HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7225 PCB IN 06-01 Property and Casualty Insurance
SPONSOR(S): Insurance Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Insurance Committee	10 Y, 6 N	Callaway	Cooper
1)			
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5)			

SUMMARY ANALYSIS

This proposed committee bill makes the following major changes to property insurance affecting homeowners in Florida:

Florida Hurricane Catastrophe Fund (FHCF): Includes a rapid cash buildup of 25% for the FHCF. Extends the date medical malpractice insurance is excluded from the FHCF assessment base.

Hurricane Mitigation: Establishes a hurricane mitigation endowment fund to allow homeowners to obtain no-interest loans to implement hurricane mitigation measures for their homes. Establishes a grant program so homeowners can obtain a hurricane inspection describing what mitigation measures will help their home to withstand hurricane damage.

Office of Insurance Regulation/Rate Review: Allows property insurers to vary their approved insurance rate up or down 5% statewide or 10% per rating territory without obtaining regulatory approval of the change. Restricts the Office of Insurance Regulation (OIR) and the Insurance Consumer Advocate from questioning insurers about certain aspects of the hurricane models insurers use to justify a rate filing. Restricts the OIR from using the public hurricane model in rate filings until it is found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology. Requires the OIR to adopt standard emergency rules to be used after a natural disaster and gives the Insurance Commissioner power to adopt emergency rules.

Citizens Property Insurance Corporation (Citizens): Requires Citizens to treat homestead and nonhomestead property differently regarding rate setting and deficit assessment. Establishes rates based upon a 100 year possible maximum loss (PML) for homestead and 250 year PML for nonhomestead. Allows authorized insurers to establish rates for nonhomestead without being subject to review for excessiveness. Reallocates Citizens' deficit assessments and requires Citizens' homestead policyholders to pay a surcharge to cover their portion of a deficit assessment. Prohibits Citizens from insuring homes insured for $1 million or more or condominium unit owner's contents and dwelling policies insured for $1 million or more. Allows authorized insurers to write policies excluded from Citizens under the $1 million exclusion without rate regulation for excessiveness. Limits Citizens' coverage on mobile homes built before 1994 to actual cash value. Requires Citizens to purchase reinsurance for the nonhomestead account. Allows Citizens to include a residual market risk load in its rates. Restricts payment of take-out bonuses by Citizens to $100 per policy. Extends the reduction of Citizens' wind-only zones. Strengthens ethics and fraud reporting requirements for Citizens' managers and employees.

Other Major Changes: Requires replacement costs to be paid in advance on dwellings only. Authorizes the Florida Insurance Guaranty Association to issue revenue bonds for hurricane recovery. Creates a Task Force to study issues relating to hurricane insurance and mitigation for mobile homes. Requires reports from OIR on the insurability of attached and free-standing structures and on the feasibility of allowing policyholders to reduce their hurricane deductibles for mitigation steps taken.

The bill requires a legislative appropriation of $105,500,000 from the General Revenue fund for the endowment and inspection programs. The bill impacts the private sector in many ways. See Fiscal Section for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: Establishing a no-interest loan program and providing for wind certification and hurricane mitigation inspections provides an opportunity for homeowners to take responsibility for protecting their homes.

Placing the hurricane deductible at 5% for all nonhomestead properties in Citizens valued at $250,000 or more may require homeowners of such properties to pay more in out-of-pocket costs for deductibles.

Excluding homes insured for $1 million or more from Citizens will require those homeowners to find insurance coverage from surplus lines insurers or authorized insurers writing on an individual rate basis.

Citizens' nonhomestead policyholders must satisfy any deficit among themselves rather than relying on all Florida homeowners to contribute to the deficit reduction.

Providing insurance agents and their employees with immunity relating to coverage differences and insolvencies of insurers participating in Citizens' depopulation will protect these individuals from suit.

Limited Government: Allowing insurers to flex rate residential property will allow rate variations without approval by the OIR.

Providing automatic approval of rate changes for private insurers' filed rate for the wind portion of a policy eligible for the Citizens' High Risk Account if the rate change is less than the Citizens' approved rate for a similar policy will allow rate variations without approval by the OIR.

Requiring the OIR to enact emergency rules covering insurer's actions after a natural disaster will prevent the OIR from having to issue such rules after each natural disaster.

Excluding homes valued at $1 million or more from Citizens will decrease the number of policies in this quasi-public insurer.

Requiring nonhomestead policyholder to get a declination from surplus lines insurers and authorized insurers before being eligible for Citizens should decrease the number of policies in this quasi-public insurer.

The bill creates an endowment and grant program within the Department of Community Affairs (DCA) and authorizes new rule-making.

Ensure Lower Taxes: Requiring Citizens' homestead property owners to be included in the deficit calculation and division will spread the deficit assessment over more policyholders, thus reducing the amount of any assessment.

Empower Families: The bill's provisions relating to no-interest loans for hurricane mitigation measures and grants for hurricane inspections will help harden homes to prevent or reduce hurricane damage.

B. EFFECT OF PROPOSED CHANGES:

The 2004 and 2005 Hurricane Seasons

The 2004 hurricane season was particularly destructive for Florida, with four hurricanes causing extensive damage throughout the state. All four hurricanes occurred within a 45-day period beginning August 13. 2004 when Hurricane Charley made landfall as a category 4 hurricane with wind speeds of 145 miles per hour; followed on September 4 by Hurricane Frances, a Category 2 hurricane with wind speeds of 105 miles per hour. Next, Hurricane Ivan struck on September 16 followed by Hurricane Jeanne on September 26, which were both Category 3 hurricanes with respective winds speeds of 130 and 120 miles per hour at landfall. The paths of the hurricanes indicated virtually no part of Florida is immune from hurricane risk. Allegedly, the 2004 hurricanes caused damage to an estimated one in every five homes in Florida. Every county in Florida but Liberty County reported losses as a result of the 2004 hurricane season.[1]

The four hurricanes in 2004 are responsible for 1.66 million insurance claims and $20.9 billion dollars of insured losses in the Florida market.[2] The primary insurers incurred $11.3 billion in losses (of this amount, Citizens incurred $1.8 billion), the reinsurers incurred $5.75 billion, and the Florida Hurricane Catastrophe Fund (FHCF) incurred $3.85 billion.[3]

For the most part, the insurance and reinsurance industry recapitalized after the 2004 hurricane season. That is, the capital lost by primary insurers and reinsurers was replenished. Additionally, the FHCF was able to pay its share of the losses out of cash reserves and maintain a cash balance to use to pay claims to start the 2005 hurricane season.

However, as the state was still recovering, recapitalizing, and rebuilding from the 2004 hurricanes, the 2005 season began. The 2005 hurricane season was also destructive for Florida, with four hurricanes hitting Florida for the second year in a row.

Hurricane Dennis hit Florida in the early part of hurricane season, making landfall on July 10, 2005 on Santa Rosa Island with maximum sustained winds of 121 miles per hour, making it a category three hurricane. Its center moved across the western Florida panhandle into southwest Alabama.[4]

The estimated gross property loss in Florida caused by Hurricane Dennis is close to $1.4 billion. Over 57,000 insurance claims resulted from this hurricane.[5]

Hurricane Katrina hit Florida on August 25, 2005 and moved west across the southern portion of the state and into the Gulf of Mexico. At landfall, Hurricane Katrina was a category 1 storm with maximum sustained winds of 81 miles per hour.[6] Although Florida did not sustain as severe damage as New Orleans, Louisiana, Biloxi, Mississippi and surrounding areas, Hurricane Katrina caused an estimated gross property loss in Florida of approximately $1.8 billion due to almost 162,000 insurance claims.[7]

The next hurricane to hit Florida in 2005 was Hurricane Rita which made landfall on September 20, 2005. Like Hurricane Katrina, Hurricane Rita moved west across the southern part of the state with maximum sustained winds of 105 miles per hour, making it a category 2 hurricane.[8] It is estimated

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1 The Property Insurance Market in Florida 2004: The Difference a Decade Makes; prepared by the OIR; March 2005, page 5.
2 The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 11. (citing the OIR's disaster reporting data system)
3 Id.
4 http://www.nhc.noaa.gov/pdf/TCR-AL042005_Dennis.pdf (last viewed February 6, 2006).
5 Information received from the OIR on March 10, 2006 based on data collected as of February 28, 2006. The loss estimate includes all lines of insurance, not just residential.
6 http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf (last viewed March 9, 2006).
7 Information received from the OIR on March 10, 2006 based on data collected as of February 28, 2006. The loss estimate includes all lines of insurance, not just residential.
8 http://www.nhc.noaa.gov/archive/2005/pub/al182005.public_a.013.shtml? (last viewed March 12, 2006).

Hurricane Rita caused an estimated gross property loss in Florida of $157 million due to an estimated 4,000 insurance claims.[9]

Hurricane Wilma moved across the southern portion of Florida taking the opposite path of Hurricanes Katrina and Rita. It moved eastward across Florida from the Gulf of Mexico to the Atlantic Ocean. It made landfall on October 24, 2005 near Cape Romano, Florida with wind speeds of 121 miles per hour, a category 3 hurricane.[10] Insured losses from Hurricane Wilma are estimated at $10.4 billion, making it the costliest hurricane for Florida in 2005. Almost 800,000 insurance claims resulted from Hurricane Wilma.[11]

Claim and loss statistics and the loss distribution among primary insurers, reinsurance, and the FHCF are still in development and being reported, but the four 2005 storms are estimated to have generated a combined 1 million claims and an estimated $14 billion in insured losses in Florida. As of February 28, 2006 insurers have already paid over $4 billion in insurance proceeds for claims from the 2005 hurricane season.[12]

Insurers' losses from the 2004 and 2005 hurricanes as well as meteorological expectations that the increase in hurricane activity will continue for the foreseeable future have caused both insurers and reinsurers to reevaluate their tolerance for risk as well as the related amount of additional capital they are willing to commit to Florida. Some insurers have added new underwriting restrictions to reflect changes in their exposure tolerance. Others have nonrenewed or cancelled policies. Still others have raised rates. In fact, since 2004 the top five insurers by market share have raised rates by an average of 28.6% with an average per year increase of 11.8%.[13]

Since the 2005 hurricanes, the reinsurance market has partly recapitalized, but not yet fully replenished their investment capital.[14] According to reports from the insurance industry, the reinsurance market is showing some signs that reinsurers are reconsidering the risk/return relationships available when compared with other investment opportunities. Reinsurance rates for wind reinsurance along the Gulf states are increasing for reinsurance purchased in 2006. In addition, reinsurers are increasing the retention levels for reinsurance.

Florida Hurricane Catastrophe Fund (FHCF or fund)

Background

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.[15] All insurers who 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 an additional source of reinsurance to what is available in the private market, insurers are generally able to write more residential property insurance in the state than could otherwise be written. Because reinsurance purchased through the FHCF is significantly less

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9 Id.
10 http://www.nhc.noaa.gov/pdf/TCR-AL242005_Wilma.pdf (last viewed March 9, 2006).
11 Information received from the OIR on March 10, 2006 based on data collected as of February 28, 2006. The loss estimate includes all lines of insurance, not just residential.
12 Information received from the OIR on March 10, 2006 based on data collected as of February 28, 2006.
13 Personal communication from a representative of the Office of Insurance Regulation on file with the Insurance Committee.
14 The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 12. (citing the Reinsurance Association of America).
15 s. 215.555, F.S. (2005).

expensive than private reinsurance, the FHCF also acts to lower residential property insurance premiums for consumers.

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 different, based on the insured value of the residential property it insures, their location, construction type, deductible amounts, and other factors.

Under current law, the maximum amount the FHCF must pay in any 1 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.[16] The total industry retention is $4.5 billion per hurricane, also adjusted annually based on the FHCF's exposure (regardless of any change in the FHCF's cash balance).[17]

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

For the current 2005-06 contract year (June 1, 2005 – May 31, 2006), the insurance industry as a whole has an aggregate retention of $4.5 billion, meaning the total of all individual insurer retentions/deductibles will hypothetically total to $4.5 billion per event, assuming all participating insurers reached their retention. Although the insurance industry's aggregate deductible/retention totals $4.5 billion, loss recovery from the FHCF is based on an individual insurer meeting its own retention prior to losses being reimbursed. The industry aggregate retention is expected to grow to $5.4 billion for the 2006-2007 contract year.

