

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 1950

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Property Insurance

DATE: April 6, 2009 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess, Emrich and Knudson	Burgess	BI	Fav/CS
2.	_____	_____	GA	_____
3.	_____	_____	WPSC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

Committee Substitute for Senate Bill 1950 provides for the following:

**Citizens Property Insurance Corporation (“Citizens” or “Corporation”)**

- Establishes a “glide path” allowing Citizens to implement a rate increase of no more than 10 percent per year for any single policyholder over a multi-year period. The rate increase will cease for any of the Corporation’s three lines of business once actuarially sound rates are achieved.
- Allocates 10 percent of the Citizens’ rate increase to the My Safe Florida Home program to be used for mitigation grants for single family homes exclusively for Citizens’ policyholders.
- Allows Citizens to increase its rates to cover the cost of paying the Florida Hurricane Catastrophe Fund (FHCF) for higher reimbursement premiums under a five year “cash build up” program. The rate impact is estimated to be less than one percent.
- Staggers the terms of office for members of the Citizens’ Board of Governors.

- Allows authorized insurers (as opposed to unauthorized insurers, i.e., surplus lines insurers) to offer ex-wind policies to specified homeowners who are no longer eligible for Citizens coverage and who are within the high risk account (HRA) area. This provision applies to personal lines residential structures valued at \$2 million or more, or structures valued at \$750,000 that are without opening protections.
- Deletes the provision that required on January 1, 2010, a seller of a home which is insured by Citizens and located in the wind-borne debris region, with an insured value of \$500,000 or more, to disclose in writing to the prospective purchaser its windstorm mitigation rating based on the uniform home grading scale, prior to sale.
- Extends for three years the requirement that Citizens reduce its high risk account (HRA) area boundaries in order to lower its 100-year probable maximum loss (PML).

### **Florida Hurricane Catastrophe Fund (“FHCF” or “Fund”)**

- Authorizes the FHCF to implement a “cash build up” factor based on increased reimbursement premiums that the Fund charges Citizens and private insurers to be phased in over a five year period. The incremental increases would be five percent each year, until the total increase is reached (25 percent) in the fifth year (2013). When the cash build up factor reaches 25 percent, it becomes a permanent part of the FHCF rate. The cash build up factor only applies to the mandatory layer of FHCF coverage.
- Phases out the Temporary Increase in Coverage Limit (TICL) coverage over a six year period at a rate of \$2 billion per year so that the amount of available TICL will be reduced from \$12 to \$10 billion for the 2009-2010 hurricane season. As the TICL option is phased out, its pricing will increase by an additional multiple each year until TICL is eliminated. For 2009, the price will be 2 times the current price; for 2010, the price will be 3 times the current price, until the remaining \$2 billion layer in 2013 will be priced at six times the current price.
- Provides insurers with the option of purchasing private reinsurance to replace the TICL layer and to recover that cost in rates which cannot exceed 10 percent of total premium. The rate recovery is limited to the reinsurance increase and prohibits recovery for added expense or profit factors.
- Removes the current \$4 billion layer of the TICL layer (which has not been activated).
- Extends until January 1, 2012, the availability of an additional amount of FHCF reimbursement coverage up to \$10 million for limited apportionment companies, for insurers that purchased such coverage in 2008, and for insurers that qualified for the insurance capital build-up incentive program. The bill specifies that the coverage is an increase to the mandatory layer of the FHCF and that the retention for this optional coverage shall be triggered prior to the mandatory coverage.
- Provides that in the event that the total reimbursement of losses that the FHCF must make to insurers exceed the Fund’s estimated claims-paying capacity, the reduction to the insurers’

reimbursement factors is to be reduced uniformly among all insurers that are to be reimbursed.

- Establishes the contract period for the FHCF to the calendar year, January 1 through December 31.

### **Private Insurers**

Allows insurers to make a separate expedited rate filing which is limited to the recovery of: (1) the incremental cost increase of the cash build up factor for the mandatory layer of FHCF coverage; (2) the incremental cost of replacing reinsurance layers that formerly had been covered by TICL with coverage for the same layer by a private reinsurer; and, (3) the incremental cost resulting from the increase in the price for the remaining TICL layers. This provision is not subject to full rate review by the OIR, but is capped at a 10 percent statewide average and 12 percent for individual policyholders.

