

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1A CS Hurricane Preparedness and Insurance
SPONSOR(S): Rivera and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Jobs & Entrepreneurship Council</u>	<u>13 Y, 0 N, w/CS</u>	<u>Carlson</u>	<u>Thorn</u>
2) <u>Policy & Budget Council</u>	<u></u>	<u>Diez-Arguelles</u>	<u>Hansen</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill makes a number of changes to the Florida Insurance Code, including:

- Prohibits formation of new Florida domestic subsidiaries of a national company (commonly called a “pup company”) to sell property insurance as of January 1, 2008.
- Prohibits insurers from writing auto insurance in Florida if the insurer writes property insurance in another state but does not write property insurance in Florida (“cherry picking”).
- Increases the current minimum surplus requirement for all property insurance companies from the current \$5 million to \$12 million and increases the minimum surplus requirements for domestic stock insurers to \$50 million.
- Requires the Insurance Consumer Advocate to provide an annual report card for each property insurer using a letter grade.
- Requires the insurer’s senior officer for Florida business to sign a sworn statement of certification under oath, with penalty of perjury, for rate filings.
- Requires the Office of Insurance Regulation (OIR) to consider the profitability of national parent companies during the rate review process for Florida-based subsidiaries (pup companies).
- Requires insurers issuing property insurance to provide monthly, quarterly, and semi-annual premium payment option to its customers.
- Extends the notice requirement for the nonrenewal of property insurance policies during hurricane season.
- Requires property insurers to return excess profits to policyholders.
- Requires an insurer to pay or deny a property claim within 90 days unless such failure is beyond the control of the company.
- Allows homeowners to select insurance coverage up to the limits of their outstanding mortgage balance or to exclude personal contents coverage.
- Precludes an insurer from denying coverage solely on the basis of the age of a property and requires consideration of the wind resistance of the structure and measures undertaken by the owner to protect the property against hurricane loss.
- Increases insurer hurricane loss reporting requirements.
- Requires the Department of Financial Services (DFS) to review agent commissions and recommend standards to justify the nature and amount of work performed by the agent.
- Changing the makeup of the Boards of the joint underwriting associations and other insurance associations.

The bill is effective upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill provides new regulations for insurance companies including the prohibition on new pup companies, the prohibition of certain companies selling automobile insurance in Florida unless they also sell homeowners insurance, and increasing the minimum surplus requirements for all property insurance companies. Also the bill provides new reporting requirements, new policy requirements, and new claims handling requirements for property insurers.

Empower families – The bill provides for certain discounts on property insurance premiums, provides for clearer insurance forms, and provides that more information on insurance companies be available to consumers.

B. EFFECT OF PROPOSED CHANGES:

Background

The 2004 and 2005 Hurricane Seasons

The 2004 hurricane season was 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 Charley¹ made landfall as a Category 4 hurricane; followed on September 5 by Hurricane Frances², a Category 2 hurricane. Next, Hurricane Ivan³ struck on September 16 followed by Hurricane Jeanne⁴ on September 26, which were both Category 3 hurricanes. 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.

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 FHC 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 on July 10, 2005 as a Category 3 hurricane. Hurricane Katrina hit Florida on August 25, 2005. At landfall in Florida, Hurricane Katrina was a Category 1 storm.⁵ Although Florida did not sustain as severe damage as New Orleans, Louisiana; Biloxi, Mississippi and surrounding areas, Hurricane Katrina caused substantial damage in Florida. The next hurricane to hit Florida in 2005 was Hurricane Rita which made landfall on September 20, 2005 as a Category 2 hurricane.⁶ Hurricane Wilma made landfall on October 24, 2005 as a Category 3 hurricane.⁷ Hurricane Wilma was the costliest hurricane for Florida in 2005.

¹ http://www.nhc.noaa.gov/pdf/TCR-AL032004_Charley.pdf (last viewed January 3, 2007).

² http://www.nhc.noaa.gov/pdf/TCR-AL062004_Frances.pdf (last viewed January 3, 2007).

³ http://www.nhc.noaa.gov/pdf/TCR-AL092004_Ivan.pdf (last viewed January 3, 2007).

⁴ http://www.nhc.noaa.gov/pdf/TCR-AL112004_Jeanne.pdf (last viewed January 3, 2007).

⁵ http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf (last viewed January 3, 2007).

⁶ http://www.nhc.noaa.gov/pdf/TCR-AL182005_Rita.pdf (last viewed January 3, 2007).

⁷ http://www.nhc.noaa.gov/pdf/TCR-AL252005_Wilma.pdf (last viewed January 3, 2007).

The following chart illustrates the eight hurricanes' impact on the insurance industry:

Summary Data by Event and CY

Event	Data as of	Estimated Gross Probable Loss	Claims Reported	Total Loss Claims	Claim Payments Made
Charley	31-Dec-05	\$10,158,404,847	474,771	17,679	\$9,056,703,918
Frances	31-Dec-05	\$7,952,635,936	541,589	14,105	\$7,707,516,393
Ivan	31-Dec-05	\$3,314,847,829	207,718	8,104	\$3,205,437,734
Jeanne	31-Dec-05	\$3,634,646,243	427,633	8,951	\$3,513,823,790
CY2004 Total		\$25,060,534,855	1,651,711	48,839	\$23,483,481,835
Dennis	31-Dec-05	\$297,399,185	52,934	920	\$269,807,639
Katrina	30-Apr-06	\$853,000,053	122,798	3,153	\$725,223,536
Rita	30-Apr-06	\$25,242,545	4,375	167	\$19,447,845
Wilma	30-Apr-06	\$9,659,383,823	975,717	18,853	\$8,848,516,509
CY2005 Total		\$10,835,025,603	1,155,824	23,093	\$9,862,995,529
Overall Totals		\$35,895,560,458	2,807,535	71,932	\$33,346,477,364

Source: Florida Office of Insurance Regulation, Hurricane Summary Data, published August 2006.⁸

This chart illustrates the eight hurricanes' impact on the different lines of insurance. The line incurring the most impact was the homeowners one.