Each insurer must meet a retention/deductible before FHCF monies are available to pay claims. The retention level for each insurer is different because the retention level is based on the amount of premium the insurer pays to the FHCF. Insurers with a high FHCF premium will absorb more as a retention/deductible than an insurer with a low FHCF premium. The insurer must meet its retention level for each storm in a hurricane season before the FHCF will step in to pay its claims. For insurers who experience losses due to multiple storms in a year, the insurer's full retention is applied to the two storms causing its two largest losses and its retention for the other storms causing loss is one-third of the full retention.[18]

As with the FHCF retention/deductible levels, every insurer participating in the FHCF has coverage based on its FHCF reimbursement premium. Each insurer has a maximum amount of coverage the FHCF will pay for claims each year. The maximum amount of coverage is different for each insurer because it is linked directly to the amount of premiums the insurer pays to the FHCF. Thus, insurers that pay higher premiums to the FHCF have more coverage than those that pay lower premiums. For the current contract year (2005-2006), the insurance industry as a whole is covered for up to $15 billion, meaning $15 billion is the most the FHCF will pay to the insurance industry on claims for a hurricane season. The coverage limit for the fund for the 2006-2007 contract year will remain at $15 billion because the fund's capacity does not grow in years the fund's cash balance declines. This will happen in 2005 due to payouts on 2005 hurricane losses.

Additionally, insurers also choose a percentage level of reimbursement by the FHCF. By statute, insurers can select 45, 75, or 90 percent coverage reimbursement for losses that exceed its deductible/retention for each hurricane.[19] Most insurers choose the 90 percent reimbursement

[16] s. 215.555((4)(c)1., F.S. (2005).
[17] s. 215.555(1)(e)1., F.S. (2005).
[18] s. 215.555(1)(e)4., F.S. (2005).
[19] s. 215.555(1)(e)2., F.S. (2005).

percentage.[20] This means 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 private market to cover their hurricane losses for amounts below the retention, amounts above their reimbursement limit, or for the coinsurance amount (e.g., 10%) that is the insurer's responsibility for the layer of coverage provided by the FHCF.

If the cash balance of the fund is not sufficient to cover losses, the law allows the issuance of revenue bonds, which are funded by emergency assessments on property and casualty policyholders.[21] 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.[22] Annual assessments (which have never been levied) are capped at 6% of premium with respect to losses from any 1 year and a maximum of 10% of premium to fund hurricane losses from multiple years.[23]

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 the FHCF's cash balance, bonding was not necessary. However, the loss estimates for the FHCF are estimates and as losses develop, the actual payments may exceed the current estimates.

For the current 2005-2006 contract year, the fund's $15 billion capacity consists of $3 billion in cash (before losses) and $12 billion in bonding capacity. The FHCF is expected to pay out $3.3 billion to insurers as a result of the 2005 hurricane season; approximately $2.2 billion has actually been paid by the fund to insurers. The remainder will be paid out as insurers request reimbursement and provide proof of losses.

Based on the latest data, the FHCF believes it may have a cash shortfall and will have to bond in order to pay claims from the 2005 hurricane season. The fund is currently estimating a cash shortfall of $264 million.[24] However, the loss estimates for the FHCF are still preliminary and as losses develop, the estimated cash shortfall amount may change. The FHCF predicts it will have no cash on hand entering the 2006 hurricane season. This puts the FHCF at its greatest risk of having to issue bonds since its inception.

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 equals $750 million. However, premiums to the FHCF are paid by insurers in three installments. Thus, $750 million is not likely to be available to pay claims at the start of the 2006-2007 contract year (June 1, 2006). Rather, the fund anticipates a cash inflow of $250 million by August 1, 2006, another $250 million by October 1, 2006, and a final $250 million by December 1, 2006. Thus, should an early season hurricane occur, it may be necessary for the FHCF to borrow money to cover losses. For low amounts of losses, this could be done with a simple bridge loan. For large amounts of loss, revenue bonds would need to be issued.

In summary, from the inception of the fund in 1993 until the 2004 hurricane season, the fund paid insurers for claims for only two hurricanes, Hurricanes Erin and Opal in 1995. Until 2004, the amount the FHCF paid to insurers totaled approximately $13 million. Thus, going into the 2004 hurricane season the FHCF had accumulated over $6 billion in cash. As a result of the 2004 hurricanes, the fund has spent or expects to spend almost $3.8 billion of its cash reimbursing insurers for hurricane losses.

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[20] Florida Hurricane Catastrophe Fund, Fiscal Year 2003-2004 Annual Report 23.
[21] s. 215.555(6)(a)1., F.S. (2005); s. 215.555(6)(b)1., F.S. (2005).
[22] s. 215.555(6)(b)1., F.S. (2005); s. 215.555(6)(b)(10), F.S. (2005).
[23] s. 215.555(6)(b)2., F.S. (2005).
[24] Memorandum regarding FHCF Losses Update & Activity Report to the State Board of Administration from Coleman Stipanovich dated March 21, 2006, on file with the Insurance Committee.

Going into the 2005 hurricane season, the fund's cash had decreased to $3 billion. With reimbursement to insurers for 2005 hurricane losses expected to be $3.3 billion, the fund anticipates it will start the 2006 hurricane season with no cash. Thus, it is important to note that the $6 billion it took the FHCF to accumulate over ten years was depleted in just two years.

The bill requires the fund to include and use a rapid cash buildup factor of 25% in its reimbursement premium formula used to calculate each insurer's premium to the fund. Current law allows its use but it has never been required.

Requiring a rapid cash buildup of 25% will allow the fund to collect $187 million more in premium for the 2006 contract year. This amount is in addition to the estimated $750 million the fund will collect due to normal premiums. Including a rapid cash buildup in the fund will not increase the amount of fund coverage insurers have; insurers will simply pay more in premiums due to the rapid cash buildup for the same amount of coverage.

Monies collected via a rapid cash buildup implemented in 2006 could be used to pay 2005 claims against the FHCF filed by insurers if the fund amends its administrative rule covering bonding to allow this use. According to the fund, it is currently pursuing such a rule change. The extra premium generated from a rapid cash buildup would put the fund in a better financial position in case their estimates of the claims from insurers from the 2005 hurricane season are too low. In such a case bonding may be prevented or reduced if the rapid cash buildup monies can be used to pay the 2005 claims.

According to the Task Force on Long-Term Solutions to Florida's Hurricane Insurance Market's report adopted March 6, 2006, including a 25% rapid cash buildup in the fund premium is estimated to increase the premium homeowners pay for residential property insurance by 3% on average. However, the premium increase per policyholder will vary.

The bill also removes a preference in fund reimbursements given to limited apportionment companies. Under current law, when the cash balance of the fund is below $2 million, limited apportionment companies are reimbursed before all other insurers qualifying for fund reimbursement. According to a fund representative, this provision is obsolete due to the quickness of Fund reimbursement to insurers.

The bill also extends the date that medical malpractice insurers are exempt from the assessment base for FHCF emergency assessments from June 1, 2007 to June 1, 2010. The provision exempting medical malpractice insurers from the emergency assessment base was added to the law in 2004. As of 2004, medical malpractice insurers wrote approximately $860 million in premiums, translating to 3% of the FHCF assessment base.[25] Extending the exemption for these insurers means if the fund has to assess insurers to pay for revenue bonds, it will be unable to levy assessments against medical malpractice insurers. It is important to note that workers' compensation insurers are also exempt from the fund's emergency assessment base.

The bill makes a clarifying change to the definition of "losses" for fund purposes. The change clarifies the fund does not reimburse insurers for claims paid for loss of rent or loss of rental income. To date, the fund has not reimbursed those types of "losses."

The bill also makes a clarifying change regarding how the FHCF capacity is adjusted. Current law allows the fund's $15 billion capacity to grow with exposure; however, the growth cannot increase more than the growth of the fund's cash balance. Under a literal interpretation of this language, the fund's cash balance could grow in a year due to bonding of the fund and thus the Fund's capacity would grow too. However, under this circumstance the fund's financial picture would be troublesome as it would have to resort to bonding to obtain sufficient cash to pay claims. Thus, under that financial picture, the

[25] Florida Office of Insurance Regulation 2005 Annual Report on Medical Malpractice Financial Information Closed Claim Database and Rate Filings dated October 1, 2005, page 14.

fund's capacity should not grow because any growth exposes insurers to more bonding potential. Due to this unintended consequence, the bill amends current law to allow the fund's capacity growth to be limited by the balance of the fund on December 31st. The balance of the fund on December 31st is required to be defined by rule and the fund currently has a rule defining how to calculate the balance of the fund on December 31st.

Hurricane Mitigation

The nature of Florida's population, housing growth, and coastal development means a substantial portion of Florida's housing stock could dramatically benefit from mitigation techniques. Any meaningful, long-term solution to the Florida hurricane insurance market should recognize the critical link between structures' wind-resistance and survivability.

The average single family home in Florida is 26 years old; however, the average age of single family homes in Broward, Miami-Dade, and Palm Beach counties is over 30 years old.[26] According to the report issued in 2005 by the Multihazard Mitigation Council of the National Institute of Building Sciences, *"Natural Hazard Mitigation Saves: An Independent Study to Assess the Future Savings from Mitigation Activities",* each dollar spent on mitigation, saves society an average of four dollars.

Increasing wind-resistance of buildings on the front end (at the time of construction) or retroactively through retrofitting will deliver a return on investment by reducing damage and therefore insurance losses. Hurricane mitigation techniques may include reinforcing roof-to-wall connections, reinforcing roof systems, use of superior roof material attachment methods, placement of secondary water barrier on roof decking and protection of all openings (window, doors, garage doors and gable vents, etc.) by either installing shutter systems or using wind and impact-resistant window and/or door systems.

Mitigation is important for single family residential homes, multi-family residential homes, and mobile or manufactured homes (mobile homes). Florida has the largest number of mobile homes of any state in the nation and the highest number of mobile homes owned by the elderly, although information varies on the number and age of mobile homes in Florida.[27] The Shimberg Center estimates mobile homes represent 12% of the housing stock and house 10% of the state population.[28] The 2000 Census report estimates there are over 600,000 mobile homes in Florida, 85% of which were built before 1995.[29] According to another source, the 2000 Census counted almost 850,000 mobile homes in Florida, most of which were built before 1995.[30]

Mobile homes built before 1994 are not built in accordance with the wind standards implemented by the U.S. Housing and Urban Development agency (HUD). These wind standards were implemented due to the severe damage to mobile homes by Hurricane Andrew. HUD designates wind zones in Florida by county and requires mobile homes to be placed in a wind zone to be manufactured to standards designed for the wind zone. For example, a mobile home located in a Type III Wind Zone must be built to withstand winds of 110 miles per hour. Type III wind zones are located primarily in coastal counties along Florida's southwest and southeast coasts, south of Lake Okeechobee. HUD has designated all counties in Florida as either a Type II or Type III Wind Zone. Type II Wind Zones must contain mobile homes able to withstand winds of up to 100 miles per hour. Prior to the implementation of wind zones by HUD in 1994, mobile homes were built to withstand winds of 70 miles per hour.[31]

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[26] The Property Insurance Market in Florida 2004: The Difference a Decade Makes; prepared by the OIR; March 2005, page 17.
[27] Id. at page 14.
[28] Id.
[29] Id. at page 18.
[30] *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005 at page 10.
[31] *See Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005 at pages 10-13; Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005 at page 1.

Hurricane Mitigation Premium Credits
Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques had been installed which reduce the amount of loss in a windstorm. These construction techniques include roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength, etc. Individual credits generally range from 3% to 25% and a fully mitigated home can qualify for total credits ranging from 20% to 42% off its wind insurance premium. Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify, often requiring some sort of certification or inspection. Insurers may allow homeowners to self-certify some features such as roof shape or number of stories, but require an engineer, building inspector, architect, or licensed building contractor to certify the more technical features such as roof deck attachment. Section 627.711, F.S. requires insurers to notify their policyholders or potential policyholders at policy issuance and renewal about the availability and range of credits or discounts for making wind mitigation improvements to their homes.