- Repeals the current provision which prevents the OIR from applying attorney client privilege or work product confidentiality to OIR attorney communications, unless the communication occurred exclusively for litigation purposes.
- Changes the means through which private insurers are allowed to recoup assessments that have been imposed by Citizens and by the Florida Insurance Guaranty Association (FIGA). Allows insurers to submit any recoupment coverage to FIGA or Citizens, rather than send pro rata amounts back to each policyholder.
- Extends for one additional year, until December 31, 2010, the prohibition against property insurers using the “use and file” rate filing procedure.

### **Other Provisions**

- Provides that licensed insurance agents may explain the existence and function of the Florida Insurance Guaranty Association to policyholders, prospects or applicants for insurance coverage.
- Makes other conforming changes.

This bill substantially amends the following sections of the Florida Statutes: 215.555, 627.062, 627.0621, 627.0629, 627.351, 627.3512, 627.712, 631.57, 631.64 and 631.65.

## **II. Present Situation:**

### **Citizens Property Insurance Corporation**

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.<sup>1</sup> It is a governmental entity and not a private insurance company.<sup>2</sup> Created in 2002 by the Florida Legislature, Citizens combined the

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<sup>1</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>2</sup> Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). The merger allowed Citizens to become exempt from federal income taxes, resulting in millions of dollars in annual savings, as well as additional administrative and economic efficiencies.

Citizens operates under the direction of an 8-member Board of Governors<sup>3</sup> and offers three types of property and casualty insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.<sup>4</sup> Assets may not be commingled or used to fund losses in another account.<sup>5</sup>

- **Personal Lines Account (PLA):** a statewide account offering multiperil policies covering homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.
  - 623,792 Policies in Force
  - \$883,018,388 In Force Premium
- **Commercial Lines Account (CLA):** a statewide account offering multiperil policies covering commercial residential-condominium associations, apartment buildings and homeowners associations; and commercial non-residential policies.
  - 9,697 Policies in Force
  - \$324,796,054 In Force Premium
- **High-Risk Account (HRA):** a coastal area account offering personal residential wind-only policies, commercial residential wind-only policies and commercial non-residential wind-only policies issued in limited eligible coastal areas. In addition, in August of 2007, Citizens began offering personal and commercial residential multiperil policies in the HRA.
  - 432,815 Policies in Force
  - \$1,077,693,301 In Force Premium

Citizens is the largest property insurer in Florida. As of February 28, 2009, it provides property insurance to 1,066,304 Florida policyholders, with a total exposure of \$414 billion of insured property, and writes 27 percent of the residential property insurance market in Florida. Citizens financial resources include insurance premiums, investment income, operating surplus from prior years, Florida Hurricane Catastrophe Fund reimbursements, private reinsurance, its policyholder surcharges, and regular and emergency assessments. Citizens has over \$6.74 billion in projected year-end 2009 liquid financial resources, not including FHCF reimbursements. Its estimated assessment base for regular assessments is \$33 billion and \$37 billion for emergency assessments.

Citizens estimates that its 100-year probable maximum loss (PML) for the 1 million policies that it had as of the end of 2008 was \$21.8 billion for all three accounts combined. Citizens estimates that its claims-paying ability, based on estimated year-end resources for 2009, are as follows, for the PLA/CLA and HRA combined:

<sup>3</sup> The Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives appoint two members each.

<sup>4</sup> The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

<sup>5</sup> Section 627.351(6)(b)2b., F.S

Unaudited Year-end 2008 Surplus	\$3.523 billion*
Projected 2009 Net Income	<u>\$0.717 billion</u>
Total Available for Claims from Surplus	\$4.240 billion
Pre-event Liquidity Available	<u>\$2.5 billion**</u>
Total Funds Available to Pay Claims (prior to FHCF recoveries)	\$6.740 billion
Projected FHCF Coverage (1st Layer only)	\$5.886 billion
Projected FHCF Coverage (TICL Layer only)	<u>\$4.273 billion</u>
Total Funds Available to Pay Claims	\$16.899 billion

\*Unaudited Year-End 2008 Adjusted GAAP Surplus.

\*\*Pre-event liquidity reflects current liquidity which will be replaced in approximately equal amounts with other financing alternatives currently being structured.

The pre-event liquidity represents bond and notes that will have to be funded by assessments if they are required to be used to pay claims (as would a significant portion of the obligations of the FHCF). Citizens estimates that if the 100-year PML loss event of \$21.8 billion occurred (as of 12/31/08), the source of claims payments would be as follows:

Surplus	\$ 4.240 billion
FHCF Recovery	\$10.160 billion
Assessments on Citizens' Policyholders	\$ 1.170 billion
Regular Assessment	\$ 2.566 billion
Emergency Assessment on P&C Policyholders	\$ 3.604 billion
<u>HRA Private Reinsurance Recoveries</u>	<u>\$ 0.344 billion***</u>
Total	\$22.084 billion

\*\*\*Assumes Citizens purchases similar private reinsurance for the 2009 season that it purchased in the 2008 season. If this coverage is not purchased, the \$344 million in expected recoveries would become an additional amount recouped under the Emergency Assessment.

