuses of amounts in excess of $100 per policy, based on conditions approved by the board and OIR.]

Section 12 amends s. 627.3517, F.S., related to Consumer Choice. This law currently provides that no provision in the Citizens statute or any other joint underwriting association or risk apportionment plan shall be construed to impair the right of any policyholder to retain his or her current agent, upon receipt of any keep out or take-out offer. [Current s. 627.3517, F.S., provides that a policyholder shall not be disqualified from being insured in Citizens or any other plan because of an offer of coverage in the voluntary market if the policyholder's current agent is unable or unwilling to be appointed by the insurer making the take-out or keep out offer.] The bill provides an exception deferring application during the first 10 days after Citizens receives a new request for coverage regardless of whether coverage is bound during this period. As described in Section 9, above, the bill requires that applications for new coverage to Citizens are subject to a 10-day waiting period and must be made available for review by agents and insurers.

Section 13 creates s. 627.3519, F.S., requiring the Financial Services Commission to provide an annual report to the Legislature of the probable maximum losses, financing options, potential assessments of Citizens and the FHCF, and the assessment burden on Florida policyholders.

Section 14 amends s. 627.4035, F.S., to provide an exception to the requirement that the recipient's written authorization must be provided to an insurer in order for the insurer to pay claims electronically. The bill waives this requirement if the insurer verifies the identity of the insured or recipient, does not charge a fee for the transaction, and remains liable if the funds are misdirected.

Section 15 creates s. 627.6121, F.S., to require property insurers to issue separate checks payable to the primary policyholder only, to pay claims for contents, living expenses, and the lesser of $20,000 or the first 20 percent of the estimated total covered claim amount for the replacement or repair of dual interest (mortgaged) property.

Section 16 amends s. 627.7011, F.S., to clarify that if a property insurer does not obtain a written rejection from the policyholder for law and ordinance coverage, the policy is deemed to include the law and ordinance coverage limited to 25 percent of the dwelling limit (and not the alternative 50 percent limit that must also be offered). The bill clarifies that this section does not prohibit an insurer from limiting its replacement cost coverage to the lesser of: the limit of liability shown on the policy declaration page; the reasonable and necessary cost to repair the property; or the reasonable and necessary cost to replace the property. [Current s. 627.7011, F.S., requires insurers to offer replacement cost coverage and requires that if a loss is insured for replacement cost, the insurer must pay the replacement costs without holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling or property.]

Section 17 creates s. 627.7019, F.S., to require the Financial Services Commission to adopt rules standardizing requirements that may be applied to insurers after a hurricane, addressing claims reporting requirements, grace periods for payment of premiums, and temporary postponement of cancellations and nonrenewals.

Section 18 amends s. 627.706, F.S., to allow (but not require) insurers to include a deductible for sinkhole losses for residential property insurance equal to 1, 2, 5, or 10 percent of the policy dwelling limits, with appropriate premium discounts offered with each deductible amount.

The bill also defines the term “professional engineer” rather than “engineer” but does not otherwise change the definition. This term is used throughout the following sections, to be consistent with the terminology used for “professional geologist,” but does not substantively change the law.

Section 19 amends s. 627.707, F.S, relating to standards for investigation of sinkhole claims. The bill allows the insurer to make payment directly to the persons selected by the policyholder to make the repairs, if approved by the policyholder and lienholder. The bill limits the application of the current law on the repair of sinkholes to personal lines residential property insurance policies. Therefore, it would not apply to commercial lines (residential or non-residential) policies, such as a condominium association or commercial business. [Current s. 627.707, F.S., requires that if the repair of the sinkhole loss has begun and the engineer selected or approved by the insurer determines that the repair cannot be completed within the policy limits, that the insurer must either complete the engineer’s recommended repair or tender the policy limits.]

Section 20 amends s. 627.7072, F.S., to make technical conforming changes to the term “professional engineer.” The bill also clarifies that that testing standards apply to either a professional engineer or professional geologist who performed such tests. This is consistent with the current law requirement in s. 627.707(2), F.S., that the insurer must engage an engineer *or* a professional geologist to conduct testing if the insurer is unable to identify a valid cause of damage, discovers damage consistent with sinkhole loss, or the policyholder demands testing.

Section 21 amends s. 627.7073, F.S., to specify that the sinkhole investigation report that is done by a professional engineer or professional geologist must include findings as to the "cause of distress to the property" rather than the "verification or elimination of a sinkhole loss." This terminology is believed to be more consistent with the findings that are typically made in such reports. The bill also clarifies that testing is done by either a professional engineer or professional geologist (as explained in the section above.)