Hurricane Loss Mitigation Funding In Current Law
Section 215.559, F.S. directs the Legislature to annually appropriate at least $10 million from the FHCF, but no more than 35% of the investment income from the prior fiscal year for hurricane loss mitigation programs.[32] Actual annual legislative appropriations have ranged from the minimum $10 million to $30 million. The Hurricane Loss Mitigation Program (Mitigation Program) within the Department of Community Affairs (DCA) was created in 1999, with 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.[33] Three ($3) million from the Mitigation Program is statutorily directed to retrofitting public facilities to be used as hurricane shelters while the remaining $7 million, is appropriated for the Residential Construction Mitigation Program (RCMP) administered by DCA and statutorily allocated as follows:

- 40% ($2.8 million) is used to inspect and improve tie-downs for mobile homes;
- 10% ($700,000) is directed to the Type I Center of the State University System dedicated to hurricane research, e.g., Florida International University; and
- The remainder (50% or $3.5 million) is generally directed 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. Chapter 2005-264, L.O.F. passed by the Legislature last year, required DCA by the 2006-2007 fiscal year to establish a low-interest loan program for homeowners and mobile homeowners to use to retrofit their homes with hurricane mitigation measures. Prior to the enactment of this law, DCA did not have any low-interest loan programs.

Governor's Fiscal Year 2006-2007 Budget
The Governor's Fiscal Year 2006-2007 Budget for Florida contains various funding proposals for hurricane mitigation. These proposals are in addition to the $10 million required to be spent on mitigation pursuant to s. 215.559, F.S. The recommended budget includes $50 million to retrofit older homes to help them better withstand hurricanes. Many of the other hurricane mitigation funding proposals cover funding for hurricane shelters, evacuation, county emergency operations centers, rebuilding for homes damaged by the 2004 and 2005 hurricanes, and affordable housing.

Mitigation Endowment Proposed By the Bill
The bill creates the Florida Hurricane Damage Prevention Endowment funded by a $100 million appropriation from the General Revenue Fund. The endowment provides no-interest loans for the

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[32] s. 215.555(7), F.S. (2005).
[33] s. 215.559, F.S. (2005).

purpose of hurricane damage mitigation and prevention. It distributes the loans on the following priorities:

1) single-family owner-occupied dwellings located in the areas designated as high-risk areas for purposes of Citizens Property Insurance Corporation coverage
2) single-family owner-occupied dwellings covered by Citizens Property Insurance Corporation, wherever located.
3) single-family owner-occupied dwellings that are more than 40 years old
4) all other single-family owner-occupied dwellings
5) all other residential properties.

Homeowners participating in the loan program must obtain a hurricane mitigation inspection as a condition of participating in the program. The cost of the inspection can be included in the loan amount. The no-interest loans provided under the program are only available to mitigate homestead property with an insured value of $500,000 or less.

The loan program is to be administered through lending institutions with the Department of Community Affairs (DCA) issuing requests for proposals for lending institutions that want to participate in it. The state will pay the participating financial institutions enough money to cover the interest on the loans the institutions give to homeowners participating in the program.

The endowment amount ($100 million) will be invested by the State Board of Administration (SBA) in investments that ensure the $100 million is preserved and will not decrease. Accordingly, the monies used to pay the interest on the loans will be generated through investment income of the $100 million (expected to be $5 million). It is anticipated financial institutions will be able to loan approximately $55 million under the program.

Eighty percent of the interest earned on the $100 million investment ($4 million) must be used to pay interest on the no-interest loans to homeowners. The remaining 20% ($1 million) is used for matching fund grants to local governments and nonprofits for hurricane mitigation projects.

An advisory council is created to advise the DCA regarding the endowment program.

Grants for Inspection
The bill also establishes a grant program for hurricane mitigation inspections for homeowners. Entities providing hurricane mitigation inspections and wind certification reports must submit bids to the DCA to participate in the program. The inspection provided under the program must include a summary of results, identification and cost estimate of hurricane mitigation measures that could be taken, hurricane insurance premium discounts associated with the measures, an evaluation of the homes' hurricane resistance and specification of the home's hurricane resistance rating if the recommended mitigation measures are made. Inspectors must be experienced, drug tested, background checked, and certified.

The bill appropriates $5.5 million from the General Revenue Fund to the DCA for the program in nonrecurring funds.

<u>Citizens Property Insurance Corporation</u>

Background
In 2002, the Florida Legislature created Citizens Property Insurance Corporation (Citizens) which combined the then existing Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens is the state's "insurer of last resort" and 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, appointed by the Governor, Chief Financial Officer, the Senate President, and the Speaker of the House of Representatives for 3-year terms. The Chief Financial Officer also appoints a technical advisory board to provide information and advice to the Board of Governors.

Citizens offers three types of property and casualty insurance in three separate accounts:

1) Personal Lines Account (PLA) which covers homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2) Commercial Lines Account (CLA) covering condominium associations, apartment buildings and homeowners associations; and
3) High-Risk Account (HRA) which covers personal lines windstorm-only policies, commercial residential wind-only polices and commercial non-residential wind-only policies.

As of January 31, 2006, Citizens provided coverage to 796,524 policyholders, making Citizens the second largest insurer in Florida. The numbers of policyholders in the three accounts are: PLA -- 367,305; CLA -- 3,148, and HRA – 426,071.[34] Currently, Citizens is averaging 30,000 new applications for coverage per month. At this rate, it is soon likely to become the largest insurer in Florida.

The High-Risk Account provides windstorm only coverage. Citizens provides coverage in specially designated areas which have been determined to be particularly vulnerable to severe hurricane damage. In these "wind only" zones, private insurers may offer other peril insurance, but are not required to provide windstorm coverage. For the HRA policies in effect on January 31, 2006, Citizens reports approximately $756 million generated in premiums, representing an exposure of approximately $134 billion.[35] The premiums generated by the HRA policies account for approximately 55% of all premiums generated and represents 64% of Citizens' total exposure.

In 2004 and 2005, Citizens policyholders were impacted by all four hurricanes hitting Florida. Citizens reports 120,000 claims have been filed for the four 2004 hurricanes and 165,000 claims for the 2005 hurricanes. As of February 1, 2006, Citizens has paid over $2.5 billion in claims for the 2004 hurricane season and an additional $775 million in claims for the 2005 hurricane season.[36] Hurricane Wilma was especially devastating for Citizens. This hurricane accounted for over 145,000 claims. As of February 28, 2006, Citizens has paid over $1 billion in losses for Hurricane Wilma and estimates its total losses will be over $2 billion.[37]

The bill increases Citizens accounts offering property and casualty insurance from three to four. It also limits the three existing accounts (PLA, CLA, and HRA) to offering insurance only to homestead property. Homestead property includes property which currently has a homestead exemption, which qualifies for a homestead exemption but does not have one (if the policy holder obtains the exemption in a year), commercial residential property, property covered by tenant's insurance, and property covered by insurance for owner-occupied mobile homes. Commercial nonresidential property on which Citizens writes wind only and property on which no homestead exemption is claimed must get insurance coverage in Citizens' nonhomestead account. Policyholders in the nonhomestead account must certify, by affidavit at the time the policy is issued and at renewal, the property insured has been rejected for coverage by at best three authorized and three surplus lines carrier. Authorized insurers are allowed to write insurance on Citizens' nonhomestead property on an individual rate basis. In most cases, this will allow the insurer and the homeowner to negotiate a rate for homeowner's insurance. The OIR; however, is still able to review the rate to determine if it is inadequate or unfairly discriminatory.

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[34] http://www.citizensfla.com/Exposure_Prem_Reports.asp (last viewed March 8, 2006).
[35] Id.
[36] *See* Citizens Property Insurance Corporation Board of Governor's Report to the Florida Legislature dated February 1, 2006.
[37] Personal communication from a representative at Citizens on file with the Insurance Committee.

The bill also requires Citizens to purchase reinsurance on the nonhomestead account to cover a 250-year probable maximum loss event. Under current law, Citizens must use its "best efforts" to purchase reinsurance for a 100-year probable maximum loss. Citizens purchased reinsurance for the 2005 hurricane season for its' HRA and PLA accounts. For the HRA, for $20 million, it purchased $282 million in season-long coverage after $775 million in losses; for the PLA, for almost $29 million it purchased $175 million in season-long coverage after $225 million in losses.[38] Citizens' expects to collect recoveries from private reinsurance on the HRA ($35 million recovery) and PLA ($41 million recovery). These recoveries will be offset against the amount of 2005 deficits in each account.

The bill requires properties in the nonhomestead account insured at $250,000 or more to have at least 5% hurricane deductible.

Under current law, private market insurers can only adjust Citizens' wind-only policies on a voluntary basis if the insurer writes the other perils policy for the Citizens policyholder. The bill requires Citizens to report to the Legislature regarding the feasibility of requiring private insurers to issue and service Citizens' wind-only policies if the insurer writes the other peril portion of the policy.

Depopulation and Take-Out Bonuses

Since 1995, Florida law has expressed the Legislature's intent to provide a variety of financial incentives to encourage the replacement of the highest possible number of policies written in the state's residual market with policies written by admitted insurers at approved rates.[39] There is specific authority for Citizens, as there was for the RPCJUA, to pay a "take-out bonus" to insurers of up to $100 for each policy removed from Citizens, under certain conditions. However, Citizens, like the RPCJUA before it, has implemented greater bonuses under conditions approved by its board and the OIR, based on a broader grant of authority to adopt programs and incentives for the reduction of both new and renewal writings found in s. 627.351(6)(g)3., F.S.

Citizens adopted a new depopulation program in December 2005. This program has non-bonus and bonus components in it. Only policies taken out with wind coverage are eligible for a bonus. Take-out companies must assume a minimum number of policies or a minimum total insured value of the take-out policies under either the bonus or non-bonus component. Policies must be taken out for three or five years in order to be eligible for a bonus. Base bonus amounts range from 5% to 12.5% for dwelling policies; however, some policies are not eligible for bonuses. Base bonuses for condo unit/tenant contents and mobile home policies have different ranges. Take-out companies can receive an additional bonus amount for assuming a greater number of policies or for taking a policy out for 5 years. The additional bonus amounts range from 0% to 10%, depending on the number of bonus eligible policies or the total insured value of policies taken out.

Citizens reports that in 2004, four insurance companies removed more than 158,416 policies from Citizens, including 145,959 in the PLA and 12,457 in the High Risk Account. In 2005, 293,684 policies were removed from Citizens (75,556 from the HRA and 218,128 from the PLA).[40] According to Citizens, take-out companies predict 150,000 – 300,000 policies will be taken out of Citizens in 2006.[41] Additionally, Citizens believes the take-out program has had substantial impact in keeping PLA policies from growing more than they have and in stabilizing the number of HRA policies.[42]

It has been questioned whether the take-out bonuses provide a cost-effective method for reducing Citizens' potential liability. On the one hand, payment of cash bonuses to insurers reduces Citizens' surplus to pay claims and may be a windfall to an insurer willing to take out a policy at its approved rate

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38 Citizens Property Insurance Corporation Board of Governor's Report to the Florida Legislature dated February 1, 2006, page 12.
39 *See* s. 627.3511(1), F.S. (2005); s. 10, ch. 95-276, L.O.F.
40 Personal communication with a representative of Citizens on file with the Insurance Committee.
41 Id. at page 3.
42 Minutes from the Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market meeting December 14, 2005; The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, pages 41-42.

without the bonus. On the other hand, a take-out bonus may be viewed as a form of “reinsurance” that transfers 100% of liability for a policy for the 3-year period that a take-out insurer must continue to renew the policy, and reduces potential assessments on the entire market.