**Citizens Assessments**

In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy regular assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute as follows:<sup>6</sup>

- Require up to a 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied on each of the three Citizens' accounts with a maximum assessment of 45 percent of premium.
- If the Citizens' surcharge is insufficient to cure the deficit for any individual account, require an assessment against insurers (which may be recouped from their policyholders through a

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<sup>6</sup> Section 627.351(6)(b)3.a.,d., and i., F.S. The three Citizens' accounts calculate deficits and resulting assessment needs independently. The Citizens regular assessment is levied on all property and casualty policies insuring property in Florida except workers' compensation, medical malpractice, accident and health, federal crop, or federal flood insurance policies (s. 627.351(6)(b), F.S.).

rate filing process) of up to 6 percent of premium for most lines of property and casualty insurance, or 6 percent of the deficit, whichever is greater. This assessment may also be levied per account for a maximum total assessment of 18 percent; however, this assessment is not levied against Citizens' policyholders.

Require any remaining deficit to be funded by multi-year emergency assessments on policyholders on most types of property and casualty insurance, including Citizens' policies, of up to 10 percent of premium for most lines of property and casualty insurance, or 10 percent of the deficit, whichever is greater. This assessment may be levied per account for a total maximum assessment of 30 percent per policy.

### **Actuarial Sound Rates by Citizens**

Beginning on July 15, 2009, and each year thereafter, Citizens must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes, to be effective no earlier than January 1, 2010.<sup>7</sup> Citizens' rates have been frozen to the rates that were in effect on December 31, 2006. The OIR must approve Citizens' rates within 45 days after Citizens files its recommended rates; however, Citizens is prohibited from legally challenging the OIR determination. Citizens' rates are subject to the general rating law, s. 627.062, F.S., which prohibits rates that are excessive, inadequate, or unfairly discriminatory and specifies factors for the OIR to consider in making this determination. The public hurricane loss-projection model must serve as the minimum benchmark for determining Citizens' windstorm rates.

### **Eligibility for Coverage in Citizens**

Effective January 1, 2009, a home (personal lines residential structure) with an insured value of \$750,000 or more that is located in the wind-borne debris region is not eligible for coverage from Citizens unless it has opening protections as required for new construction. A home complies with this requirement if it has opening protections on all openings and complied with the Florida Building Code at the time they were installed.<sup>8</sup> Current law also provides that effective January 1, 2009, a personal lines residential structure with a dwelling replacement cost of \$2 million or more, or a single condominium unit, are not eligible for Citizens coverage.<sup>9</sup>

### **The Florida Hurricane Catastrophe Fund (FHCF)**

The FHCF is a tax-exempt trust fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers.<sup>10</sup> All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.<sup>11</sup> 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). The FHCF provides insurers an additional source of reinsurance that is significantly less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance

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<sup>7</sup> Section 627.351(6)(m), F.S.

<sup>8</sup> Section 627.351(6)(a)5., F.S.

<sup>9</sup> Section 627.351(6)(a)3., F.S.

<sup>10</sup> Section 215.555, F.S.

<sup>11</sup> Two hundred one (201) insurers purchased FHCF coverage for the 2008-09 contract year (2008 hurricane season).

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.

Insurers must first pay hurricane losses up to their “retention” for each hurricane, similar to a deductible, before being reimbursed by the FHCF coverage. The retention is adjusted annually based on the FHCF’s exposure. For 2008 hurricane season, the retention was approximately \$6.878 billion for all insurers combined.<sup>12</sup>

For the 2008 hurricane season the FHCF provided \$16.35 billion in mandatory coverage. That amount is adjusted annually based on the percentage growth in fund exposure, but not to exceed the dollar growth in the cash balance of the fund. The maximum coverage amount for each insurer is based on that insurer’s share of the total premiums paid to the fund.