**Event Totals by Lines of Business
CY2004 and CY 2005**

Data as of 04/30/2006	CY2004 and CY2005 Combined		
	Claims Reported	Total Loss Claims	Claim Payments Made
Commercial Auto Physical Damage	21,958	416	\$126,247,845
Commercial Multi-Peril	138,323	2,712	\$5,641,902,527
Farmowners	2,909	68	\$72,565,576
Fire & Allied Lines	337,614	5,022	\$7,200,947,534
Flood	3,764	6	\$50,572,939
Homeowners	1,582,848	48,472	\$15,869,192,338
Mobile Homeowners	215,696	5,502	\$2,364,824,992
Ocean Marine	217	1	\$4,822,286
Other Lines	72,190	1,887	\$927,831,013
Private Passenger Auto Physical Damage	432,017	7,847	\$1,087,570,314
Totals by Line of Business	2,807,535	71,932	\$33,346,477,364

Source: Florida Office of Insurance Regulation, Hurricane Summary Data, published August 2006.⁹

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

⁸ According to the publication, the information contained in the chart is compiled from data submitted by each reporting entity and has not been formally audited or independently verified by the Office of Insurance Regulation.

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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 addition, the insurance company rating agencies, such as Standard and Poor's and Moodys, have increased the amount of capital insurers and reinsurers must have to keep a favorable rating. Insurers need to maintain favorable ratings in order to ensure future capital contributions by stockholders.

The reinsurance market only partly recapitalized after the 2005 hurricanes.¹⁰ Pricing at the beginning of 2006 for private sector Florida hurricane risk reinsurance increased 50-70 percent from the prior year and increased another 50-100 percent on July 1, 2006.¹¹ Reinsurance rates covering Florida property are expected to fall in 2007 as no hurricanes hit Florida in 2006, but are not expected to drop to pre-2004 rates. One reinsurance broker believes reinsurance rates for Florida will drop 10-15 percent in June 2007 with capacity increasing by 25 percent in 2007.¹²

Capacity: As a result of the hurricane damage in 2004 and 2005, insurance companies are enforcing stricter underwriting standards to limit their exposure in certain high risk areas or limiting types of properties they select to insure. In the 2nd Quarter 2006, there were 167 companies writing personal residential coverage in Florida, a significant drop from the high of 225 companies writing personal residential coverage in 1998. The manufactured housing insurance market also has tightened significantly (one in every five detached family homes in Florida is a manufactured home).

The number of companies actively writing property residential coverage has been declining steadily, even prior to the most recent hurricane activity. The market is dominated by five insurers – Citizens Property Insurance Corporation, State Farm Florida, Allstate Floridian, Nationwide of Florida, and United Services Automobile Association. The number of companies actively writing in the commercial residential market, which includes condominiums and apartment buildings, is also declining.

Although insurance companies have made frequent rate increase filings since the 2004-2005 hurricane seasons, many believe it is not the rates which are inhibiting a growth in capacity because the surplus lines market is also contracting and rates are not regulated in this market. Thus, it appears the private industry may have reached its threshold for risk in Florida's residential property markets.

Availability: In theory, availability can be bifurcated into two issues: fewer companies are writing insurance and the companies that are writing have decreased the number of policies they are issuing. From a consumer perspective, less availability creates a considerable problem in a growing economy, which requires a constant infusion of new capital to compensate for the new homeowners entering the state. Some individuals who own their homes have the opportunity to "go bare," while the majority of people have mortgages that require homeowners' insurance.

One symptom of less availability is the increase in the number of policies in Citizens Property Insurance Corporation. Residual markets such as Citizens are often a measure of the "health" of a particular market – an increase in the number of policies in the residual market is a symptom of a troubled market. Regardless of the underlying reasons, there has been a general growth trend in the number of Citizens policies, which has continued through the last two storm seasons.

¹⁰ 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); "A Study of Private Capital Investment Options and Capital Formation Impacting Florida's Residential Insurance Market," prepared by the State Board of Administration of Florida on September 19, 2006, page 3.

¹¹ "A Study of Private Capital Investment Options and Capital Formation Impacting Florida's Residential Insurance Market," prepared by the State Board of Administration of Florida on September 19, 2006, page 3.

¹² Ed Leefeldt, "Reinsurance Broker says Florida prices to fall," Reuters News 4 January 2007 (available from House Committee on Insurance).

A market that has absorbed some of the additional need for capacity is the surplus lines market. According to data from the Florida Surplus Lines Service Office (FSLSO), the amount of premium collected in 2002 on residential and commercial policies was \$2.2 billion. Based on the most recent data available, as of October 1, 2006, the projected premium for 2006 will be \$4.2 billion, an increase of 88 percent in five years. However, this market is also contracting.

Affordability: The recent increases in insurance rates have created serious concerns for policyholders, legislators, and other leaders within state government. Property values and related taxes have escalated. Combined with insurance rate increases, Floridians are having difficulty absorbing these increases in the cost of living.

The Office of Insurance Regulation (OIR) is charged with the review of insurer rate filings to ensure rates are fair, adequate, and do not unfairly discriminate. Florida law does not authorize the Insurance Commissioner to determine whether or not insurance policies are “affordable.” With few exceptions, the Insurance Commissioner is given the responsibility to ensure all rates are fair and adequate and commensurate with the risk.

Insurers are precluded from recouping prior losses; therefore, admitted insurers are not permitted to include hurricane losses from the 2004-2005 hurricane seasons in their current rates. In 2006, 52 of Florida’s 167 property insurance carriers requested rate increases over 25 percent related primarily to the considerable increase in their cost to purchase reinsurance and the heightened expectations of future losses related to hurricanes (wind losses arising from hurricane loss models). Increases in property values also have contributed to the increase in insurance premiums as have substantial increases in the cost of labor and materials to re-build after an event.

Governor’s Property and Casualty Insurance Reform Committee: On June 27, 2006, Governor Jeb Bush issued Executive Order 06-150 creating the Property and Casualty Insurance Reform Committee (Governor’s Committee) to study Florida’s insurance issues and make recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The Governor’s Committee met eight times throughout the state to obtain testimony about insurance issues facing Florida homeowners and commercial businesses. The Governor’s Committee issued a Final Report on November 15, 2006. In accordance with its charge from Governor Bush, the Governor’s Committee made recommendations to improve competition and create incentives for private insurance and reinsurance in the areas of residential, commercial, manufactured homes, condominiums/apartments, and government entities; to depopulate Citizens Property Insurance Corporation (Citizens); to reduce the exposure of the Florida Hurricane Catastrophe Fund by substituting private alternatives; to evaluate the preliminary results of SB 1980 including the capital build-up program, mitigation program, private insurance competition and capacity measures, and Citizens’ rate changes; and to influence national catastrophe risk management planning.