The bill also requires that insurers that pay sinkhole claims must file sinkhole reports with the county clerk of court, rather than the county property appraiser.

Section 22 creates s. 627.7074, F.S. to require the Department of Financial Services ("department") to certify engineers and geologists to serve as "neutral evaluators" of sinkhole claims disputes between insurers and policyholders. This process would be optional and nonbinding and the costs must be paid by the insurer. However, if an insurer requests this process and the policyholder either declines to participate or declines to resolve the matter in accordance with the recommendation of the neutral evaluator, the insurer would not be liable for attorney's fees or other extra-contractual damages related to a claim.

Neutral evaluation must be conducted as an informal process in which formal rules of evidence and procedure need not be observed. The department must adopt rules of procedure for the process. The conference may be held by telephone, if feasible and desirable, and must be held within 45 days after receipt of the request by the department. Upon receipt of a request, the department must refer the request to a neutral evaluator who shall notify the parties of the date, time, and place of the conference.

The bill provides that evidence of an offer to settle a claim during the neutral evaluation process, or other relevant conduct or statements made concerning an offer to settle are inadmissible to prove or disprove liability or a claim's value. However, the recommendation of the neutral evaluator is admissible in any subsequent action or proceeding only for a determination regarding the award of attorney's fees.

The bill provides that if the neutral evaluator verifies a sinkhole and recommends costs that exceed the amount the insurer has offered to pay the policyholder, the insurer is liable for up to $2,500 in attorney's fees for the attorney's participation in the neutral evaluation process.

A party may seek judicial review to vacate the recommendation of the neutral evaluator if it was not "reasonable". However, the grounds are very limited in this regard, because a recommendation is reasonable unless: it was procured by corruption, fraud, or other undue means; there was evident partiality by the neutral evaluator or misconduct prejudicing the rights of any party; or the neutral evaluator exceeded the authority and power granted by this section.

Section 23 amends s. 627.727, F.S., to make a technical change to conform to a cross-reference.

Section 24 amends s. 631.181, F.S., related to insurance guaranty associations. The bill allows FIGA and other guaranty associations to pay claims of unearned premium refunds, without requiring the policyholder to file a proof of claim form, if adequate claims file documentation exists within the records of the insolvent insurer, or if the receiver certifies to the guaranty fund

that the records of the insolvent insurer are sufficient to determine the amount of unearned premium owed to each policyholder. This should result in returning unearned premiums to policyholders much more quickly.

Claimants are required to file "proof of claim" forms with the receiver (department) for any unpaid claims against an insurer in receivership, which must include certain information and be filed within the time limits specified in the receiver's notice. This applies not only to claims covered under the policy, but also to policyholder claims for the return of unearned premium, which is covered by each of the guaranty funds, subject to a $100 deductible in FIGA. This process is time consuming and often results in insureds not receiving a return of their unearned premium for months or even a year after an insolvency.

Section 25 amends s. 631.54, F.S., to revise the definition of "covered claim" to specify that an entity's (i.e., a business or other legal entity) residence is the state where its principal place of business is located. This would change the current interpretation—that the state of incorporation is the state of residency—applied by FIGA.

According to representatives from FIGA, this will conform Florida law to the majority of jurisdictions that use the principal place of business test for determining residency of a corporation for purposes of guaranty fund coverage. So, corporations and business entities with their principal place of business in Florida will be covered by FIGA if their insurer is rendered insolvent. Corporations incorporated in Florida but which have their principal place of business in another state will be required to seek reimbursement from the other state's guaranty association.

The bill adds a definition of "homeowners insurance" that is relevant to the following section of the bill which increases the maximum amount of FIGA's liability for a covered homeowners insurance claim against an insolvent insurer from $300,000 to $500,000.

Section 26 amends s. 631.55, F.S., to make a technical change to a cross-reference.

Section 27 amends s. 631.57, F.S., to authorize FIGA to impose annual emergency assessments on insurers of up to 2 percent of written premium for specified lines of property and casualty insurance to fund revenue bonds issued by a municipality or county to pay claims of an insurer rendered insolvent due to a hurricane. The bill authorizes FIGA to contract with a city or county to issue tax-exempt revenue bonds for this purpose. The provision is similar to the law enacted by the Legislature in 1992 to enable FIGA to pay the hurricane-related claims of insurers who became insolvent following Hurricane Andrew, except that the bill would provide continuing authority in this regard for any hurricane-caused insolvencies.