In its operational audit of Citizens, the Auditor General found the bonus amount paid or escrowed for each policy taken out of Citizens averaged $148, although Citizens had several takeout programs paying take-out bonuses of $300 per policy. The Auditor General also recommended Citizens seek legislative clarification of its authority to pay bonuses in excess of $100 per policy as provided in s. 627.3511(2), F.S. In response to the Auditor General’s recommendation, the Board of Citizens requested the Legislature to clarify their authority to develop takeout bonus programs providing more than $100 per policy.[43]

The bill provides legislative clarification regarding the amount per policy Citizens can pay as a takeout bonus. The bill limits the bonus amount to $100 per policy in accordance with s. 627.3511(2), F.S. The bill also provides immunity to insurance agents and their employees relating to coverage differences and insolvencies of private insurers participating in Citizens’ depopulation.

Rates

In order to assure that Citizens rates are not competitive with the voluntary market, the current law requires that Citizens rates for its PLA be actuarially sound and that its average rates for each county must be no lower than the average rates charged by the insurer that had 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.[44]

For its HRA (wind-only policies in coastal areas), the law more generally requires that Citizens rates be actuarially sound and not be competitive with approved rates charged by authorized insurers. However, the law further requires Citizens and the OIR to jointly develop a wind-only ratemaking methodology to meet this purpose, for rates effective on or after July 1, 2004.[45] A wind-only rate methodology was developed that uses a variation of the “Top 20” approach mandated for personal residential multi-peril policies.

In 2005, Citizens made two rate filings, each seeking an increase in rates. One filing was based on the Top 20 approach; the other filing was based on actuarially soundness. Neither filing has been approved by the OIR yet. The Citizens’ Top 20 rate filing (filed with OIR on November 29, 2005) results in a statewide average premium rate increase of 16% for Citizens’ HRA policyholders and a 15% increase for its PLA policyholders.[46]

The Citizens’ actuarial rate analysis filing results in a statewide average premium rate increase of 17% for the PLA and 45% for the HRA. The combination of the Top 20 rate filing and the actuarial rate filing results in a statewide average premium increase of 35.5% for PLA policyholders and 68.4% for HRA policyholders.[47]

The bill requires Citizens to charge a rate in its three homestead accounts to cover a 100-year probable maximum loss event using premiums, FHCF reinsurance, and investment income only. Citizens is prohibited from using income from assessments, bonding, state revenues, or long-term debt in its rate calculation.

For the nonhomestead account, Citizens must charge a rate to cover a 250-year probable maximum loss event using only the same assets described above. In addition, authorized insurers willing to

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[43] Id. at page 13.
[44] s. 627.351(6)(d)2., F.S. (2005).
[45] s. 627.351(6)(d)3., F.S. (2005).
[46] Meeting minutes from Citizens’ Board of Governors meeting on December 15, 2005.
[47] Id.

provide insurance to property in the nonhomestead account can do so on a consent to rate basis without the policies insured counting against their maximum percentage of consent to rate policies.

The bill also requires Citizens to include a residual market risk load in their rates. This factor will allow Citizens to develop a capital base similar to that required of insurers in the voluntary market and should, over time, reduce the need for and frequency of assessments. The Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market adopted this recommendation in its report of March 6, 2006.

The bill provides for automatic approval of an insurer's rate request for the wind portion of a policy in Citizen's HRA if the rate requested is lower than Citizens' approved rate for a similar risk. However the OIR retains the authority to disapprove such a rate request if it finds the request is inadequate or unfairly discriminatory.

Deficits
Generally, if Citizens does not have adequate funds to pay claims in any of its three accounts (i.e. a deficit), it may levy regular assessments for each such account against property insurers, including surplus lines insurers, up to 10% of each insurer's net written premium from the prior year for subject lines of business.[48] The deficit amount is divided up only among property insurers (i.e. Citizens policyholders are not included).

The insurer must pay the company's assessment share within 30 days of receipt of notification from Citizens; however, it can recoup its assessment share from its individual policyholders by adding a surcharge to the premium upon renewal of the policy. If this deficit collection is not sufficient, 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% of premium, or 10% of the deficit, whichever is greater.

Citizens policyholders are charged a surcharge (called a "market equalization surcharge") in the same percentage amount nonCitizens homeowners are charged. However, the amount Citizens expects to collect by its surcharge levy is not used to reduce the amount of assessment charged to Florida homeowners. In other words, Citizens collects money from Florida homeowners in an amount sufficient to cover its deficit and then collects an additional amount from its policyholders.

Currently, Citizens' assessment base has about $8.3 billion in premium, so a one-time regular assessment would generate about $830 million.[49]

Prior to the 2004 hurricane season, Citizens had a surplus of about $1.1 billion for its High Risk Account and $700 million for the PLA/CLA combined. Citizens' claims losses related to the 2004 hurricane season amounted to more than $2.4 billion, depleting its entire surplus in the High Risk Account. Thus, Citizens incurred a $516 million deficit in the HRA. The other two accounts (PLA and CLA) did not incur deficits.

The $516 million deficit translates into statewide average 6.8% assessment on all non-Citizens insured homeowners in Florida. However, Citizens policyholders will also pay a 6.8% assessment, a "market equalization surcharge," upon renewal of their policy.

Historically, joint underwriting authorities have used an assessment mechanism to fund deficits.[50] Florida's assessment mechanism for the property and casualty joint underwriting authority has been in

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[48] Subject 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.

[49] Personal communication with representatives from Citizens on November 29, 2005.

place since the mid 1970s. The following chart outlines the assessments made by the property and casualty joint underwriting authority since 1970:

Year	Account	Principal Storm(s)	Assessment Amount
1975	HRA	Hurricane Eloise	$ 5.0 million
1985	HRA	Hurricane Elena	$ 3.2 million
1992	HRA	Hurricane Andrew	$ 16.2 million
1993	HRA	Winter Storm	$ 3.2 million
1994	PLA	Non-hurricane	$ 17.7 million
1995	HRA	Hurricane Opal	$ 84 million
1995	PLA	Hurricane Opal	$ 22.8 million
1998	HRA	Hurricane George and Tropical Storm Mitch	$100 million

Source: Citizens Property Insurance Corporation (August 25, 2005)

Although all of the assessments outlined above were levied before the creation of Citizens, they were levied by the predecessor "insurer of last resort" for property and casualty insurance (i.e. the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) or the Florida Windstorm Underwriting Association (FWUA)).

Citizens started the 2005 hurricane season with no surplus in the HRA.[51] Because this account sustained losses again in 2005 as a result of the 2005 hurricanes, Citizens incurred a deficit for the second year in a row. Although Citizens does not have actuarially determined amounts of its 2005 deficit, it estimates the deficit in the High Risk Account will be $1.6 billion.[52]

Citizens started the 2005 hurricane season with an estimated $62 million surplus in the PLA and $26 million surplus in the CLA.[53] For 2005, Citizens estimates a deficit of $82 million in the PLA and a deficit of $4 million in the CLA for 2005.[54]

The assessment amount needed to cover the 2005 deficit has not yet been determined.

The bill requires Citizens to collect deficits in the three homestead accounts and the one nonhomestead account differently. The bill requires Citizens to divide any deficit among all property insurers, including their policyholders in the three homestead accounts. This will ensure Citizens does not collect more for their deficit than the deficit amount (i.e. cannot collect monies through deficit assessments to reserve as surplus). In order to charge Citizens' homestead policyholders their share of the deficit, Citizens will levy a surcharge (a "Citizens policyholder surcharge") in the same amount of the assessment passed on by the insurers to their homeowners.

If there is a deficit in the nonhomestead account, its policyholders must be assessed an amount sufficient to defray the deficit. The deficit cannot be paid by policyholders in the three Citizens homestead accounts or property insurers in the private market. In other words, a Citizens' deficit created by losses to nonhomestead property will not be passed on to Florida homeowners or Citizens' homestead property owners. Furthermore, any Citizens' policyholders in the nonhomestead account that does not pay its' assessment cannot obtain insurance from surplus lines or authorized insurers.

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50 *See* s. 617.3512, F.S. (2005); s. 627.311(5)(d), F.S. (2005) (relating to the Florida Workers' Compensation Joint Underwriting Association); s. 627.351(4)(e), F.S. (2005) (relating to the Medical Malpractice Joint Underwriting Association)

51 Personal communication from a representative of Citizens on file with the Insurance Committee.

52 Personal communication from a representative of Citizens on file with the Insurance Committee.

53 Personal communication from a representative of Citizens on file with the Insurance Committee.

54 Personal communication from a representative of Citizens on file with the Insurance Committee.

Changes to Coverage Limits of Citizens

$1 Million Coverage Prohibition
Although not specified by statute, Citizens currently has a maximum policy limit of $1 million for homeowner policies issued in its PLA. This prohibition has been in effect for at least ten years. This account also limits coverage to $100,000 for mobile homes, $200,000 for condominium units, and $100,00 for tenants policies. However, there is no corresponding upper limit for residential (wind-only) policies issued the HRA. According to Citizens' estimates, the HRA has 6,000 policies in it for homes valued at $1 million or more.

The bill prohibits homes with insured values of $1 million or more and condominium unit owner policies with combined dwelling and contents coverage of $1 million or more from obtaining coverage in Citizens. Citizens estimates restricting eligibility for coverage to homes with insured values of $1 million or more will reduce their probable maximum loss (PML) in the HRA by $809 million which equates to 12.5%. Additionally, this restriction will reduce Citizens' residential exposure by $16.7 billion or 14%.[55] The largest single residential insured property Citizens covers in the HRA has a total insured value of $25.5 million.

One property insurance option for homeowners with properties insured for $1 million or more is to obtain property coverage from the surplus lines insurers. The percentage of homeowners' insurance written by surplus lines insurers from 2002 – 2004 was 4% for each year. In other words, the admitted insurers wrote 96% of the homeowners' insurance written in Florida for those years. In 2004, 179,180 homeowners' policies were written in the surplus lines market.[56] Of these, 153,117 or 85% provided wind coverage and 26,068 excluded wind coverage. These included 5,690 policies with coverage limits in excess of $1 million, of which 3,980 provided wind coverage and 1,710 excluded wind coverage. Prior to the 2005 hurricane season, the Florida Surplus Lines Service Office reported that there is capacity and interest in the surplus lines market in writing high-value dwellings, but windstorm deductibles are typically 5% or 10% and sinkhole coverage is typically excluded

As of December 14, 2005, the surplus lines insurers issued 134,000 homeowners' policies in Florida in 2005, down from 179,180 policies in 2004.

In conjunction with the prohibition against Citizens' covering properties insured at $1 million or more, the bill allows authorized insurers in the private voluntary market to insure these properties on an individual rate basis; however the OIR can still to review such rate to determine if the rate is inadequate or unfairly discriminatory. This is another property insurance option for homeowners with properties insured for $1 million or more. Having property insured covered in the admitted market, rather than the surplus lines market, offers policyholders the protection of the guaranty association to pay any claims (up to the association's limit) in the event the insurer becomes insolvent. This protection is not afforded to policyholders obtaining insurance in the surplus lines market.

Insurance agents are given access to claims and underwriting information kept by Citizens for policies ineligible for Citizens due to the $1 million restriction, in order to try to find coverage for the properties in the private market. The bill provides a procedure for agents to obtain such information and a procedure for policyholders to request that Citizens keep their information confidential.

Mobile Homes
Mobile home insurance does not seem to be returning to the private markets. Citizens' mobile home policies in force in the PLA account increased from 12,028 to 62,029 over a two-year period (October 2003 – 2005) and the policies in the HRA increased from 12,552 to 14,056 during the same period.[57]

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[55] Personal communication received from Citizens on February 13, 2006 on file with the Insurance Committee.
[56] Final Report and Recommendations of the Joint Select Committee on Hurricane Insurance, February 25, 2005, page 14.
[57] The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 28.

Citizens currently insures over 110,000 mobile homes. Currently, the only restriction for mobile homes covered by Citizens is the $100,000 coverage limit for mobile homes in the PLA.

Citizens' mobile home policies are rapidly increasing as more private insurers restrict their mobile home exposure, particularly for those built prior to1994. Mobile homes manufactured before 1994 were built before implementation of differing wind standards for mobile homes promulgated by the U.S. Department of Housing and Urban Development (HUD), thus are more likely to sustain damage in a hurricane. HUD sets wind standards for Florida and by law a mobile home must be built for the wind standard where it is located. Mobile homes manufactured after 1994 located in many coastal counties in Florida are designed to handle the fastest wind speed load, 110 miles per hour.