Proposed Changes

Pup Companies

Current law does not specifically address the formation of Florida domestic subsidiaries of national insurance companies (“pup companies”). Between 1996 and 1999, Insurance Commissioner Bill Nelson issued a series of Consent Orders allowing the formation of Florida subsidiaries for State Farm Florida¹³, Allstate Floridian¹⁴, Allstate Floridian Indemnity¹⁵, Nationwide Insurance Company of Florida¹⁶, and other companies.

¹³ DOI Case Nos. 26914-98-CO and 26390-98-C

¹⁴ DOI Case No. 15796-96-C

¹⁵ DOI Case Nos. 21145-96-C and 22077-97-C

¹⁶ DOI Case No. 27990-99-CO

The bill prohibits the issuance of a certificate of authority by the OIR to a Florida domestic subsidiary of a company authorized to conduct insurance business in another state as of January 1, 2008. This provision will prohibit the formation and operation of so-called “pup companies.”

Cherry Picking

The decision by an insurer about which risks it will write is ordinarily an underwriting issue. Insurers file underwriting guidelines with the OIR. Current law does not require insurers to write specific lines or multiple lines of insurance in Florida and therefore does not address the “cherry picking” problem, which has been described as when an insurer chooses profitable lines to write in Florida to the exclusion of riskier lines, such as homeowners, while at the same time writing homeowners in other states.

The bill prohibits insurers from writing auto insurance in Florida if the insurer writes property insurance in another state but does not write property insurance in Florida unless the insurer writing auto insurance is affiliated with an insurer writing homeowners’ insurance in Florida. This will prevent so-called “cherry picking” by insurers who choose to write risks other than homeowners risks in Florida.

Insurer Surplus Requirements

Under current law, a new property and casualty company must have \$5 million in surplus as to policyholders upon application for a certificate of authority and must maintain the greater of \$4 million or 10 percent of its total liabilities thereafter.¹⁷ A property insurer’s written premium to surplus ratio must not exceed 4 to 1 for net written premiums or 10 to 1 for gross written premiums (Net Premiums = Gross Premiums minus reinsurance premiums ceded).¹⁸

The bill raises the required surplus as to policyholders for new property insurance companies from \$5 million to \$12 million and requires casualty insurers to maintain a surplus of \$4 million (current law). For companies holding certificates of authority on December 30, 2006, the bill requires property insurance companies to meet the \$12 million surplus by 2010, requiring \$4 million in 2006-07, \$6 million in 2007-08, \$8 million in 2008-09, \$10 million in 2009-10 and \$12 million on December 31, 2010 and thereafter.

The bill also requires a domestic insurer transacting residential property insurance that is a wholly owned subsidiary (“pup company”) of an insurer authorized to do business in any other state to possess surplus as to policyholders of at least \$50 million and to give 10 days notice to the OIR prior to the payment of any dividend or distribution of cash or other property to stockholders and to maintain a surplus as to policyholders of at least 133 percent of the minimum required surplus after the dividend or distribution is made. This provision would require a domestic stock insurer, including a “pup company” to maintain a surplus as to policyholders of \$66.5 million.

Multi-Line Discount

Under an administrative rule promulgated by the predecessor to the Office of Insurance Regulation, no multi-line discount may be offered unless such discount bears a reasonable relation to a reduction in expected losses or expenses. The discount must be supported by credible documentation, which may include reasonable judgment factors as to expense or experience savings or other administrative cost savings.¹⁹

¹⁷ ss. 624.407(1)(a), 624.408(1)(a)5., F.S.

¹⁸ s. 624.4095(1), F.S.

¹⁹ rule 69O-125.002, F.A.C.

The bill codifies the administrative rule to allow an insurer to offer discounts based the customer purchasing multiple lines of insurance from the consumer as long as the discount bears a reasonable relation to the expected losses or expenses and must be supported by credible documentation, which may include reasonable judgment factors as to expense or experience savings or other administrative cost savings.

Insurer Report Card

The Florida Insurance Code does not contain any provision requiring the issuance of a report card or other grade for insurance companies transacting business in Florida. However, the Agency for Health Care Administration publishes an annual Nursing Home Guide to assist consumers in evaluating nursing home performance that includes information relating to the quality and licensure history of these facilities.²⁰

The bill requires the Insurance Consumer Advocate to provide an annual report card for each property insurer using a letter grade. The grades are based on the following factors:

- The number and nature of consumer complaints received by the DFS against the insurer.
- The disposition of all complaints received by the DFS;
- The average length of time for payment of claims by the insurer; and
- Any other factors the Financial Services Commission identifies as assisting policyholders in making informed choices about homeowner's insurance.

The bill gives the Financial Services Commission rulemaking authority to set the form and grading scale.

Rating Law

Certification Under Oath

Pursuant to an OIR administrative rule²¹, an annual rate filing must be prepared by or under the direct supervision of and signed by an actuary, prepared and signed by the company ratemaker or by consultants, or if no rate change is proposed, made by certification by an actuary or by an experienced company ratemaker or consultant. There is no requirement that the signatories certify the rate filings under oath.

The bill requires an insurer's senior officer responsible for Florida insurance business operations to provide a sworn statement under oath, with penalty of perjury, certifying the appropriateness of the information contained in the rate-filing and that the information fairly presents, in all material respects, the basis of the rate-filing submitted by the insurer. If the certification is omitted the rate filing will be disapproved without prejudice to refile, but no private right of action is deemed to be created by the certification requirement. The bill authorizes the Financial Services Commission to prescribe the form and contents of the statement by rule.