The bill also increases the maximum amount of FIGA's liability for a covered homeowners insurance claim against an insolvent insurer from $300,000 to $500,000.

Section 28 amends s. 631.695, F.S., to authorize any city or county substantially affected by a hurricane to issue bonds to fund an assistance program in conjunction with FIGA, to pay covered claims arising from the insolvency of an insurer determined by FIGA to have been a result of a hurricane. Such bonds would be secured by the current assessments that can be levied by FIGA,

and may be for a term not to exceed 30 years. The bond proceeds may be used by FIGA to settle unpaid claims or to refund unearned premiums to citizens of the state affected by the hurricane, even if the claimant's residence is not in the city or county that issues the bonds.

The bill makes legislative findings that it is necessary for the protection of the public health, safety, and general welfare of the residents of this state, and declared to be an essential public purpose, to permit municipalities and counties to take such actions as will provide relief to claimants and policyholders having claims against insolvent insurers. Related findings are made regarding the personal hardship to persons and families who suffer losses during a hurricane and the need for claims to be settled expeditiously. The findings also recognize the success of the FIGA bonds issued in 1993 and their potential for future use. The legislative findings likely will be used as part of the supporting documents that accompany any future bond issue for hurricane recovery.

The bill authorizes several uses for bonds issued for hurricane recovery. Among the authorized uses is the payment of covered claims of an insolvent insurer; to refinance or replace previous borrowings; to fund reserves for the bonds; to pay expenses incident to bond issuance; and other similar enumerated purposes. The bill provides that the state covenants (promises) not to take any action that could endanger the availability of funds to repay the bonds.

The bill requires FIGA to file a report annually with the Senate President, the Speaker of the House, and the Chief Financial Officer on the status of the bond proceeds.

Section 29 provides that no provision of s. 631.57, F.S., (as amended by the bill) or s. 631.695, F.S., (as created by the bill) shall be repealed until such time as the principal and interest on all bonds issued pursuant to such sections have been paid in full or adequate provision for payment has been made.

Section 30 amends s. 877.02, F.S., to make it unlawful for a contractor or business providing sinkhole remediation services to communicate with any attorney for the purpose of assisting the attorney in the solicitation of legal business. This expands the current law that makes it unlawful for certain other persons (employees of hospitals, police departments, etc.) to communicate with any attorney for this purpose.

Section 31 appropriates $50 million from non-recurring funds in the General Revenue Fund to the Department of Community Affairs (DCA) for the Home Retrofit Hardening Program that the bill (Section 2) requires DCA to establish.

Section 32 appropriates $5.5 million from non-recurring funds in the General Revenue Fund to the Department of Community Affairs for the wind certification and hurricane mitigation inspection program that the bill (Section 3) requires DCA to establish.

Section 33 appropriates $750 million dollars from non-recurring funds in the General Revenue Fund to the Department of Financial Services to be transferred to Citizens Property Insurance Corporation. This amount must be applied to reduce the amount of the regular assessment for the 2005 deficit. Citizens would be required to inform insurance companies in the assessment notice how much their assessment is being reduced. The insurance companies would then be required to

inform policyholders in their premium notices of how much the amount itemized for the Citizens assessment has been reduced due to the appropriation by the Florida Legislature.

Citizens estimates that its deficit for 2005 will be about $1.7 billion dollars. This would result in about an average 11 percent regular assessment and about 8 percent in future emergency assessments. The 11 percent regular assessment would total about $916 million, so the $750 million appropriation would reduce this to about $166 million, thereby reducing the average 11 percent regular assessment to about an average 2.4 percent assessment. The remaining 8 percent in emergency assessments would still be necessary, but emergency assessments can be spread out over a period of years, depending on the terms of the financing used.

Section 34 repeals subsection (3) of s. 215.559, F.S., which is the requirement, enacted in 2005, for the Department of Community Affairs to develop a low-interest loan program for retrofitting homes, and which appropriated $1 million to DCA for this purpose for FY 2005-2006. The bill's requirement in Section 2 for DCA to implement a grant program for this purpose would replace this program.

