

CONFERENCE COMMITTEE AMENDMENT

Bill No. CS/HB 5057

Amendment No.

CHAMBER ACTION

Senate

House

.
. .
. .

1 The Conference Committee on HB 5057 offered the following:

2
3 **Conference Committee Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Section 215.5595, Florida Statutes, is amended
6 to read:

7 215.5595 Insurance Capital Build-Up Incentive Program.--

8 (1) Upon entering the 2008 ~~2006~~ hurricane season, the
9 Legislature finds that:

10 (a) The losses in this state ~~Florida~~ from eight hurricanes
11 in 2004 and 2005 have seriously strained the resources of both
12 the voluntary insurance market and the public sector mechanisms
13 of Citizens Property Insurance Corporation and the Florida
14 Hurricane Catastrophe Fund.

15 ~~(b) Private reinsurance is much less available and at a~~
16 ~~significantly greater cost to residential property insurers as~~

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17 ~~compared to 1 year ago, particularly for amounts below the~~
18 ~~insurer's retention or retained losses that must be paid before~~
19 ~~reimbursement is provided by the Florida Hurricane Catastrophe~~
20 ~~Fund.~~

21 ~~(c) The Office of Insurance Regulation has reported that~~
22 ~~the insolvency of certain insurers may be imminent.~~

23 ~~(d) Hurricane forecast experts predict that the 2006~~
24 ~~hurricane season will be an active hurricane season and that the~~
25 ~~Atlantic and Gulf Coast regions face an active hurricane cycle~~
26 ~~of 10 to 20 years or longer.~~

27 (b)(e) Citizens Property Insurance Corporation has over
28 1.2 million policies in force and has the largest market share
29 of any insurer writing residential property insurance in this
30 state, and faces the threat of a catastrophic loss that ~~The~~
31 ~~number of cancellations or nonrenewals of residential property~~
32 ~~insurance policies is expected to increase and the number of new~~
33 ~~residential policies written in the voluntary market are likely~~
34 ~~to decrease, causing increased policy growth and exposure to the~~
35 ~~state insurer of last resort, Citizens Property Insurance~~
36 ~~Corporation, and threatening to increase the deficit of the~~
37 ~~corporation, currently estimated to be over \$1.7 billion. This~~
38 ~~deficit must be funded by assessments against insurers and~~
39 ~~policyholders, unless otherwise funded by the state. The program~~
40 has a substantial positive effect on the depopulation efforts of
41 Citizens Property Insurance Corporation since companies
42 participating in the program have removed over 199,000 policies
43 from the corporation. Companies participating in the program
44 have issued a significant number of new policies, thereby

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45 keeping an estimated 480,000 new policies out of the
46 corporation.

47 (c)-(f) Policyholders are subject to high ~~increased~~
48 premiums and assessments that are increasingly making such
49 coverage unaffordable and that may force policyholders to sell
50 their homes and even leave the state.

51 (d)-(g) The increased risk to the public sector and private
52 sector continues to pose ~~poses~~ a serious threat to the economy
53 of this state, particularly the building and financing of
54 residential structures, and existing mortgages may be placed in
55 default.

56 ~~(h) The losses from 2004 and 2005, combined with the~~
57 ~~expectation that the increase in hurricane activity will~~
58 ~~continue for the foreseeable future, have caused both insurers~~
59 ~~and reinsurers to limit the capital they are willing to commit~~
60 ~~to covering the hurricane risk in Florida; attracting new~~
61 ~~capital to the Florida market is a critical priority; and~~
62 ~~providing a low cost source of capital would enable insurers to~~
63 ~~write additional residential property insurance coverage and act~~
64 ~~to mitigate premium increases.~~

65 (e)-(i) Appropriating state funds to be exchanged for ~~used~~
66 ~~as~~ surplus notes issued by ~~for~~ residential property insurers,
67 under conditions requiring the insurer to contribute additional
68 private sector capital and to write a minimum level of premiums
69 for residential hurricane coverage, is a valid and important
70 public purpose.

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71 (f) Extending the program will provide an incentive for
72 investors to commit additional capital to the residential
73 insurance market in this state.

74 (2) The purpose of this section is to provide funds in
75 exchange for surplus notes to be issued by new or existing
76 authorized residential property insurers under the Insurance
77 Capital Build-Up Incentive Program administered by the State
78 Board of Administration, under the following conditions:

79 (a) The amount of state funds provided in exchange for a
80 the surplus note to for any insurer or insurer group, other than
81 an insurer writing only manufactured housing policies, may not
82 exceed \$25 million or 20 percent of the total amount of funds
83 appropriated for available under the program, whichever is
84 greater. The amount of the surplus note for any insurer or
85 insurer group writing residential property insurance covering
86 only manufactured housing may not exceed \$7 million.