Arbitration of "Use and File" Rate Disputes

In 1996, the Insurance Code²² was amended to allow insurance companies to challenge decisions of the Department of Insurance (now the Office of Insurance Regulation) on property and casualty rate filings and appeal to a three member arbitration panel. The insurance company and the OIR each appoint one arbitrator and then mutually agree on a third arbitrator. According to current law, the OIR and the insurer must treat the decision of the arbitration panel as the final approval of a rate filing.²³ There is no statute requiring the arbitration panel to follow the Insurance Code and applicable administrative rules.

²⁰ s. 400.191, F.S.

²¹ rule 690-170-007(4), F.A.C.

²² s. 627.062(6), F.S.

²³ s. 627.062(6)(a), F.S.

In at least two arbitration cases involving rate increases implemented under the “use and file” method, the arbitration panel upheld the OIR’s decision that the insurer filed and charged consumers excessive rates. The panel, however, allowed the insurers to keep the excessive premiums collected and ruled the insurers were prohibited from charging such premiums in the future. This is contrary to current law governing “use and file” rate filings which requires the insurer to refund to policyholders any portion of a rate increase that is subsequently disapproved by the regulator.²⁴ In other words, the insurer cannot keep the excess premium paid to date by the policyholders and stop charging the excessive rate in the future.

The bill requires arbitrators in “use and file” arbitrations to require an insurer found to have used excessive rates to credit or refund the excessive portion back to policyholders.

Consideration of Parent Company Profits

Current law does not require, and the OIR does not review, the profits of national parent companies of wholly owned Florida subsidiaries when considering a rate filing.

The bill requires the OIR to consider the profitability of national parent companies during the rate review process for Florida-based subsidiaries (“pup companies”), but does not allow parent company profits to be the sole basis for a rate denial.

Mitigation Discounts

Section 627.711, F.S., requires an insurer to provide notice to a policyholder of a personal lines residential property insurance policy, at the time of the issuance of the policy and at each renewal, of the availability and the range of each premium discount, credit, other rate differential, or reduction in deductibles for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm can be or have been installed or implemented.

Section 627.0629, F.S., requires insurers to include in rate filings actuarially reasonable discounts, credits or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. This section also requires a premium notice to specify the amount by which the rate has been adjusted for a policyholder because of mitigation and to specify a maximum possible positive and negative adjustment that are approved for the insurer for mitigation discounts.

The bill expresses Legislative intent that insurers must pay mitigation discounts to consumers who undertake windstorm damage mitigation on their homes and requires that the notice of premium discounts for hurricane loss mitigation include all combinations of mitigation discounts, credits, rate differentials or reductions in deductibles available to a homeowner.

Premium Payment Plans

There is no requirement in the Insurance Code that an insurer writing residential or commercial property insurance offer policyholders the option of an installment payment plan. However, there are installment plans authorized for the financing of insurance premiums.

Sections 627.901-627.904, F.S., allow an insurance agent, insurer, or a subsidiary of an insurer to finance property insurance policy premiums. The law allows the agent or insurer financing such policies to charge \$3 per installment but not more than \$36 per year as a service charge for the premium financing. In lieu of the service charge, the agent or insurer can charge 18 percent simple interest a year on the unpaid premium balance or the average unpaid balance as billed over the policy term.

²⁴ s. 627.062(2)(h), F.S.

Sections 627.826-627.849, F.S., govern insurance premium finance companies. These provisions set forth a protocol for entities wanting to finance insurance premiums for policyholders, including licensing and disciplinary provisions. Under a premium finance agreement, the insurance premium finance company advances the premium on behalf of the policyholder. The policyholder repays the premium finance company in installments. The premium finance company can collect a service charge of \$12 per \$100 financed per year from the policyholder. An additional \$20 maximum charge per year can also be collected by the premium finance company.

The bill requires insurers issuing personal lines residential and commercial property policies to provide monthly, quarterly, and semi-annual premium payment options to its customers by July 1, 2007.

Notice of Nonrenewal or Cancellation of Property Insurance

Insurers are generally allowed to non-renew policies in order to reduce the insurer's hurricane exposure or to non-renew particular policies pursuant to underwriting rules filed with the OIR. However, the law prohibits insurers from non-renewing policies due to property insurance claims that are the result of an "act of God" unless the insured has failed to take actions reasonably necessary to prevent recurrence of damage.²⁵ The law also prohibits non-renewal solely because of race, color, creed, marital status, sex, or nation origin.²⁶

Insurers are required to give policyholders 90 days' notice of cancellation or non-renewal of a residential property insurance policy, except that 10 days' notice is required if cancellation is due to non-payment of premium.²⁷

Insurers are prohibited from canceling or non-renewing a residential property insurance policy during the duration of a hurricane.²⁸ Insurers are also prohibited for canceling coverage for a dwelling damaged by a hurricane until 90 days after the dwelling has been repaired, with certain exceptions.²⁹

The bill increases from 90 to 100 days the notice requirement for nonrenewal, cancellation or termination of an insurance policy and requires an insurer to give 100 days written notice, or written notice by June 1, whichever is earlier, for the nonrenewal, cancellation or termination of a policy that would otherwise be effective during hurricane season, the period between June 1 and November 30.

Excess Profits

The Insurance Code prohibits rates that are excessive, inadequate, or unfairly discriminatory.³⁰ An excessive rate is one that is "likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved in the class of business or if expenses are unreasonably high in relation to services rendered;" or "if the rate structure established by a stock insurance company provides for replenishment of surpluses from premiums, then the replenishment is attributable to investment losses."³¹ A rate filing containing a rate deemed excessive is subject to denial.

There are specific additional excess profits prohibitions applicable to auto insurance³² and workers compensation, employer's liability, commercial property and commercial casualty insurance³³ that

²⁵ s. 627.4133(3), F.S.

²⁶ s. 626.9541(1)(x), F.S.

²⁷ s. 627.4133(2)(b), F.S.

²⁸ s. 627.4133(2)(e), F.S.

²⁹ s. 627.4133(2)(d), F.S.

³⁰ s. 627.062(1), F.S.

³¹ s. 627.062(2)(e)1., 2., F.S.

³² s. 627.066, F.S.

³³ s. 627.215, F.S.

require return of the excess profits to policyholders. There is no similar provision regarding excess profits for property insurance.