Legislation enacted in 2007, increased the coverage limits of the FHCF for the 2007, 2008 and 2009 hurricane seasons by adding two additional layers of optional coverage that property insurers may buy:<sup>13</sup>

- **Temporary Increase in Coverage Limit Options (“TICL”)**, that allows an insurer to purchase additional reinsurance for its share of up to \$12 billion, in \$1 billion increments, above the FHCF mandatory coverage of approximately \$16 billion (i.e., up to a total of approximately \$28 billion). The SBA may further increase the limits by an additional \$4 billion (i.e., up to \$32 billion). The SBA did not increase the limits in 2007.
- **Temporary Emergency Additional Coverage Options (“TEACO”)**, that allows residential property insurers to purchase additional coverage below each insurer’s market share of the FHCF retention. The TEACO options allow an insurer to select its share of a retention level of \$3 billion, \$4 billion, or \$5 billion, to cover 90 percent, 75 percent, or 45 percent of its losses up to the normal retention for the mandatory FHCF coverage.

The fund also permitted qualified “limited apportionment companies” (generally, insurers with \$25 million in surplus or less), insurers that purchased FHCF coverage in 2008, and companies that qualified for the insurance capital build up incentive program, to purchase coverage from the fund that reimburses the insurer for up to \$10 million in losses from each of two hurricanes for the 2008 hurricane season only. The Legislature mandated that the savings insurers received from these reforms must be reflected in rate filings and thus passed on to policyholders through lower rates for residential property insurance.

Reimbursements to insurers for losses above the current cash balance of the fund will have to be financed through bonding. If a large storm triggered the full capacity of the FHCF, bond issues totaling over \$20 billion could be necessary for the fund to meet its maximum obligations. Bonds would be funded by an assessment of up to 6 percent of premium on most lines of property and casualty insurance for funding losses from a single year, and up to 10 percent of premium for funding losses from multiple years. The State Board of Administration, as administrator of the FHCF, has considered options for purchasing reinsurance and risk transfer products available from the capital markets.

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<sup>12</sup> A retention is calculated for each insurer based on its share of fund premiums.

<sup>13</sup> Chapter 2007-1, L.O.F.

In 2008, the mandatory layer of FHCF coverage totaled \$16.35 billion, for which insurers were charged \$996 million in premiums. The optional TICL coverage was purchased by 133 insurers for the 2008 hurricane season. The FHCF provided \$11.143 billion in TICL coverage in return for premiums totaling approximately \$217 million. For the second consecutive year the TEACO coverage was not selected by any insurers, presumably due to the cost, which is much higher than the mandatory coverage and the TICL coverage. The \$10 million limited apportionment coverage option was purchased by 22 companies, for which \$81 million in premium was collected. The FHCF has a \$2.8 billion cash balance, additional access to \$3.5 billion in floating rate notes, and expects to collect \$1.3 billion in estimated premiums on 2009, providing the fund with approximately \$7.6 billion in liquidity, plus the expectation of being able to bond approximately \$3 billion.

The total liabilities of the FHCF could be up to approximately \$28 billion for a single season. Losses above the fund's liquidity level are intended to be financed through the issuance of revenue bonds. However, instability in the worldwide financial markets has greatly reduced the fund's ability to raise money through bonding. Based on historical loss patterns, the fund's current liquidity would enable it to timely reimburse insurers until about 3 to 6 months after the hurricane before resources would be exhausted. At some point, improvements in the financial markets should increase the fund's bonding capacity and reduce its unfunded obligations. It is also possible that the federal government would lend needed funds by purchasing or guaranteeing FHCF bonds.

#### **Rate Filing Standards-Use and File Prohibition for Property Insurers**

Currently, property insurers are prohibited from using the "use and file" option for filing rate increases with the OIR until December 31, 2009.<sup>14</sup> Instead, insurers must use the "file and use" rate filing procedure which prohibits insurers from increasing their rates prior to approval by the OIR, unless deemed approved by failure of the OIR to issue a notice of intent to disapprove within 90 days. Prior to 2007,<sup>15</sup> property and casualty insurers filing rates for approval with the OIR had the option of utilizing either of the two procedures: "file and use" or "use and file." Under the use and file option, insurers could file their rates 30 days *after* the rate filing was implemented. With this option, insurers could implement the filing prior to approval, but may be ordered by the OIR to refund to the policyholder that portion of the rate found to be excessive.

#### **Transparency in Rate Regulation**

Under s. 627.0621, F.S., with respect to any residential property insurance rate filings, the OIR must provide the following information on an Internet website:

- the overall rate change requested by the insurer;
- all assumptions made by an OIR actuary;

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<sup>14</sup> Section 626.062(2), F.S. The use and file option is allowed for rate decreases, as well as for rate increases for casualty insurance lines subject to this section, such as general and professional liability, medical malpractice, boiler and machinery, credit insurance as well as motor vehicle collision and comprehensive coverages.