In a study, Federal Emergency Management Agency (FEMA) estimated Florida has a maximum number of 829,553 pre-1994 mobile homes.[58] Additionally, FEMA estimates 847,000 mobile homes in Florida have lower anchoring standards as Florida did not implement its updated mobile home tie down standards until 1999.[59]

A study done by the International Hurricane Research Center at Florida International University found 85.5% of mobile homes in Florida were built before 1994. In addition, it found 338,000 mobile homes in Florida were built prior to 1976 and 643,000 were built between 1976 and 1994.[60]

The bill requires mobile homes insured by Citizens that were manufactured before 1994 to be insured on an actual cash value basis, rather than on a replacement cost basis. Thus, any losses sustained by these homes will be paid for with depreciation accounted for, rather than the cost for replacing the property loss without accounting for depreciation. Citizens insures approximately 94,000 mobile homes built before 1995.

<u>Issuance of Restrictive Coverage Policies</u>
Section 627.351(6)(c)1., F.S. requires Citizens to adopt five different policy forms – standard personal lines policies with comprehensive multiperil coverage, basic personal lines policies meeting the requirements of the secondary mortgage market, commercial lines policies with full coverage, personal and commercial residential wind-only policies, and commercial nonresidential wind only policies.

The bill allows Citizens to adopt variations of the five policy forms that offer more restrictive coverages than the five policy forms listed above.

Ethical Considerations
Citizens operates subject to the supervision and oversight of the Board of Governors and pursuant to a plan of operation approved by order of the OIR. Because Citizens is not considered a state agency, state law governing ethics for state employees is not applicable to Citizens' employees or board of directors.

On October 20, 2005, the Citizens' Board of Directors adopted proposed amendments to the Citizens' plan of operation relating to ethical standards and disclosure requirements for officers and board members of Citizens. Upon adoption by the board, the proposed amendments were sent to the OIR for approval and inclusion in the Citizens' plan of operation. The OIR approved the amendments on November 30, 2005. The standards and requirements adopted are similar to those governing state employees. The standards and requirements:

- Prohibit the Executive Director, Senior Managers of Citizens or any Board member from personally representing another person or entity before the Board or Corporation for a period of two years following their departure;

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58 *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005 at page 10.
59 <u>Id.</u>
60 The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 27. (citing *Final Report on Hurricane Loss Reduction for Housing in Florida* dated July 30, 2003).

- Subject the Executive Director and Senior Managers of Citizens to the background investigation provisions prescribed by the Office of Insurance Regulation for officers of insurers;
- Require the Executive Director and Senior Managers of Citizens to file financial disclosure information in a format substantially similar to that required of state employees under Section 112.3144, F.S.;
- Require vendors to disclose any relationship, financial or otherwise, with employees or Board members;
- Require the Executive Director to immediately report to the Chairman of the Board any breach of ethics policy regarding an employee or Board member and to report any such breach which may constitute criminal activity to the Division of Insurance Fraud within 48 hours of discovery.

The bill requires all members of the Citizens' Board and any employee with managerial, policy making, or professional duties to comply with the Code of Ethics applicable to state government employees.

Wind-Only Coverage Zones
Citizens provides coverage in specially designated areas which have been determined to be particularly vulnerable to severe hurricane damage. In these "wind only" zones, private insurers may offer other peril insurance, but are not required to provide windstorm coverage.

Beginning February 1, 2007, if Citizens' 100 year probable maximum loss (PML) in its wind only zones is not reduced by 25% from what it was in February 2001, the wind only zones must reduce by an amount that allows Citizens to reduce its PML by 25%.[61] It does not appear Citizens will be able to reduce its 100 year PML by 25% by February 1, 2007 in accordance with this statute. One reason is because Citizens has grown, in part, due to the reluctance of private insurers to expand their writings in Florida because of the significant losses sustained in the 2004 and 2005 hurricane seasons.

The bill extends the time period for Citizens to reduce its 100 year PML in the wind only zones from February 1, 2007 to February 1, 2013.

A similar provision relating to Citizens' reduction of its 100 year PML by February 1, 2012 by 50% or risk having the area eligible in the HRA to reduce to a smaller area is affected by the bill. This provision is extended to February 1, 2018.

The bill creates the High Risk Eligibility Panel to study Citizens wind-only zones and to recommend to the Legislature each year the areas that should be eligible for the wind-only zones. Requires the panel to report by November 30, 2006, on eligibility of specified areas for the wind-only zones.

Hurricane Loss Models

In 1995 the Legislature established the Florida Commission (Commission) on Hurricane Loss Projection Methodology to serve as an independent body within the State Board of Administration.[62] The Commission's role is to adopt findings relating to the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. The membership of the Commission is designed to equip it with expertise in fulfilling its mission. The members include experts in insurance finance, statistics, computer system design, and meteorology who are full-time faculty members in the State University System, appointed by the CFO, an actuary member from the FHCF Advisory Council, an actuary employed with a property and casualty insurer appointed by the CFO, an actuary employed by the 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 standards. The Commission uses a staff of five experts

[61] s. 627.351(6)(o), F.S. (2005).
[62] s. 627.0628, F.S.

made up of a meteorologist, an engineer, an actuary, a statistician, and a computer scientist known as the "Professional Team" to conduct on-site reviews of proprietary models and to report back to the Commission as to their conclusions.

There are currently four private hurricane loss models that have been determined by the Commission to meet its standards and found acceptable. The law provides that an insurer may use in its rate filing hurricane loss models found by the commission to be accurate or reliable and that such findings are admissible and relevant in consideration of the rate filing by OIR or on any arbitration or administrative or judicial review.

The bill limits the OIR and the Insurance Consumer Advocate from questioning specified aspects about the hurricane models an insurer uses to justify its rate filing if the Commission has reviewed the hurricane model used and found it to be accurate or reliable. It also allows the insurer to use a hurricane model to justify its rate filing only if the OIR and Insurance Consumer Advocate are given a reasonable opportunity to review all the basic assumptions and factors used in developing the model results. Under current law, the OIR and Insurance Consumer Advocate must have access to, rather than a reasonable opportunity to review, the assumptions and factors.

Public Hurricane Loss Model

In 2000, the state authorized and initially funded the development of a public hurricane loss projection model.[63] The model is required to be designed in accordance with the standards set by the Florida Commission on Hurricane Loss Projection Methodology (Commission). The Department of Insurance (the predecessor to the DFS) contracted with the International Hurricane Research Center at Florida International University for the development of the public hurricane model. The model has been developed, has been tested, and has been released for use. It has not; however, been reviewed by the Commission. Thus, it has not been found by the Commission to be accurate and reliable.

The bill restricts OIR from using the public hurricane model in rate filings until the model is found by the Commission to be accurate or reliable. Current law (s. 627.0628(3)(c), F.S.) restricts an insurer from using a private hurricane loss model in its rate filing unless the Commission finds the model accurate and reliable.

Rate Modernization

Background

Florida is considered by some as having a restrictive system of rate regulation for property and casualty insurance (including homeowners' insurance, liability insurance, and motor vehicle insurance). In general, with respect to file-and-use submissions, insurers are not able to implement rate changes until their rate filing is approved by the regulator (formerly the Department of Insurance, currently the OIR of the Financial Services Commission).

While the option known as "use and file," under which an insurer may implement a rate change and then file it with the regulator, is available under relevant statutes, the option does not reduce the insurer's regulatory burden. Under use and file, the insurer is required to refund to policyholders any portion of a rate increase that is subsequently disapproved by the regulator. Under Florida law, the insurance company has the burden of proving that its proposed rate is not excessive, inadequate, or unfairly discriminatory.

More specifically, Florida's insurance laws require insurers (including homeowners' insurance, liability insurance, and motor vehicle insurance) to file property and casualty insurance rates for approval with the OIR either 90 days before the proposed effective date, or 30 days after the rate filing is implemented. Under the latter option, known as "use and file," the OIR may order the insurer to refund that portion of the rate determined to be excessive.

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[63] Section 2226 of Ch. 2000-166, L.O.F.

If the OIR disapproves a rate filing, in most cases, a property and casualty insurer may either request an administrative hearing under the Administrative Procedures Act (APA) (Chapter 120, F.S.), or seek binding arbitration.

Rating Territories

Property and casualty insurers establish rating territories for which a territorial rating factor will apply to increase, decrease, or leave unchanged, the base rate charged by the insurer. The insurer must demonstrate to the OIR that the application of the territorial rating factors will not result in a rate that is unfairly discriminatory, so that the factor bears a reasonable relationship to the expected loss and expense experience amount the various risk within that territory. Each insurer is permitted to establish its own territories, based on these standards. Generally, OIR does not require an insurer to justify its territorial rating factors in each rate filing, but will periodically require an insurer to do so.

Flex Rating

Flex rating allows an insurer to vary their rates up or down from a rate approved by the regulator without obtaining approval by the regulator for the rate change; however, the rate variance must be within a specified range from the approved rate. Flex rating has been implemented in a number of states.

South Carolina implemented flex rating in 1999 for auto insurance due to a significant decline in the number of insurers writing motor vehicle insurance in the voluntary market causing an increase in auto owners insured in the residual market. Under South Carolina's flex rating, annual increases or decreases of 7% or less are deemed approved unless the regulator issues an order with findings specifying in detail why the rate filing violates statutory standards.[64] After South Carolina implemented flex rating for auto, insurers returned to the market and rates decreased.[65] South Carolina included fire, allied lines, and homeowners insurance in its 7% flex rating law on July 29, 2004.[66]

Lousiana allows flex rating for all lines of insurance where the rate variation is a 10% increase or decrease from the insurer's rate in effect. Pennsylvania allows flex rating for all lines except motor vehicle involving rate decreases of 10% or more and small commercial risks with rate variations of 10% or less. Texas allows flex rating for private passenger automobile insurance. New York allows it for designated commercial lines.[67] In 2004, Rhode Island implemented a 5% flex rating for personal lines insurance.[68]

The National Conference of Insurance Legislator's (NCOIL) adopted a model law regarding flex rating in 2004. The model law establishes a 12% flex band on overall statewide rate increases or decreases within which an insurer can file rate changes on an expedited basis during any 12-motnh period. The flex rating under the model law applies to personal lines insurance. The model law allows a Commissioner of Insurance to disprove a flex rating if the Commissioner finds the rating is inadequate or unfairly discriminatory.[69]

The bill implements flex rating as of January 1, 2007 for use in residential property insurance. Insurers will be allowed to implement rate changes of a 5% increase or decrease average statewide or 10% increase or decrease per rating territory without obtaining the OIR's approval that the rate is excessive

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[64] *Rates and Regulation*, March 2006, available at http://www.iii.org/media/hottopics/insurance/ratereg/, (last viewed March 12, 2006).

[65] NCOILetter, February 2004.

[66] See Bulletin No. 2004-09 Issued by the South Carolina Department of Insurance on August 18, 2004 available at https://www.doi.sc.gov/Eng/Public/bulletins/Bulletin2004-09.pdf (last viewed March 7, 2006).

[67] *Rates and Regulation*, March 2006, available at http://www.iii.org/media/hottopics/insurance/ratereg/, viewed March 12, 2006

[68] Newsbriefs, Insurance Journal, July 19, 2004, available at http://www.insurancejournal.com/magazines/east/2004/07/19/newsbriefs, viewed March 12, 2006.

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

or unfairly discriminatory. Insurers can only increase or decrease rates by these amounts once per year. The OIR maintains authority to disapprove a rate change as inadequate or for use of unfairly discriminatory rating factors. In order for the OIR to operate under this authority, the bill requires insurers changing their rates in accordance with the flex rating allowance to submit the proposed rate change to the OIR at least 30 days prior to the effective date of the rate change. The OIR then has 30 days to determine whether to disapprove the rate change based on inadequate or use of unfairly discriminatory grounds. The rate change is automatically approved if the OIR does not make a finding on these grounds within the 30 day window.