The bill requires property insurers to return excess profits to policyholders. In determining whether excess profits exist, the OIR is directed to consider the profits of national affiliates of Florida-based subsidiaries.

Payment of Property Claims

Under current law, there is no time frame in which property insurers must pay property claims. A policyholder can request mediation via the DFS,³⁴ request an appraisal, or file suit in order to expedite or contest claims payments. Section 627.4261, F.S., requires an insurer to review and acknowledge receipt of a communication with respect to a claim within 14 days of receipt of the communication and to begin an investigation within 10 working days of receipt of proof of loss statements regarding a claim.

The bill requires an insurer to pay or deny a property claim within 90 days unless such failure is beyond the control of the company. The violation of this provision constitutes a violation of the Insurance Code.

Coverage Limits

Section 627.701, F.S., provides requirements relating to the amount that a residential property insurance policyholder may be a co-insurer (have a deductible) on a policy of insurance. Under current law, for homeowners' policies issued or renewed after January 1, 2006, the insurer must generally offer alternative deductible amounts applicable to hurricane losses equal to \$500, 2 percent, 5 percent, and 10 percent of the policy dwelling limits, unless the specific percentage deductible is less than \$500.³⁵

The bill allows homeowners to select a personal lines residential policy of insurance covering the outstanding balance of their mortgage or one that excludes personal contents coverage. The policyholder must elect such coverage on a form approved by the OIR that clearly advises the policyholder of the limited type of coverage elected. The failure to obtain the consent form renders the selection of optional coverage void. An insurer must provide notice of this option prior to policy issuance and at each renewal, and provides that the election remains in effect for subsequent renewals unless the policyholder notifies the insurer in writing of another selection. The bill grants rulemaking authority to the Financial Services Commission pursuant to ss. 120.536(1) and 120.54, F.S., to implement this requirement.

Denial of Coverage

Under current law and industry practice, insurers evaluate risks pursuant to their underwriting guidelines, which are filed with the OIR. Pursuant to these guidelines, an insurer determines which types of risks it will write insurance on and which risks it will not write.

The bill precludes an insurer from denying coverage solely on the basis of the age of a property and requires consideration of the wind resistance of the structure and measures undertaken by the owner to protect the property against hurricane loss.

Insurer Loss Reporting

During the 2004 and 2005 hurricane seasons the OIR issued Informational Memorandums requiring property and casualty insurers to report certain information for claims resulting from the disaster and the financial impact of the disaster.

³⁴ s. 627.7015, F.S.

³⁵ s. 627.701(3)(b)1., F.S.

The insurer had to submit biweekly reports which included the number of claims, payment of claims, and expected losses. The insurers also had to submit cumulative claims data by line of business on a monthly basis. Additionally, the insurers had to report monthly cumulative data about claims, including the number of claims open for more than 60 days and the average number of days to adjust a claim.

The bill authorizes the OIR to require property insurers to report data regarding hurricane claims and underwriting costs including:

- Number of claims;
- Amount of claim payments made;
- Number and amount of total-loss claims;
- Amount and percentage of losses covered by reinsurance or other loss-transfer agreements;
- Amount of losses covered under specified deductibles;
- Claims and payments for specified insured values;
- Claims and payments for specified dollar values;
- Claims and payments for specified types of construction or mitigation features;
- Claims and payments for policies under specified underwriting criteria;
- Claims and payments for contents, additional living expense, and other specified coverages;
- Claims and payments by county for the information specified in this section; and
- Any other data that the office requires.

Policyholder Notice of Insurance Terms

The premium notice for a residential property insurance policy must specify the amount of the premium that is for windstorm coverage.³⁶ Insurers must notify policyholders upon application and renewal of the availability and range of premium discounts for mitigation techniques and describe generally what actions the policyholders must take to obtain the discounts.³⁷

Current law allows Citizens Property Insurance Corporation, the Florida Hurricane Catastrophe Fund, and the Florida Insurance Guaranty Association to assess certain Florida policyholders if any of these entities incurs a deficit.³⁸ The population of policyholders assessed (i.e. assessment base) is different for each entity, however, all three entities can assess Florida policyholders that do not participate in the entity. Insurers are allowed but not required (due to the law being silent) to itemize in the premium renewal notice the amounts recouped for assessments by Citizens, the Florida Hurricane Catastrophe Fund, or the Florida Insurance Guaranty Association.

For homeowners policies, insurers must provide a comprehensive checklist of coverage on a form adopted by the Financial Services Commission and an outline of coverage.³⁹ The outline of coverage must include a description of the principal benefits and coverage and an itemization of the applicable premium. The outline must also include a description of the credit or surcharge plan that is being applied and the reason why the policy is being surcharged or is receiving a credit. The checklist must include discounts applied to the premium.

The bill requires every notice of renewal premium to specify:

- The dollar amounts recouped for assessments by the Florida Hurricane Catastrophe fund, Citizens Property Insurance Corporation, and the Florida Insurance Guaranty Association, using the full names of the entities;
- The dollar amount of any premium increase that is due to a rate increase and dollar amounts that are due to coverage changes; and

³⁶ s. 627.0629(4), F.S.

³⁷ s. 627.711, F.S.

³⁸ See ss. 627.351(6)(b), 215.555(6)(b), 631.55(1), F.S.

³⁹ s. 627.4143(3), F.S.

- For insurers that are wholly owned subsidiaries of an insurer authorized to do business in any other state, the dollar amount of profit and loss for all lines of property insurance for the subsidiary and the parent for the most recent reporting year.

Joint Underwriting Associations and Other Entities

Joint underwriting plans provide equitable apportionment or sharing of risk among its members. The plans are governed by joint underwriting associations and operate subject to the supervision and approval of a board of governors.

Current law also provides for guaranty associations as a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer. All insurers authorized to write certain lines of insurance in this state must subscribe to the guaranty association. The plans operate subject to the supervision and approval of a board.

Florida Automobile Joint Underwriting Association

The Florida Automobile Joint Underwriting Association currently operates subject to the supervision of an 11 member board of governors.⁴⁰

The board consists of the following:

- Five members appointed by the Chief Financial Officer, two of whom must be chosen from the insurance industry.
- Six members appointed by the participating insurers, two of whom must be from the insurance agents' associations.