Section 35 provides that except as otherwise expressly provided, this act takes effect upon becoming law. (Many of the sections of the bill have later effective dates.)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill requires Citizens to impose a 25 percent deficit surcharge on nonhomestead property (as defined) owned by a non-resident of Florida. It also imposes a 25 percent surcharge on rates for nonhomestead property, and the definition of "homestead" for mobile homes includes state residency as a factor. These provisions raise a constitutional issue regarding equal protection and the "right to travel." The right to travel is derived from Art. IV, Sect. 2 of the constitution which states that "[t]he Citizens of each State shall be entitled to all the Privileges and Immunities of Citizens in the several States." The United States Supreme Court has found a fundamental right to interstate travel within the Constitution.[29] The right has three components: (1) the right of a citizen of one state to enter and leave another state; (2) the right to be treated as a welcome visitor

[29] *Saenz v. Roe*, 526 U.S. 489 (1999).

rather than an unfriendly alien while temporarily in the state; and (3) for persons who elect to become permanent residents, the right to be treated like other citizens of that state.[30] The right to be treated as a welcome visitor while temporarily in a state, is the most likely of the three provisions to be implicated by the provisions regarding Citizens surcharges.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Section 4. The bill amends s. 193.155, F.S., to provide that specified mitigation improvements are not to be included or otherwise increase the assessed value of a home for tax purposes. Department of Revenue estimates no fiscal impact.

Section 9. The impact on assessments by Citizens and the Florida Hurricane Catastrophe Fund are discussed below in sections on Private Sector Impact and Government Sector Impact.

B. Private Sector Impact:

Section 1. The bill requires that premiums paid by insurers for coverage from the Florida Hurricane Catastrophe Fund be increased by 25 percent to provide for more rapid cash buildup in the fund. This is expected to increase property insurance premiums by about 2.7 percent.

Medical malpractice policyholders will retain their exemption from Florida Hurricane Catastrophe Fund assessments until June 1, 2010. This benefit is actual rather than theoretical given the fact that deficit assessments are expected for 2006. It is unlikely that such assessments will exceed 1 percent of premium given the broad assessment base, but this is dependent on the term of the debt and potential losses for 2006-07 and subsequent contract years. The elimination of medical malpractice insurance premiums removes about $850 million (or about 2.6 percent) from the assessment base, which is expected to total about $33 billion for year end 2005.

Sections 3 and 4. The bill creates programs providing grants to homeowners for hurricane loss mitigation and home inspections for this purpose. Mitigation efforts will benefit individual homeowners who reduce their potential out-of-pocket costs due to a hurricane and receive credits on their property insurance premiums. Property insurers will benefit by reducing their exposure to hurricane losses, and all policyholders will benefit from lower premiums.

Section 7. The bill may facilitate the insurer's attempt to have rate filings approved by allowing an insurer to recoup the costs of reinsurance in its rates, unless OIR establishes that the costs are in excess of amounts consistent with prudent business practices and sound actuarial principles.

[30] *Saenz*, at 500.

Section 9. Owners of homes valued at $1 million or more (not including the value of the land) would be subject to a 25 percent surcharge for rates charged by Citizens, effective January 1, 2007, and would no longer be eligible for windstorm coverage in Citizens HRA account, effective July 1, 2011. These homeowners may be more likely to find coverage from an authorized insurer since the bill places the burden on OIR to establish that rates are excessive for coverage of such properties. Alternatively, these homeowners may find coverage in the surplus lines market. A representative of the surplus lines market recently said that a market for these homes exists, but that market conditions may change rapidly.

Owners of nonhomestead homes (as defined) insured by Citizens would be subject to a 25 percent surcharge, and non-Florida resident owners would be subject to an additional 25 percent surcharge if there is a deficit.

Non-Citizens policyholders will have a lower exposure to deficit assessments for deficits due to the increased rates for $1 million homes and nonhomestead property, as well as the requirement that the calculation of the regular assessment deduct the amount to be collected from Citizens' policyholders. The impact of making homes valued over $1 million ineligible for coverage is unknown given uncertainty surrounding the location of future hurricanes and whether Citizens will have a profit or loss for these homes in the future. But, according to Citizens, eliminating these homes reduces the 100-year probable maximum loss by an estimated $800 million.

Lessened enrollment with Citizens (and lower potential for assessments) may also result from the 10-day waiting period for Citizens coverage and the exception from the Consumer Choice law during this period, meaning that a keep-out offer would make the applicant ineligible for coverage whether or not the current agent is appointed by the keep-out insurer. Insurance agents who submit applications to Citizens but lose the business to a "keep out" insurer must still be compensated by the insurer, who, for the first year, is required to pay the producing agent the greater of the insurer's commission or Citizen's commission.