In order to provide safeguards for rate decreases allowed by flex rating, during the OIR's 30-day review period, the bill requires the OIR to suspend a rate decrease if it finds the decrease will result in inadequate premiums or solvency problems.

The bill requires the OIR to furnish the Legislature with an annual report regarding the impact of flexible rate regulation on competition in the insurance market.

Surplus Lines Insurers

Surplus lines insurance refers to a high risk category for which there is no market available through standard insurance carriers. Typical categories of this nature are homeowners' insurance in hurricane-prone regions, commercial aircraft, and some sea vessels. Additionally, there are some types of specialized risks that general lines policies cannot cover. For example, special events, such as concerts or major sports exhibitions, may not be eligible for coverage by licensed general lines insurers.

Under current law, surplus lines insurance is governed by ss. 626.913 through 626.938, F.S. When insurance coverage is not available among licensed general lines insurers, the insurers may seek coverage in the surplus lines market. The law requires the general lines agent to make a diligent effort to procure the desired coverage from authorized agents. A diligent effort is defined by law to mean seeking and being denied coverage from at least three authorized agents. Surplus lines insurers also are regulated by the state, but to a lesser degree than general lines insurers.

The Florida Surplus Lines Service Office (the office) is created by s. 626.921, F.S., as a nonprofit association overseen by a Board of Governors comprised of nine members. Seven of the nine board members must be affiliated with the surplus lines industry. The office is directed to oversee the surplus lines industry in Florida and to provide protection of the general public with respect to the placement of surplus lines policies. The office is authorized by law to collect fees from licensed surplus lines agents, based upon the premiums collected, in order to pay the administrative and other costs associated with the office.

Under current law, in general surplus lines agents may not place any coverage with any unauthorized insurer which is not an eligible surplus lines insurer.[70] An unauthorized insurer cannot become a surplus lines insurer unless the statutory conditions specified in s. 626.918(2), F.S., are met. One of the conditions is the insurer must have and maintain surplus of at least $15 million.[71] Another condition is the insurer must have and maintain a trust fund in the U.S. of at least $5.4 million. The purpose of the trust fund is to provide additional protection to the insurer's U.S. policyholders. The statute further provides what type of funds can be used to satisfy the surplus and trust fund requirements.

In addition to the types of funds which can be used by alien surplus lines insurers to satisfy the surplus and trust fund requirements, the bill adds the use irrevocable, unconditional, and evergreen letters of credit issued by a qualified U.S. financial institution to be used to fund the $5.4 million trust fund which serves to protect all policyholders. The bill also defines the term "qualified U.S. financial institution" to mean U.S. banks that are members of the Federal Reserve system.

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[70] s. 626.918 (1), F.S. (2005).

[71] s. 626.918(2)(d)1., F.S. (2005).

Law and Ordinance Coverage

Under current law, insurers must offer coverage in homeowners policies for the additional costs necessary to meet applicable building codes (often referred to as "law and ordinance" coverage) that provides 25% and 50% of the dwelling limits. Pursuant to s. 627.7011(2), F.S., a homeowners' insurance policy automatically includes law and ordinance coverage unless the insurer obtains the policyholder's written refusal of such. However, because both 25% and 50% law and ordinance is required to be offered to the policyholder, it is unclear which percentage of coverage is automatically included in a homeowners' policy if the policyholder does not refuse law and ordinance coverage in writing.

To clarify any uncertainty regarding which percentage of coverage is automatically included in such circumstances, the bill specifies that 25% law and ordinance coverage (rather than 50%) is the automatically included amount if the policyholder does not refuse law and ordinance coverage in writing. This clarification was recommended in the OIR's Law and Ordinance Coverage Report submitted to the Legislature in January 2006.

Replacement Costs Coverage

Currently, polices that provide replacement cost coverage provide payment of the replacement costs, without depreciating the payment for the depreciated value of the property, regardless of whether the policyholder replaces the property or submits receipts for the repair or replacement of property. This provision applies to the insured dwelling and personal property covered by the insurance policy.

By removing the allowance for payment of replacement costs for personal property, the bill allows only losses sustained to insured dwellings to be paid at replacement costs (without taking into account depreciation). Thus, losses to personal property that is insured under a homeowners' policy will be paid for after depreciation of the personal property is taken into account and the property is replaced.

The bill clarifies an insurer retains the ability to determine whether damage can be repaired or replaced.

Electronic Payment of Claims

Pursuant to s. 627.4035(3)(b), F.S., insurers are allowed to pay claims by electronic means (e.g. debit card) if authorized in writing by the recipient/policyholder or the recipient's representative and if any fees or costs associated with the electronic payment and charged against the recipient are disclosed in writing at the time the recipient gives written authorization for the insurer to pay the claim by electronic means. This provision is especially helpful and useful in ensuring policyholders receive prompt payment of insurance proceeds after a disaster when they are displaced from their homes and may not have access to a financial institution to cash or deposit a check. After disasters, often times, mail delivery is interrupted and payment by electronic means is the most efficient way to make certain the policyholder receives the insurance proceeds.

The bill adds language to the existing law regarding payment of claims by electronic means to allow insurers to waive the requirement that written authorization from the policyholder is required in order for the insured to pay insurance claims electronically as long as there is no fee for the electronic payment and the insurer verifies the identity of the recipient of the insurance proceeds (the policyholder). Furthermore, the new language requires the insurer to be liable for payment of the proceeds if the payment is misdirected.

In at least one emergency order issued by OIR to insurers as a result of hurricanes hitting Florida, OIR has authorized insurers to pay claims electronically with the safeguards outlined in the bill.[72] However, OIR has only authorized such payment for additional living expenses and personal property contents claims. The bill does not limit electronic payment to only these claims; rather, it allows electronic payment for all types of insurance claims.

OIR Rulemaking in Natural Disaster Situations

In response to each hurricane during the 2004 and 2005 hurricane season, the Commissioner of the OIR issued emergency orders. The orders covered such topics as:

- Requiring state health insurance companies and HMOs to temporarily suspend their regulations regarding prescription refills to allow prescriptions to be refilled early.
- Restricting cancellation or non-renewals of homeowners' insurance policies in specified areas for a specified time or for the whole state for a specified time with certain exceptions.
- Restricting cancellation of all insurance policies for the whole state for a specified time with certain exceptions.
- Requiring all property and casualty insurers to do reporting to the OIR.
- Requiring all property and casualty insurers to file copies of contracts between public adjusters and the policyholder with the OIR and of current fee schedules with independent adjusting firms.
- Requiring the reporting to the OIR of violations of the OIR's rules or the insurance statute and unlicensed activity.
- Prohibiting insurers from instituting rate hikes without approval from the OIR.
- Requiring insurers to follow property mediation rules adopted by emergency rule by DFS.
- Requiring insurers to toll premiums due on insurance policies for a specified time.
- Establishing timelines for initial damage assessments, processing and settlement of personal lines residential property claims, and reporting of compliance or non-compliance with the timeline.
- Requiring insurers to extend personal and commercial residential insurance coverage for a specified time after the damaged dwelling is repaired and is insurable.

The OIR issued at least five emergency orders due to the 2004 hurricanes and at least six emergency orders due to the 2005 hurricanes. Many of the orders contained similar, if not exact, provisions

When the emergency orders were issued, any party adversely affected by the order was given notice of his or her right to seek review of it at the Department of Administrative Hearings pursuant to s. 120.68, F.S. (under the Florida Administrative Procedures Act) and at the District Court of Appeal pursuant to Rule 9.110 of the Florida Rules of Appellate Procedure.

The bill requires the Financial Services Commission (the Governor and Cabinet) to adopt standard rules for insurers to abide by following a hurricane or other natural disaster. The standard rules are limited to the following areas: claims reporting, grace periods for payment of premiums and performance of other duties by policyholders, and temporary postponement of cancellation and nonrenewals of insurance policies.

The bill requires the OIR to issue an order within 72 hours after a hurricane or natural disaster to specify what line of insurance the standard rules apply to, the geographic areas of the state the standard rules apply to, and the time period the standard rules are in place. The bill prohibits the Financial Services Commission or the OIR from adopting emergency rules that conflict with the standard rules.

The bill also provides the Commissioner of the Office of Insurance Regulation with power to enact emergency rules during a state of emergency.

[72] *See* Case No. 83836-05-EO relating to Hurricane Wilma.

Insurer Solvency

Background on Insurer Solvency Issues

In Florida, regulation of the insurance industry is shared by the Department of Financial Services (DFS) and the OIR. The state's Chief Financial Officer (CFO) heads the DFS while the head of the OIR is the Governor and Cabinet members sitting as the Financial Services Commission. Generally, the OIR is responsible for granting a certificate of authority or license to an insurer; a domestic insurer, i.e., an insurer based in Florida, must possess a certificate of authority in order to conduct business in Florida. The regulation and licensure of insurance agents and agencies is the purview of the DFS. Staff of the DFS also provides consumer information and assistance through the Division of Consumer Services. When an insurer faces financial difficulties or insolvency, the Division of Rehabilitation and Liquidation (the Division) of the DFS intervenes to protect the affected insurer's policyholders.

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy. Instead, they are either "rehabilitated" or "liquidated" by the Division of the DFS.

By law, a delinquency proceeding is initiated by the Division against any insurer believed to be insolvent or experiencing an impairment of its capital reserves or surplus. A delinquency proceeding may include liquidation, rehabilitation, reorganization, or conservancy. Staff of the Division indicates that rehabilitation and liquidation are the two most common delinquency proceedings. By law, the Division files all delinquency proceedings in the Circuit Court in Leon County.

Only one insurer became insolvent as a result of the 2004 and 2005 hurricane season.

Insurance Guaranty Funds: General Information

In addition to the consumer protections afforded by the Division, Florida operates several insurance guaranty funds to ensure that policyholders are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law. A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance carrier. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums to policyholders. The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for 6 months or 1 year, and which is still owed on the unexpired portion of the policy.

Florida's guaranty associations are comprised of insurer representatives. Insurers are required by law to participate in guaranty associations as a condition for transacting business in the state. Monies available through a guaranty association for claims settlement and premium refunds are paid by insurers as a percentage of their total collected premiums. The percentage of premiums payable to a guaranty association is determined by law, although nationally it typically ranges from 1-3 percent. In many cases, a guaranty association also is authorized by law to assess an additional amount if an emergency arises and the association lacks sufficient funds to pay outstanding claims and to refund unearned premiums. This means, in essence, that insurers licensed to transact insurance in a state assess or tax their respective premium income streams to pay the outstanding claims and unearned premiums of an insolvent insurer.

Most states, including Florida, have more than one insurance guaranty association. Each association is assigned by law to pay outstanding claims and unearned premium, up to limits specified by law, for specific lines of insurance. In Florida, there are four guaranty associations created in chapter 631, F.S. The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of an insolvent Health Maintenance Organization (HMO) and the Florida Workers' Compensation Insurance Guaranty

Association is directed by law to protect policyholders of workers' compensation insurance. The fourth guaranty association is the Florida Insurance Guaranty Association (FIGA); it is responsible for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

The Florida Insurance Guaranty Association (FIGA)
Provisions relating to FIGA, which was created in 1970, are contained in part II of chapter 631, F.S. The board of directors for FIGA is directed by law to be comprised of at least five, and no more than nine members; members serve on the FIGA board for a 4-year term.

The law directs FIGA to pay any eligible claim of more than $100 and less than $300,000, less any applicable deductible, with a few specified exceptions (s. 631.57, F.S.). Funds available to FIGA are the result of an annual assessment of up to 2% of each specified insurer's net direct written premiums for the previous year. There have been no assessment to FIGA members since 2002. Other monies that accrue to FIGA include receivership payments from the DFS and from the agencies that liquidate the estates of insolvent insurers in other states.

The law creates three accounts under FIGA:
- auto liability account;
- auto physical damage account; and
- an account for all other included insurance lines (the all-other account).