All board members, including the chair, must be appointed to serve for 2 year terms beginning annually on a date designated by the plan.

Proposed Changes

The bill revises the membership of the board of the Florida Automobile Joint Underwriting Association.

The membership of the board is increased from 11 to 12 individuals.

The bill provides that the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint 4 members of the board. Members appointed by the President of the Senate and the Speaker of the House of Representatives may not be members of the Legislature unless they are appointed as ex officio, nonvoting members. At least one of the 2 members appointed by each appointing officer must have demonstrated expertise in insurance.

The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All board members, including the chair, must be appointed to serve for 3 year terms beginning annually on a date designated by the plan. Any board vacancy shall be filled for the unexpired term by the appointing officer.

Workers' Compensation and Employer's Liability Insurance Joint Underwriting Association

The Workers' Compensation and Employer's Liability Insurance Joint Underwriting Association currently operates subject to the supervision of a 9 member board of governors.⁴¹ The board consists of the following:

- Three members appointed by the Financial Services Commission.

⁴⁰ s. 627.311(3)(e), F.S.

⁴¹ s. 627.311(5)(b), F.S.

- Two of the 20 domestic insurers, as defined in s. 624.06(1), F.S., having the largest voluntary direct premiums written in this state for workers' compensation and employer's liability insurance, which shall be elected by those 20 domestic insurers.
- Two of the 20 foreign insurers as defined in s. 624.06(2), F.S., having the largest voluntary direct premiums written in this state for workers' compensation and employer's liability insurance, which shall be elected by those 20 foreign insurers.
- One person appointed by the largest property and casualty insurance agents' association in this state; and
- The consumer advocate appointed under s. 627.0613, F.S., or the consumer advocate's designee.

Each board member shall serve a 4 year term and may serve consecutive terms. The Financial Services Commission shall designate a member of the board to serve as chair.

Proposed Changes

The bill revises the membership of the board of the Workers' Compensation and Employer's Liability Insurance Joint Underwriting Association.

The bill provides that the Governor shall appoint three members and the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. Members appointed by the President of the Senate and the Speaker of the House of Representatives may not be members of the Legislature unless they are appointed as ex officio, nonvoting members. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance.

The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All board members, including the chair, must be appointed to serve for 3 year terms beginning annually on a date designated by the plan. Any board vacancy shall be filled for the unexpired term by the appointing officer.

Medical Malpractice Joint Underwriting Association

The Medical Malpractice Joint Underwriting Association currently operates subject to the supervision of a 9 member board of governors.⁴² The board consists of the following:

- Representatives of five of the insurers participating in the Joint Underwriting Association selected by the Chief Financial Officer. One insurer representative shall be selected from recommendations of the American Insurance Association. One insurer representative shall be selected from recommendations of the Alliance of American Insurers. One insurer representative shall be selected from recommendations of the National Association of Independent Insurers. Two insurer representatives shall be selected to represent insurers that are not affiliated with these associations.
- An attorney to be named by The Florida Bar.
- A physician to be named by the Florida Medical Association.
- A dentist to be named by the Florida Dental Association.
- A hospital representative to be named by the Florida Hospital Association.

The board of governors shall choose, during the first meeting of the board after June 30 of each year, one of its members to serve as chair of the board and another member to serve as vice chair of the board.

Proposed Changes

The bill revises the membership of the board of the Medical Malpractice Joint Underwriting Association.

⁴² s. 627.351(4)(c), F.S.

The bill provides that the Governor shall appoint three members and the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. Members appointed by the President of the Senate and the Speaker of the House of Representatives may not be members of the Legislature unless they are appointed as ex officio, nonvoting members. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance.

The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All board members, including the chair, must be appointed to serve for 3 year terms beginning annually on a date designated by the plan. Any board vacancy shall be filled for the unexpired term by the appointing officer

Property and Casualty Insurance Joint Underwriting Association

The Property and Casualty Insurance Joint Underwriting Association currently operates subject to the supervision of a 13 member board of governors.⁴³ The members are appointed by the Chief Financial Officer.

At least four of the members shall be representatives of insurance trade associations as follows: one member from the American Insurance Association, one member from the Alliance of American Insurers, one member from the National Association of Independent Insurers, and one member from an unaffiliated insurer writing coverage on a national basis. Two representatives shall be from two of the statewide agents' associations.

Each board member shall be appointed to serve for 2 year terms beginning on a date designated by the plan and shall serve at the pleasure of the Chief Financial Officer. Members may be reappointed for subsequent terms.

Proposed Changes

The bill revises the membership of the board of the Property and Casualty Insurance Joint Underwriting Association.

The bill provides that the Governor shall appoint four members and the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint three members of the board. Members appointed by the President of the Senate and the Speaker of the House of Representatives may not be members of the Legislature unless they are appointed as ex officio, nonvoting members. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance.

The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All board members, including the chair, must be appointed to serve for 3 year terms beginning annually on a date designated by the plan. Any board vacancy shall be filled for the unexpired term by the appointing officer appointed by the Chief Financial Officer, and shall have an executive or underwriting committee.

At least four of the members shall be representatives of insurance trade associations as follows: one member from the American Insurance Association, one member from the Alliance of American Insurers, one member from the National Association of Independent Insurers, and one member from an unaffiliated insurer writing coverage on a national basis. Two representatives shall be from two of the statewide agents' associations. Each board member shall be appointed to serve for 2 year terms beginning on a date designated by the plan and shall serve at the pleasure of the Chief Financial Officer. Members may be reappointed for subsequent terms.

⁴³ s. 627.351(5)(a)11, F.S.

Florida Insurance Guaranty Association

The Florida Insurance Guaranty Association currently operates subject to the supervision of a board of directors.⁴⁴ The board of directors of the association shall consist of not less than five or more than nine.

The Department of Financial Services shall approve and appoint to the board persons recommended by the member insurers. In appointing members to the board, the department shall consider among other things whether all areas of insurance covered by this part are fairly represented. Each member shall serve for a 4 year term and may be reappointed.

Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments.

Proposed Changes

The bill revives the membership of the board of the Florida Insurance Guaranty Association.

The membership of the board is set at 8 individuals.