87 (b) The insurer must contribute an amount of new capital
88 to its surplus which is at least equal to the amount of the
89 surplus note and must apply to the board by September 1, 2008
90 July 1, 2006. If an insurer applies after September 1, 2008 ~~July~~
91 ~~1, 2006,~~ but before June 1, 2009 ~~2007,~~ the amount of the surplus
92 note is limited to one-half of the new capital that the insurer
93 contributes to its surplus, except that an insurer writing only
94 manufactured housing policies is eligible to receive a surplus
95 note of up to \$7 million. For purposes of this section, new
96 capital must be in the form of cash or cash equivalents as
97 specified in s. 625.012(1).

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98 (c) The insurer's surplus, new capital, and the surplus
99 note must total at least \$50 million, except for insurers
100 writing residential property insurance covering only
101 manufactured housing. The insurer's surplus, new capital, and
102 the surplus note must total at least \$14 million for insurers
103 writing only residential property insurance covering
104 manufactured housing policies as provided in paragraph (a).

105 (d) The insurer must commit to increase its writings of
106 residential property insurance, including the peril of wind, and
107 to meet ~~meeting~~ a minimum writing ratio of net written premium
108 to surplus of at least 1:1 for the first calendar year after
109 receiving the state funds or renegotiation of the surplus note,
110 1.5:1 for the second calendar year, and 2:1 for the remaining
111 term of the surplus note. Alternatively, the insurer must meet a
112 minimum writing ratio of gross written premium to surplus of at
113 least 3:1 for the first calendar year after receiving the state
114 funds or renegotiation of the surplus note, 4.5:1 for the second
115 calendar year, and 6:1 for the remaining term of the surplus
116 note. The writing ratios, ~~which~~ shall be determined by the
117 Office of Insurance Regulation and certified quarterly to the
118 board. For this purpose, the term "~~net written~~ premium" means
119 ~~net written~~ premium for residential property insurance in this
120 state Florida, including the peril of wind, and "surplus" means
121 the new capital and surplus note ~~refers to the entire surplus~~ of
122 the insurer. An insurer who makes an initial application after
123 July 1, 2008, must also commit to writing at least 15 percent of
124 its net or gross written premium for new policies, not including
125 renewal premiums, for policies taken out of Citizens Property

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126 Insurance Corporation, during each of the first 3 years after
127 receiving the state funds in exchange for the surplus note,
128 which shall be determined by the Office of Insurance Regulation
129 and certified annually to the board. The office may determine
130 that an insurer meets the requirement for taking policies out of
131 the corporation, by written notice to the board, upon a finding
132 that the insurer made offers of coverage to policyholders of the
133 corporation which would have resulted in meeting this
134 requirement had the policyholders accepted the offer. The
135 insurer must also commit to maintaining a level of surplus and
136 reinsurance sufficient to cover in excess of its 1-in-100 years
137 probable maximum loss, as determined by a hurricane loss model
138 accepted by the Florida Commission on Hurricane Loss Projection
139 Methodology, which shall be determined by the Office of
140 Insurance Regulation and certified annually to the board. If the
141 board determines that the insurer has failed to meet any of the
142 requirements of this paragraph ~~If the required ratio is not~~
143 ~~maintained~~ during the term of the surplus note, the board may
144 increase the interest rate, accelerate the repayment of interest
145 and principal, or shorten the term of the surplus note, subject
146 to approval by the Commissioner of Insurance of payments by the
147 insurer of principal and interest as provided in paragraph (f).

148 (e) If the requirements of this section are met, the board
149 may approve an application by an insurer for funds in exchange
150 for issuance of a surplus note, unless the board determines that
151 the financial condition of the insurer and its business plan for
152 writing residential property insurance in Florida places an
153 unreasonably high level of financial risk to the state of

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154 nonpayment in full of the interest and principal. The board
155 shall consult with the Office of Insurance Regulation and may
156 contract with independent financial and insurance consultants in
157 making this determination.

158 (f) The surplus note must be repayable to the state with a
159 term of 20 years. The surplus note shall accrue interest on the
160 unpaid principal balance at a rate equivalent to the 10-year
161 U.S. Treasury Bond rate, require the payment only of interest
162 during the first 3 years, and include such other terms as
163 approved by the board. The board may charge late fees up to 5
164 percent for late payments or other late remittances. Payment of
165 principal, ~~or~~ interest, or late fees by the insurer on the
166 surplus note must be approved by the Commissioner of Insurance,
167 who shall approve such payment unless the commissioner
168 determines that such payment will substantially impair the
169 financial condition of the insurer. If such a determination is
170 made, the commissioner shall approve such payment that will not
171 substantially impair the financial condition of the insurer.

172 (g) The total amount of funds available for the program is
173 limited to the amount appropriated by the Legislature for this
174 purpose. If the amount of surplus notes requested by insurers
175 exceeds the amount of funds available, the board may prioritize
176 insurers that are eligible and approved, with priority for
177 funding given to insurers writing only manufactured housing
178 policies, regardless of the date of application, based on the
179 financial strength of the insurer, the viability of its proposed
180 business plan for writing additional residential property
181 insurance in the state, and the effect on competition in the

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182 residential property insurance market. Between insurers writing
183 residential property insurance covering manufactured housing,
184 priority shall be given to the insurer writing the highest
185 percentage of its policies covering manufactured housing.