Insurance companies writing the non-wind coverage for properties that are provided wind coverage by Citizens will continue to be allowed to write non-wind coverage for those properties (i.e., properties in the areas currently eligible for wind-only coverage by Citizens). Current law requires the board of Citizens to reduce these boundaries on February 1, 2007, which the bill delays for two years. Therefore, these insurers will not face the choice of dropping the non-wind coverage or writing the windstorm coverage for these policies. These same insurers will, however, be required to provide claims adjusting services for the wind coverage provided by Citizens at terms that are substantially the same as those provided in contracts that Citizens and insurers have entered for 2006.

Requiring take-out bonuses be paid to insurers conditioned on the insurer keeping the policy for five years may reduce the number of policies taken out, but would provide assurance that any such policies remain out of Citizens for this time period.

Section 15. Financial institutions and mortgage holders will no longer be entitled to have checks issued jointly in their name and the name of the primary policyholder for claims payments up to the lesser of $20,000 or 20 percent of the estimated damage. This will compromise the ability of these institutions to protect their collateral for the mortgage, and, potentially, the marketability of mortgages on the secondary market.

Section 22. Sinkhole claims payments may be reduced with a favorable impact on premiums due to requirements for the arbitration process and the prohibition on awards of attorney fees under certain circumstances. If insurers offer the percentage sinkhole deductibles allowed by the bill, appropriate reductions in premiums would have to be provided.

Section 27. The bill authorizes FIGA to impose annual emergency assessments on insurers of up to 2 percent of written premiums, for specified lines of property and casualty insurance, to fund revenue bonds issued by a municipality or county to pay claims of an insurer rendered insolvent due to a hurricane.

The bill increases the maximum amount of FIGA's liability for a covered homeowners insurance claim against an insolvent insurer from $300,000 to $500,000. This benefits affected homeowners, and adds to FIGA's liability.

C. Government Sector Impact:

Section 624.509, F.S., provides for an insurance premium tax, with insurers required to pay "to the Department of Revenue a tax on insurance premiums, premiums for title insurance, or assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements, and on annuity premiums or considerations, received during the preceding calendar year . . ." Assessments by Citizens Property Insurance Corporation "are not subject to premium taxes, fees, or commissions" pursuant to the provisions of s. 627.3512(1), F.S.

Section 1. The bill requires an addition to the Florida Hurricane Catastrophe Fund of 25 percent of the actuarially indicated premium to provide a more rapid cash buildup factor. Current estimates of Fund premiums for 2006 are $800 million without any changes to current law. The 25 percent rapid cash build up factor would add $200 million to the premium, totaling $1 billion. Representatives of the State Board of Administration suggest that current bonding documents prohibit the Fund from utilizing premium income from the actuarially indicated premium for 2006 to pay for claims incurred in 2005. However, the portion attributable to the rapid cash buildup factor can be used to pay claims associated with the 2005 hurricane season, and, therefore, reduce the cash shortfall for the 2005 season.

Section 9. The various provisions imposing ethical standards and greater accountability and oversight of Citizens should help assure that Citizens operates in a manner consistent with the operation of state agencies and should help prevent conflicts of interest, improper expenditures, and deviations from accepted accounting and business practices.

Section 22. The Department of Financial Services is given additional duties regarding the neutral evaluation process of sinkhole claims. The DFS must certify and maintain a list of neutral evaluators. It must also receive requests for neutral evaluation and refer a neutral evaluator to mediate the dispute and make findings. The department will also receive the written report of the neutral evaluator.

The DFS has estimated the following costs related to these provisions:

i. $58,243 in salary and benefits, expenses, and start-up costs for a Management Analyst I who will implement and manage the neutral evaluation process.
ii. $65,565 in salary and benefits, expenses, and start up costs for a Consumer Affairs Specialist who will serve as a liaison for consumers participating in the neutral evaluation process without an attorney.
iii. Approximately $2,000 to create 5,250 brochures regarding the sinkhole mediation process.

Estimated first year costs total $125,808.

Sections 31. The bill appropriates $50 million from non-recurring funds in the General Revenue Fund to the Department of Community Affairs for the purposes of the Home Retrofit Hardening Program in Section 2.

Section 32. The bill appropriates $5.5 million from non-recurring funds in the General Revenue Fund to the Department of Community Affairs for the wind certification and hurricane mitigation inspections specified in Section 3. (The cost of an inspection is about $175 per house on a wholesale level, such as a group of homes inspected in the same area, or about $250 on a retail level.

Section 33. The bill appropriates $750 million from non-recurring funds in the General Revenue Fund to the Department of Financial Services to be transferred to Citizens Property Insurance Corporation. Citizens is required to use these funds to reduce the regular assessment for the 2005 deficit. This is expected to result in a reduction in the regular assessment from 11 percent to about 2.4 percent.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.