The bill provides that the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. Members appointed by the President of the Senate and the Speaker of the House of Representatives may not be members of the Legislature unless they are appointed as ex officio, nonvoting members. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance.

The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All board members, including the chair, must be appointed to serve for 3 year terms beginning annually on a date designated by the plan. Any board vacancy shall be filled for the unexpired term by the appointing officer

Florida Life and Health Insurance Guaranty Association

The Florida Life and Health Insurance Guaranty Association currently operates subject to the supervision of a board of directors.⁴⁵ The board of directors shall consist of not fewer than five nor more than nine member insurers. At all times at least one member of the board shall be a domestic insurer as defined in s. 624.06(1), F.S.

The members of the board shall be elected by member insurers subject to the approval of the Department of Financial Services. In approving the election of members to the board, or in appointing members to the board, the department shall consider, among other things, whether all member insurers are fairly represented. A vacancy on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the department.

Proposed Changes

The bill revises the membership of the board of the Florida Life and Health Insurance Guaranty Association. The membership of the board is set at eight individuals.

The bill provides that the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. Members appointed by the President of the Senate and the Speaker of the House of Representatives may not be members of the Legislature unless they are appointed as ex officio, nonvoting members. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance.

⁴⁴ s. 631.56, F.S.

⁴⁵ s. 631.716, F.S.

The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All board members, including the chair, must be appointed to serve for 3 year terms beginning annually on a date designated by the plan. Any board vacancy shall be filled for the unexpired term by the appointing officer

Florida Health Maintenance Organization Consumer Assistance Plan

The Florida Health Maintenance Organization Consumer Assistance Plan currently operates subject to the supervision of a board of directors.⁴⁶

The board of directors consists of not less than five or more than nine persons serving terms as established in the plan of operation. The Department of Financial Services shall approve and appoint to the board persons recommended by the member Health Maintenance Organizations (HMOs). In appointing members to the board, the department shall consider, among other things, whether all member HMOs are fairly represented.

Each member shall serve for a 4 year term and may be reappointed, except that terms may be staggered as defined in the plan of operation. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments

The board of directors shall elect one of its members as chair.

Proposed Changes

The bill revises the membership of the board of the Florida Health Maintenance Organization Consumer Assistance Plan. The membership of the board is set at 8 individuals.

The bill provides that the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. Members appointed by the President of the Senate and the Speaker of the House of Representatives may not be members of the Legislature unless they are appointed as ex officio, nonvoting members. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance.

The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All board members, including the chair, must be appointed to serve for 3 year terms beginning annually on a date designated by the plan. Any board vacancy shall be filled for the unexpired term by the appointing officer

Florida Workers' Compensation Insurance Guaranty Association

The Florida Workers' Compensation Insurance Guaranty Association currently operates subject to the supervision of an 11 member board of directors.⁴⁷ The board consists of the following:

- The insurance consumer advocate appointed under s. 627.0613, F.S., or designee.
- One member is designated by the Chief Financial Officer.
- Six members elected by private carriers from among the 20 workers' compensation insurers with the largest amount of net direct written premium as determined by the department.
- Three members selected by the self-insurance funds. At least two of the private carriers shall be foreign carriers authorized to do business in this state.

The board shall elect a chairperson from among its members. Each board member shall serve for a 4 year term and may be reappointed. A vacancy on the board shall be filled for the remaining period of the term in the same manner by which the original appointment was made.

⁴⁶ s. 631.816, F.S.

⁴⁷ s. 631.912, F.S.

Proposed Changes

The bill revises the membership of the board of the Florida Workers' Compensation Insurance Guaranty Association. The membership of the board is increased from 11 to 12 individuals.

The bill provides that the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint four members of the board. Members appointed by the President of the Senate and the Speaker of the House of Representatives may not be members of the Legislature unless they are appointed as ex officio, nonvoting members. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance.

The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All board members, including the chair, must be appointed to serve for 3 year terms beginning annually on a date designated by the plan. Any board vacancy shall be filled for the unexpired term by the appointing officer

Florida Patient's Compensation Fund

The Florida Patient's Compensation Fund currently operates subject to the supervision of an 11 member board of governors.⁴⁸ The board consists of the following:

- One representative of the insurance industry appointed by the Chief Financial Officer.
- One attorney appointed by The Florida Bar.
- One representative of physicians appointed by the Florida Medical Association.
- One representative of physicians' insurance appointed by the Chief Financial Officer.
- One representative of physicians' self-insurance appointed by the Chief Financial Officer.
- Two representatives of hospitals appointed by the Florida Hospital Association.
- One representative of hospital insurance appointed by the Chief Financial Officer.
- One representative of hospital self-insurance appointed by the Chief Financial Officer.
- One representative of the osteopathic physicians' or podiatric physicians' insurance or self-insurance appointed by the Chief Financial Officer.
- One representative of the general public appointed by the Chief Financial Officer.

The board of governors shall choose one of its members to serve as chair of the board and another member to serve as vice chair of the board. The members of the board shall be appointed to serve terms of 4 years.

Proposed Changes

The bill revises the membership of the board of the Florida Patient's Compensation Fund.

The membership of the board is increased from 11 to 12 individuals.

The bill provides that the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint four members of the board. Members appointed by the President of the Senate and the Speaker of the House of Representatives may not be members of the Legislature unless they are appointed as ex officio, nonvoting members. At least one of the members appointed by each appointing officer must have demonstrated expertise in insurance.

The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All board members, including the chair, must be appointed to serve for 3 year terms beginning annually on a date designated by the plan. Any board vacancy shall be filled for the unexpired term by the appointing officer.

⁴⁸ s. 766.105(3)(b), F.S.

Agent Commission Standards

Insurance agent commissions are negotiated and set pursuant to contracts between insurers and agents. Current law does not address what standards, if any, apply to the determination of agent commissions. The Department of Financial Services (DFS) regulates insurance agents and agencies.⁴⁹

The bill requires the DFS to review agent commissions and recommend standards to justify the nature and amount of work performed by the agent. It requires the Office of Insurance Regulation to provide information to DFS. Finally, it requires a report to the Governor, the President of the Senate and the Speaker of the House of Representatives on July 1, 2007.

C. SECTION DIRECTORY:

Section 1. Provides a short title.