186 ~~(h) The board may allocate portions of the funds available~~
187 ~~for the program and establish dates for insurers to apply for~~
188 ~~surplus notes from such allocation which are earlier than the~~
189 ~~dates established in paragraph (b).~~

190 (h)~~(i)~~ Notwithstanding paragraph (d), a newly formed
191 manufactured housing insurer that is eligible for a surplus note
192 under this section shall meet the premium to surplus ratio
193 provisions of s. 624.4095.

194 (i)~~(j)~~ As used in this section, "an insurer writing only
195 manufactured housing policies" includes:

196 1. A Florida domiciled insurer that begins writing
197 personal lines residential manufactured housing policies in
198 Florida after March 1, 2007, and that removes a minimum of
199 50,000 policies from Citizens Property Insurance Corporation
200 without accepting a bonus, provided at least 25 percent of its
201 policies cover manufactured housing. Such an insurer may count
202 any funds above the minimum capital and surplus requirement that
203 were contributed into the insurer after March 1, 2007, as new
204 capital under this section.

205 2. A Florida domiciled insurer that writes at least 40
206 percent of its policies covering manufactured housing in
207 Florida.

208 (3) As used in this section, the term:

209 (a) "Board" means the State Board of Administration.

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210 (b) "Program" means the Insurance Capital Build-Up
211 Incentive Program established by this section.

212 (4) The state funds provided to the insurer in exchange
213 for the A surplus note provided to an insurer pursuant to this
214 section are is considered borrowed surplus an asset of the
215 insurer pursuant to s. 628.401 625.012.

216 (5) If an insurer that receives funds in exchange for the
217 issuance of a surplus note pursuant to this section is rendered
218 insolvent, the state is a class 3 creditor pursuant to s.
219 631.271 for the unpaid principal and interest on the surplus
220 note.

221 (6) The board shall adopt rules prescribing the
222 procedures, administration, and criteria for approving the
223 applications of insurers to receive funds in exchange for
224 issuance of surplus notes pursuant to this section, which may be
225 adopted pursuant to the procedures for emergency rules of
226 chapter 120. Otherwise, actions and determinations by the board
227 pursuant to this section are exempt from chapter 120.

228 (7) The board shall invest and reinvest the funds
229 appropriated for the program in accordance with s. 215.47 and
230 consistent with board policy.

231 (8) Costs and fees incurred by the board in administering
232 this program, including fees for investment services, shall be
233 paid from funds appropriated by the Legislature for this
234 program, but are limited to 1 percent of the amount
235 appropriated.

236 (9) The board shall submit a report to the President of
237 the Senate and the Speaker of the House of Representatives by

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238 February 1 of each year as to the results of the program and
239 each insurer's compliance with the terms of its surplus note.

240 (10) The amendments to this section enacted in 2008 do not
241 affect the terms or conditions of surplus notes that were
242 approved prior to January 1, 2008. However, the board may
243 renegotiate the terms of any surplus note issued by an insurer
244 prior to January 2008 under this program, upon the agreement of
245 the insurer and the board, consistent with the requirements of
246 this section as amended in 2008.

247 (11) By December 15, 2008, Citizens Property Insurance
248 Corporation shall transfer \$250 million to the General Revenue
249 Fund if the combined surplus of each account as defined in s.
250 627.351(6) exceeds \$1 billion. The board of governors of the
251 corporation shall make a reasonable estimate of such surplus on
252 or after December 1, 2008, and no later than December 14, 2008,
253 using generally accepted actuarial and accounting practices,
254 recognizing that audited financial statements will not yet be
255 available.

256 (12) Beginning July 1, 2009, the board shall make
257 quarterly transfers of any interest earned prior to the issuance
258 of any surplus notes, interest paid, and principal repaid to the
259 state for any surplus notes issued by the program after December
260 1, 2008, to Citizens Property Insurance Corporation, provided
261 such surplus notes were funded exclusively by an appropriation
262 to the program by the Legislature for the 2008-2009 fiscal year.
263 The corporation shall credit each account as defined in s.
264 627.351(6) in a pro rata manner for the funds removed from each
265 account to make the transfer required by subsection (11).

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294 the board to submit an annual report to the Legislature on
295 the program and insurer compliance with certain
296 requirements; providing that amendments made by the act do
297 not affect the terms of surplus notes approved prior to a
298 specified date; authorizing the State Board of
299 Administration and an insurer to renegotiate such terms
300 consistent with such amendments; requiring Citizens
301 Property Insurance Corporation to transfer certain funds
302 to the General Revenue Fund if the combined surplus of
303 certain accounts exceeds \$1 billion; requiring the
304 corporation to make certain reasonable estimates of such
305 surplus funds; requiring the board to make quarterly
306 transfers of funds to the corporation under certain
307 circumstances; requiring the corporation to credit certain
308 accounts for funds removed to make certain transfers;
309 prohibiting Citizens Property Insurance Corporation from
310 using certain statutory changes or authorized transfers of
311 funds as justification or cause to seek any rate or
312 assessment increase; providing an effective date.

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