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% of their net direct premiums collected in 2001. Similarly, FIGA made an assessment for the auto physical damage account in 2002, as well, although that assessment was for .75%. There was no assessment in 2002 for the all-other account. According to FIGA, it has assessed the maximum of 2% only once in the past 11 years. The maximum assessment was levied in 1993, only for the all-other account, after more than six insurers were declared insolvent in the first several months following Hurricane Andrew. The law, at s. 631.56(2)(d), F.S., prohibits the use of any state funds by FIGA to settle claims and return unearned premiums.

The law authorizes insurers to include the cost of their annual FIGA assessment in their rate schedule. This means an insurer may recoup its assessment through increasing its policy rates, subject to OIR approval. Generally, however, a guaranty association assessment is one of many factors an insurer considers in setting its rates.

Local Government Revenue Bonds
Article VII of the Florida Constitution governs finance and taxation by the state and its political subdivisions. In that article, the state and its political subdivisions, including municipalities and counties, are authorized to issue bonds. In most cases, bonds issued either by a city or a county are tax exempt; the tax-exempt status generally makes bonds issued by governmental entities an attractive investment instrument.

FIGA as Bond Guarantor after Hurricane Andrew
On August 24, 1992, Hurricane Andrew devastated much of Dade County. By December 1992, six insurers were declared insolvent due to their inability to settle claims received following Hurricane Andrew. The Legislature met in special session in December 1992 to consider remedies for affected homeowners whose insurers were unable to pay valid claims.

Chapter 92-345, Laws of Florida (LOF) resulted from the December 1992 special legislative session. Under the law, the city of Homestead was authorized to issue municipal revenue bonds 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 members a special 2% assessment in addition to the regular assessment of up to 2%. The additional assessment served as the revenue stream pledged to retire the bonds issued by Homestead. Beginning in 1993, FIGA members were assessed the full 2% regular assessment. That same year, and for the following 3 years—through 1996—the full 2% special assessment also was collected from FIGA members. Only in 1993 did FIGA impose both 2% assessments. By 2000, FIGA had sufficient funds to defease (i.e. "pay off") the Homestead bonds, although those funds were reserved to make the regular annual payments until the bonds expired in 2003.

Changes Made By the Bill
Under the bill, FIGA is authorized to contract with a city or county, or a combination of cities, counties, or cities and counties to issue tax-exempt revenue bonds for hurricane recovery. The provisions of the bill closely follow the law enacted by the 1992 Legislature to enable FIGA to pay the hurricane-related claims of insurers who became insolvent following Hurricane Andrew. As in 1993, FIGA will guarantee the tax-exempt bonds through the imposition of an emergency assessment of up to 2% in addition to the regular FIGA assessment of up to 2%. The guaranty association is authorized to charge the emergency assessment for the life of the bonds. The bill also raises the limit FIGA may pay on a covered claim that is a homeowners' insurance claim from $300,000 to $500,000.

The bill eliminates the need for an affected policyholder to file a "proof of claim" form before receiving a refund of unearned premium or a claim settlement from FIGA if the insurer's records are sufficient to indicate premiums collected and claims outstanding.

The powers and duties of FIGA are outlined in s. 631.57, F.S. The bill amends that law to authorize FIGA to enter into a contract with a municipality or a county, or a combination of the two, for the issuance of tax-exempt revenue bonds. Bond proceeds will be used by the city or county for hurricane recovery, although the proceeds are not required to be used exclusively within the boundaries of the issuing city or county. This means that 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. Bonds may be issued by any local government substantially affected by a category 1 or stronger hurricane.

The bill authorizes FIGA to impose an emergency assessment of up to 2% for bond payments; the emergency assessment is in addition to the regular FIGA assessment of up to 2% . As with the FIGA regular assessment, the emergency assessment will be based upon an insurer's direct written premiums in the previous year, after the insurer makes any refunds. The bill specifically applies the emergency assessment only for bond payments and costs associated with their issuance. The FIGA board of directors may require the emergency assessment to be paid in a single payment or in 12 monthly installments.

The bill requires FIGA to file a report annually with the Senate President, the Speaker of the House, and the Chief Financial Officer (CFO). The report must specify the amount of bond proceeds used each year, the number of claims settled, and analyze the amount of emergency assessment needed to retire the bonds as promised. The bill specifies that the emergency assessment is not a premium and thus, is not subject to the premium tax, the payment of commissions, or other fees.

Insurers are required by the bill to report their emergency assessments as part of the reports they file with the OIR related to setting rates. This reporting is intended to ensure that each insurer charges premiums sufficient to satisfy its reserve requirements and to meet the other liquidity requirements in law.

The bill includes several pages of legislative findings relating to the potential damage to the state if hurricane damage is not addressed and repaired quickly, especially if insurers become insolvent due to hurricane claims. The findings acknowledge the personal hardship to persons and families who suffer losses during a hurricane and the need for claims to be settled expeditiously. Otherwise, the findings realize that great damage can occur to the economy and the citizens of the state. 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 state promises not to take any action that could endanger the availability of funds to repay the bonds.

Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes

As noted previously, there is no consensus as to the number of mobile/manufactured homes in Florida. Reports based on the same 2000 Census data place the number at over 600,000 and over 850,000. There is consensus; however, that the majority of Florida's mobile and manufactured homes were built prior to 1995.

In 1974, Congress designated the U.S. Department of Housing and Urban Development (HUD) to set standards for the construction of mobile homes. On June 15, 1976, new country-wide regulations were implemented and HUD took full control over the manufacture of mobile homes. Mobile homes were constructed to the same standards nationwide until 1994 when HUD implemented changes in response to damage from Hurricane Andrew. The changes implemented three wind zones, with HUD specifying the wind zones for all areas of the United States. The changes also required mobile homes to be manufactured for each wind zone and restricted mobile home dealers from selling a mobile home to a customer that is not designed for the wind zone area where the customer intends to install the home.[73]

In 1996, the Department of Highway Safety and Motor Vehicles (DHSMV) began regulating the installation of mobile homes in Florida. Florida implemented more stringent tie-down standards, by rule, in 1999.[74] Florida's mobile home installation program is generally considered a model for the United States.[75]

DHSMV's assessment of mobile home damage after the 2004 hurricanes showed homes constructed after 1994 (in accordance with the enhanced construction requirements by HUD) withstood hurricane force winds and remained intact with minor to no damage. Homes installed pursuant to the more stringent tie-down standards remained on their foundation with no movement. Although DHSMV found some destroyed mobile homes in their assessment, many of the destroyed homes were installed prior to the enhanced tie-down standards were implemented.[76] DHSMV found similar results in its assessment of mobile home damage due to Hurricane Wilma.[77]

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73 *See* Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005 at page 1; *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005 at pages 9-10.

74 *See* Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005 at page 2; *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, report by FEMA, June 2005 at pages 9-10.

75 Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005 at page 2.

76 Mobile Home Damage Assessments From Hurricanes Charley, Frances, Ivan, and Jeanne, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 10, 2004 at page iv.

77 Mobile Home Damage Assessment From Hurricane Wilma 2005, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 29, 2005 at page iii.

Many in the mobile home industry have commented on the lack of homeowners' insurance for these homes in the private market and Citizens' policy numbers support this problem. As indicated previously, Citizens' mobile home policies in the PLA jumped from 12,028 in October 2003 to 62,029 in October 2005 (a 2-year period) and the number of such policies in the HRA jumped from 12,552 to 14,056 for the same time period.[78] Also, although new insurers are entering the market and are writing hurricane insurance for mobile homes, they are restricting their coverage to post-1994 mobile homes.[79] Additionally, a number of insurers historically writing hurricane insurance for mobile homes have revised their underwriting guidelines to exclude older mobile homes.[80]

The bill creates a ten-member Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes. The task force is to study issues relating to hurricane mitigation and hurricane insurance for mobile and manufactured homes. The Task Force is staffed by the Governor's office, the DFS, the OIR, the DHSMV, and the DCA. The bill provides appointment of Task Force members by the Governor, the Chief Financial Officer, the President of Senate, and the Speaker of House of Representatives. The Task Force includes the Commissioner of OIR, the Executive Director of Citizens, and the CEO of Federal Alliance for Safe Homes as members.

The bill requires the Task Force to make recommendations to the Legislature regarding the creation and maintenance of insurance capacity for mobile and manufactured homes and the effectiveness of hurricane mitigation measures for such homes. It requires the Task Force to gather information on specific subjects, including number, age, size, and location of mobile and manufactured homes in Florida, the extent of hurricane mitigation measures prevent or lessen damage to such homes, and the extent to which insurance discounts for mitigated mobile or manufactured homes would increase insurance capacity for such homes. The Task Force must issue a report to the Legislature of their findings by January 1, 2007.

<u>Report on Insurability of Attached or Free Standing Structures to Homes</u>

The Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market (Task Force) received testimony and information suggesting effective mitigation measures for carports, pool enclosures, and other attached structures may not exist, particularly those attached to mobile homes.[81] The Task Force recommended conducting an analysis to determine whether mobile homes with attached structures are insurable risks and whether or not they should be insured by the admitted market. Importantly, add-ons to mobile homes are not subject to the HUD mobile home construction standards. Rather, the Florida Building Code and local ordinances govern their construction.[82]

Furthermore, an investigation by the *Palm Beach Post* indicated insurers incurred significant losses from Hurricane Wilma due to pool enclosures that did not withstand hurricane force winds during the 2004 and 2005 hurricane seasons.[83]

The bill requires the OIR to submit a report to the Legislature by January 1, 2007 regarding the insurability of attached or free standing structures to residential, mobile or manufactured homes; the increase or decrease in insurance costs associated with insuring such structures; the feasibility of insuring such structures; whether mitigation to such structures can reduce loss; and the impact on homeowners of not having such structures insured. In writing the report, the OIR is required to work with the DHSMV, the DCA, the Florida Building Commission, the Florida Home Builders Association,

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78 The Task Force on Long Term Solutions to Florida's Hurricane Insurance Market report adopted March 6, 2006, page 28.
79 <u>Id.</u> at page 35.
80 <u>Id.</u> at page 28.
81 <u>Id.</u> at page 28.
82 Mobile Home Damage Assessments From Hurricanes Charley, Frances, Ivan, and Jeanne, prepared by the Bureau of Mobile Home and RV Construction, Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, on November 10, 2004 at page iv.
83 http://www.palmbeachpost.com/storm/content/storm/reports/2005/screens/ (last viewed March 12, 2006).

representatives of the property and casualty insurance industry and representatives of the mobile and manufactured home industry.

Hurricane Deductible Buy-Down Program

The bill requires the OIR to submit a report to the Legislature by January 1, 2007 regarding requiring insurers to provide an opportunity for policyholders to decrease the amount of their hurricane deductible as long as the policyholder implements hurricane mitigation measures.

C. SECTION DIRECTORY:

Section 1: Amends s. 215.555, F.S. relating to the Florida Hurricane Catastrophe Fund.

Section 2: Creates s. 215.558, F.S. relating to The Florida Hurricane Damage Prevention Endowment.

Section 3: Creates s. 215.5586, F.S. relating to wind certification and hurricane mitigation inspections.

Section 4: Creates s. 252.63, F.S., relating to the Commissioner of Insruance Regulation; powers in a state of emergency.

Section 5: Amends s. 626.918,F.S. relating to eligible surplus lines insurers.

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

Section 7: Amends s. 627.0628, F.S. relating to Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.

Section 8: Amends s. 627.06281, F.S., relating to public hurricane loss projection model; reporting of data by insurers.

Section 9: Amends s. 627.351, F.S. relating to insurance risk apportionment plans.

Section 10: Amends s. 627.4035, F.S. relating to cash payment of premiums; claims.

Section 11: Amends s. 627.7011, F.S. relating to homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.

Section 12: Creates s. 627.7019, F.S. relating to standardization of requirements applicable to insurers after natural disasters.

Section 13: Amends s. 627.727, F.S. to correct a cross-reference.

Section 14: Amends s. 631.181, F.S. relating to filing and proof of claim.

Section 15: Amends s. 631.54 relating to definitions.

Section 16: Amends s. 631.55 to correct a cross reference.

Section 17: Amends s. 631.57, F.S. relating to powers and duties of the association.