Section 2. Creates s. 624.404(8), F.S., relating to eligibility for insurer certificates of authority.

Section 3. Prohibits insurers from writing auto only in Florida and writing homeowners coverage in other states and not Florida (cherry picking).

Section 4. Amends s. 624.407(1), F.S., relating to capital funds required of new insurers.

Section 5. Amends s. 624.408(1), F.S., relating to capital requirements of existing insurers.

Section 6. Creates s. 626.9542, F.S., permitting an insurer to offer multi-line discounts.

Section 7. Creates s. 627.0613(4), F.S., relating to the powers of the Insurance Consumer Advocate.

Section 8. Amends s. 627.062, F.S., relating to rate filings.

Section 9. Amends s. 627.0629(1), F.S., stating legislative intent relating to mitigation discounts.

Section 10. Amends s. 627.4035(1), F.S., relating to payment of insurance premiums.

Section 11. Amends s.627.4133(2)(b), F.S., relating to notice of cancellation, nonrenewal or renewal premium.

Section 12. Requires residential property insurers to return excess profits to policyholders.

Section 13. Transfers and amends s. 627.4261, F.S. to s. 627.70131, F.S., relating to claims payments.

Section 14. Creates s. 627.70141, F.S., relating to personal lines residential policy coverage options.

Section 15. Creates s. 627.7018, F.S., relating to standards for determining risk of coverage.

Section 16. Amends s. 627.711, F.S., relating to notice of premium discounts for hurricane loss mitigation.

Section 17. Creates s. 627.713, F.S., relating to hurricane loss reporting.

Section 18. Amends s. 627.7277, F.S., relating to notice of renewal premium.

Section 19. Creates s. 628.371(5), F.S., relating to insurer dividends to stockholders.

⁴⁹ s. 626.016, F.S.

Section 20. Amends s. 627.311, F.S., relating to the board of governors for the Florida Automobile Joint Underwriting Association.

Section 21. Amends s. 627.311(5)(b), F.S., relating to the board of governors for the Workers' Compensation & Employee Liability Joint Underwriting Association.

Section 22. Amends s. 627.351(4)(c), F.S., relating to the board of governors for the Medical Malpractice Joint Underwriting Association and Property and Casualty Joint Underwriting Association..

Section 23. Amends s. 631.56, F.S., relating to the board of governors for the Florida Insurance Guarantee Association.

Section 24. Amends s. 631.716, F.S., relating to the appointment of the board of governors for the Florida Life and Health Insurance Guaranty Association.

Section 25. Amends s. 631.816, F.S., relating to the appointment of the board of governors for the Florida Health Maintenance Organization Consumer Assistance Plan.

Section 26. Amends s. 631.912(1), F.S., relating to the appointment of the board of governors for the Florida Workers' Compensation Insurance Guaranty Association.

Section 27. Amends s. 766.105(3)(b), F.S., relating to the appointment of the board of governors for the Florida Patient's Compensation Fund.

Section 28. Requires the review of agent commissions by DFS with a report due to the Legislature on July 1, 2007.

Section 29. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Annual Report Card by the Consumer Advocate

The Department of Financial Services estimates that it will need 1.00 FTE to complete the requirements of the bill related to the Annual report Card by the Consumer Advocate.

Insurance Regulatory Trust Fund

\$70,000 – salary and benefits for 1.00 FTE (recurring)

\$ 4,726 – standard expense package (nonrecurring)

\$74,726 – Total

There will be no fiscal impact upon the Office of Insurance Regulation.

Insurer Loss Reporting

The Office of Insurance Regulation estimates that it will require one additional actuary position as well as non-recurring budget authority to update their Catastrophe Event Data Reporting System as well as the Quarterly Supplemental Reporting System.

The additional actuary position would evaluate the data collected with the system.

Insurance Regulatory Trust Fund

\$500,000 - contracted services (non-recurring)

\$175,000 - additional salary and benefits for 1.00 actuary position

\$675,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill imposes a series of new regulatory restrictions on property insurers which will require changes in their underwriting, claims handling, and premium renewal notice processes. These changes will impose administrative costs on these insurers.

With respect to underwriting, the bill will require auto insurers that write homeowners' insurance in other states but not Florida to write homeowners' insurance in Florida unless they already write it or are part of an affiliate that writes this line. The bill will also require insurers to write coverage for homes that they may not otherwise write based on the age of the home.

The bill will require insurers to pay or deny a claim within 90 days and makes a violation of this requirement a violation of the Insurance Code, which could subject the insurer to the suspension or revocation of its certificate of authority or other penalties.

The bill requires additional notice of assessments, changes in premium explanations (rate versus coverage changes); notice of all combinations of mitigation discounts; and notice the profits of a Florida subsidiary and a parent authorized to transact insurance in another state on all property lines, which will require insurers to adjust their account processes and related software and will make these renewal notices much more lengthy.

The bill allows the OIR to require additional reporting of hurricane loss data to the OIR, which will have an associated administrative cost to insurers.

The bill will restrict how a large national insurer may form subsidiaries for Florida-only business activities, which may preclude the formation of new such companies who could otherwise add capacity in Florida.

D. FISCAL COMMENTS:

The provisions of the bill that allow homeowners to select a windstorm policy excluding personal contents coverage may result in larger reimbursements by FEMA and therefore increase the state's FEMA match.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take any 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 authorizes the Financial Services Commission to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to:

- Establish the letter grade scale to be used by the insurance consumer advocate for rating property insurers.
- Implement the provisions of the bill requiring insurers to offer optional insurance coverages.
- Implement the requirements of the notice of renewal premium.
- Set the form and contents of the statement of certification of an insurer's rate filings by the insurer's senior officer responsible for Florida insurance business operations.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 16, 2007, the Jobs and Entrepreneurship Committee adopted three amendments to the bill. The amendments include do the following:

- Include Citizens Property Insurance Corporation within the list of assessing entities that are disclosed to consumers;
- Include a provision allowing a homeowner to choose to take a policy of insurance that excludes personal contents coverage;
- Clarifies that the failure of an insurer to obtain a signed written consent form for optional coverages renders the options void; and
- Eliminates the \$500,000 property value eligibility threshold for optional coverages.

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