Section 18: Creates s. 631.695, F.S. relating to revenue bond issuance through counties or municipalities.

Section 19: States that no provision in ss. 631.57 and 631.695, F.S., may be repealed until all bonds issued under the laws are paid in full.

Section 20: Amends s. 817.234, F.S. relating to false and fraudulent insurance claims.

Section 21: Creates the Task Force on Hurricane Mitigation and Hurricane Insurance for Mobile and Manufactured Homes.

Section 22: Requires OIR to submit a report on the insurability of attached or free standing structures to homes.

Section 23: Requires OIR to submit a report on implementation of hurricane deductible buy-downs.

Section 24: Appropriates $100 million from the General Revenue Fund to the Florida Hurricane Damage Prevention Endowment, as a nonrecurring appropriation for the purposes specified in s. 215.558, F.S. Appropriates $5.5 million from the General Revenue Fund to the Department of Community Affairs, as a nonrecurring appropriation for the purposes specified in s. 215.5585, F.S.

Section 25: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Including a 25% rapid cash buildup in the FHCF premium is estimated to add an additional $187 million to the FHCF.

2. Expenditures:

   The bill has an appropriation of $100 million from the General Revenue Fund for the Florida Hurricane Damage Prevention Endowment that will not be spent; it will be used to generate an income stream of approximately $5 million a year that will be used to pay lending institutions for interest on loans they make to homeowners for implementation of mitigation measures.

   An additional appropriation of $5.5 million from the General Revenue Fund to the DCA is provided to fund the hurricane inspection grant program.

   The costs to FIGA for implementing the bill should be minimal. Any costs incurred for preparing and offering the revenue bonds authorized by the bill will be paid from the bond proceeds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Local governments are eligible to receive matching grant money for hurricane mitigation programs through the endowment program.

   Cities and counties are authorized by the bill to issue tax-exempt revenue bonds for hurricane recovery. The bonds will be repaid by FIGA using an emergency assessment of up to 2 percent on the total premiums of insurers who are members of FIGA.

   Bond proceeds may be used by a city or county substantially affected by a category 1 or stronger hurricane for rebuilding and repair of damaged structures. The proceeds will be available to a citizen whose insurer becomes insolvent following a hurricane; bond monies will settle the valid claims of insolvent insurers and refund unearned premiums to affected policyholders.

2. Expenditures:

   A city or county that issues revenue bonds under the bill is not required to repay the bonds from its own revenues. Rather, FIGA is authorized to charge its members an emergency assessment of up to 2 percent annually, for the life of the bonds. Expenses associated with issuing the bonds will be paid from bond proceeds. This means the costs to a city or county that issues the bonds should be negligible.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Including a 25% rapid cash buildup in the FHCF premium is estimated to increase the premium homeowners pay for residential property insurance by 3% on average. However, the premium increase per policyholder will vary.

The adoption of a residual market risk load in Citizens' rates will likely increase their premiums; however, over time, it should reduce the likelihood of assessments on all homeowners.

Allowing private insurers to use an individual rate to write homeowners' insurance for dwellings insured at over $1 million and condominium unit owners' contents policies insured for over $1 million may increase surplus for insurers; however, the insurers also assume the risk for these high dollar policies.

Homeowners with homes insured for over $1 million or with condominium unit contents insured for over $1 million may have an increase in homeowners' premiums because they are required by the bill to get homeowners' insurance from surplus lines insurers or from voluntary market insurers under an individual rate.

If a surplus lines insurer or authorized insurer decides to write a Citizen's nonhomestead policy, the policyholder's rates could increase above what would be charged by the Citizens nonhomestead rate. However, this provision may encourage surplus lines and authorized insurers to write policies for Citizens' policyholders thus reducing Citizens' exposure.

Excluding homes insured for over $1 million or with condominium unit contents insured for over $1 million should decrease the amount and likelihood of a future assessment against Florida homeowners and Citizens' policyholders as the exclusion will reduce Citizens' exposure.

Prohibiting Citizens from insuring mobile homes manufactured before 1994 at replacement costs will likely result in less insurance proceeds going to the mobile homeowner if there is a loss because depreciation will be taken into account; however, the exclusion may decrease the amount and likelihood of a future assessment against Florida homeowners and Citizens' policyholders as the exclusion will reduce Citizens' exposure.

If Citizens incurs a deficit in the future, the assessment against Florida homeowners will be less than under current law because the bill requires Citizens to spread the deficit assessment over Florida homeowners and its homestead policyholders.

Citizens' policyholders who choose to buy policies with coverages more restrictive than a standard homeowner's policy may have a lower premium; however, they will also have less coverage in case of loss.

Restricting Citizens' take-out bonuses to $100/policy will enable Citizens to save money. More money means either Citizens will not incur a deficit or any deficit incurred will be reduced by the amount of the additional money, leading to less assessments.

Restricting Citizens' take-out bonuses to $100/policy may reduce the number of policies taken out, thus maintaining Citizens' exposure.

Requiring Citizens to set rates in the nonhomestead account for a 250-year PML is likely to raise rates for these property owners.

Requiring Citizens to purchase reinsurance for a 250 year PML for the nonhomestead account may eliminate or reduce any future deficit in that account, thus eliminating or reducing any assessment among the account policyholders. However, Citizens' surplus will be reduced by the cost of the reinsurance.

Requiring properties insured by Citizens for $250,000 or more to have a 5% hurricane deductible may increase the deductible for policyholders because under current law, these policyholders may have a lower deductible. An increased deductible means more out-of-pocket costs to the policyholder if there is a loss.

The adoption of flex rating for property insurance may result in rate increases; however, any increase is limited to 10% statewide or 15% per rating territory per year. Additionally, flex rating may encourage insurers to increase rates in small increments rather than waiting and filling a large rate increase. Thus, homeowners will not incur large rate increases at one time; they may be spread out over a year's period. Additionally, because insurers will not have to do a full rate filing to charge a rate under the flex rating allowance, insurers will save administrative expenses associated with rate filings.

As many as 20,000 or more homeowners may receive free hurricane mitigation inspections via the inspection grant program. Additionally, approximately $55 million will be available to homeowners in the form of no-interest loans to pay for installation of hurricane mitigation measures. The number of homeowners that can take advantage of the no-interest loan program is indeterminate and will depend on the amount of the loans. Mitigated homes reduce loss during a hurricane which in turn saves the homeowner out-of-pocket costs associated with hurricane deductibles and finding and paying for temporary housing. It also saves the homeowner the emotional and psychological strains associated with quality of life, such as of being displaced from their home, having children displaced from their schools, etc. It is impossible to put a dollar amount on this type of savings.

Removing the requirement that insurers must pay replacement costs for personal property will decrease insurance proceeds to policyholders if there is a loss related to their insured personal property because depreciation will be taken into account. This may reduce premiums as an insurer's exposure will be reduced.

The bill ensures that FIGA will have funds sufficient to pay the valid claims and unearned premium of any insurer who becomes insolvent following a hurricane that hits Florida. This assurance should enable the economies of communities affected by a category 1 or stronger hurricane to recover quickly and efficiently.

Insurers who are members of FIGA will be required to pay an emergency assessment of up to 2 percent of their respective premiums for the previous year to repay the bonds. Based upon the outstanding insurance policies in Florida for 2003, a 2 percent assessment on FIGA members would cost insurers an estimated $188 million.

Increasing the FIGA limit for homeowner's claims from $300,000 to $500,000 will allow some homeowners to obtain an additional $200,000 from FIGA if their homeowner's insurer goes insolvent.

D. FISCAL COMMENTS:

The number of nonhomestead properties in Florida that will be insured by Citizens and thus subject to higher rates is indeterminate. The number of properties currently in Florida that would be considered nonhomestead by the bill's provisions is also indeterminate.

Although Citizens could not estimate the impact on rates creating a homestead account with a 100 year PML and a nonhomestead account with a 250 year PML or its cost to purchase reinsurance for a 250 year PML for the nonhomestead account, the following information was provided by Citizens' on their current account structure:

Personal Lines Account

	Probable Maximum Loss	**Estimated Cost of Reinsurance**	**Indicated Rate Change (HO3)***	**Filed Actuarial Rate Change (HO3)**	**Difference in Rates**
1 in 50 year event	$1.3 billion	$107-$119 million	6.1% **	21.3%	-15.2%
1 in 100 year event	$2.2 billion	$180-$207 million	19.5%	21.3%	-1.8%
1 in 250 year	$3.7 billion	$267-$310 million	36.1%	21.3%	14.8%

High Risk Account (Personal Residential Portion)

	Probable Maximum Loss	**Estimated Cost of Reinsurance**	**Indicated Rate Change***	**Filed Actuarial Rate Change**	**Difference in Rates**
1 in 50 year event	$6.4 billion	$677-$755 million	62.1%***	45.2%	16.9%
1 in 100 year event	$10.3 billion	$.992-$1.1 billion	103.2%	45.2%	58.0%
1 in 250 year event	$17.0 billion	$1.36-$1.57 billion	155.2%	45.2%	110.0%

NOTE: *Estimates are based on current exposures in the PLA and the HRA (personal residential only).*

* Increase in rates necessary to cover costs of proposed reinsurance.

** Rate indication does not include the Note Financing Factor that would be needed to procure pre-event financing to the 1 in 100 year PML.

*** Rate indication does not include the 15% Catastrophe Financing that would be needed to procure pre-event financing to the 1 in 100 year PML.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill gives the DCA rule-making authority to adopt rules governing the wind certification and wind mitigation inspection program.

The bill gives the Financial Services Commission (FSC) rulemaking authority to adopt rules setting forth the standard rules insurers must follow regarding claims reporting, grace periods for payment of premiums and performance of other duties by policyholders, and temporary postponement of cancellations and nonrenewals. The bill also requires the FSC to begin rulemaking by June 1, 2006.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 16, 2006, the Insurance Committee considered the bill, adopted 22 amendments, and reported the bill favorably. The amendments made technical and substantive changes to the bill. The substantive changes made:

- allows agents to get claims and underwriting information for policies ineligible for Citizens due to the $1 million restriction in order to try to find coverage for the properties in the private market and provides a procedure for receipt of the information and a procedure for the policyholder to request Citizens to maintain the confidentiality of the information.

- adds and amends a provision in the laws governing FIGA. Eliminates the need for an affected policyholder to file a "proof of claim" form before receiving a refund of unearned premium or a claim settlement from FIGA if the insurer's records are sufficient to indicate premiums collected and claims outstanding.

- requires Citizens to report to the Legislature regarding the feasibility of requiring private insurers to issue and service Citizens' wind-only policies if the insurer writes the other peril portion of the policy

- provides for automatic approval of an insurer's rate request for the wind portion of a policy if the rate requested is lower than Citizens' approved rate.

- provides immunity to insurance agents and their employees relating to coverage differences and insolvencies of insurers for depopulation activities.

- creates a panel to study Citizens wind-only zones and to recommend to the Legislature each year the areas that should be eligible for the wind-only zones. Requires the panel to report by November 30, 2006, on eligibility of specified areas for the wind-only zones.

- allows an insurer in the private market to issue a homeowner's policy on nonhomestead property eligible for Citizens on an individual rate basis. Allows the OIR to review such rate to determine if the rate is inadequate or unfairly discriminatory.

- allows an insurer in the private market to issue a homeowner's policy on an individual rate basis on homes insured for $1 million or more and thus ineligible for coverage in Citizens. Allows the OIR to review such rate to determine if the rate is inadequate or unfairly discriminatory.

- removes the repeal of the Panhandle exemption in the building code.

- provides the Commissioner of the OIR with power to enact emergency rules during a state of emergency.

- clarifies the increase in the FIGA limit on claims from $300,000 to $500,000 only applies to homeowners' insurance claims and defines "homeowner's insurance" for use under the FIGA statute.

- clarifies an insurer retains the ability to determine whether damage can be repaired or replaced.

- decreases rate flexibility for property insurers from a statewide average of 10 percent increase or decrease to 5 percent.

- decreases rate flexibility for property insurers in a single territory from 15 percent to 10 percent.

The staff analysis was updated to reflect the adoption of the amendments.