<sup>15</sup> During the 2007 Special Session A (Ch. 2007-1, L.O.F.), the Legislature required property and casualty insurers, through December 31, 2008, to utilize only the file and use procedure to implement a rate change if the rate was greater than the rate most recently approved by the OIR. If the rate change was lower than the rate most recently approved, insurers were allowed to continue to elect the use and file procedure. During the 2007 Regular Session (Ch. 2007-90, L.O.F.), legislation was enacted limited the applicability of the file and use provision to property (as opposed to casualty) insurance. In 2008 (Ch. 2008-66, L.O.F.), the Legislature extended the prohibition on the use and file option to December 31, 2009.



- a statement describing any assumptions that deviate from actuarial standards of the Casualty Actuarial Society or American Academy of Actuaries;
- all recommendations made by any OIR actuary who reviewed the rate filing;
- a certification by the OIR's actuary that based on the actuary's knowledge, that his or her recommendations are consistent with accepted actuarial principles; and
- the overall rate change approved by the OIR.

Furthermore, in any administrative or judicial proceeding, the work-product and attorney-client privilege exemptions from public disclosure do not apply to communications with office attorneys or records prepared by or at the direction of an OIR attorney, except when the communication or record reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the OIR that was prepared exclusively for civil or criminal litigation or adversarial administrative proceedings and the communication occurred or the record was prepared after the initiation of a court action, after issuance of a notice of intent to deny a rate, or after the filing by an insurer of a request for a hearing.

### **Recoupment of Assessments**

Insurers operating in Florida are subject to different types of assessments from various entities, including Citizens and the Florida Insurance Guaranty Association (FIGA).<sup>16</sup> In general, there are two basic types of assessments: the regular assessment and the emergency assessment. The emergency assessment is often referred to as a pass through assessment because it is collected by each insurer from its policyholders, and then the assessment is remitted to the assessing entity. For the regular assessment, each insurer is billed a specified dollar amount for its respective share of the deficit and must make a full payment to the assessing entity. The insurer must then submit a recoupment factor filing with OIR, and upon receiving approval, the insurer begins to bill its policyholders to recoup the amount of the assessment. If the assessment has not been recouped fully after one year, the insurer can continue to recoup the remainder of the assessment yet to be recouped. If the assessment is over-recouped, the insurer must cease its recoupment factor, and remit checks to its policyholders for the excess that has been collected. This step sometimes can cause a significant amount of administrative cost for a relatively insignificant amount of over-recoupment.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 215.555, F.S., pertaining to the FHCF. The bill specifies that the contract year for the FHCF for 2010 will begin June 1 and end December 31, 2010. For 2011, and each year thereafter, the contract year shall begin January 1 and end December 31. The FHCF currently operates on a "contract year" that runs from June 1 to May 31 of the next calendar year. The start of the hurricane season coincides with the start of the fund's contract year. The proposal changes the contract year in order to allow insurers to have a more competitive position when purchasing private reinsurance because they will have already purchased FHCF reinsurance.

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<sup>16</sup> The FIGA is created under ch. 631, F.S., to protect Florida policyholders from default in the event their insurer becomes insolvent and is unable to pay their claims. If the insolvency is significant, FIGA may assess all authorized property insurers operating in the state to pay the remaining claims of the insolvent carrier.

The bill extends until January 1, 2012, the availability of an additional amount of reimbursement coverage of up to \$10 million from the FHCF for limited apportionment companies,<sup>17</sup> for insurers that purchased FHCF coverage in 2008,<sup>18</sup> and for companies that have qualified for the insurance capital build-up incentive program.<sup>19</sup> Similar coverage was offered in 2006, 2007 and 2008. This coverage would reimburse the insurer for up to \$10 million in losses, for each of two hurricanes. As in past years, the coverage will be priced at a 50 percent rate on line (e.g., \$5 million premium for \$10 million in coverage) with a free reinstatement for a second event. The insurer's retention for such coverage remains at 30 percent of the company's surplus. Without this extension, the availability of this coverage would cease on May 31, 2009. The bill specifies that the optional coverage retention as provided for the limited apportionment and other insurers shall be triggered prior to the mandatory coverage under the reimbursement contract; however, once the limit of the optional coverage is exhausted, the insurer's retention under the mandatory coverage will apply and be paid concurrently with the mandatory coverage.

The bill specifies that in the event that the total reimbursement of losses that the FHCF must make to insurers exceeds the estimated claims-paying capacity of the fund, the reduction to the insurers' reimbursement factors is to be reduced uniformly among all insurers that are to be reimbursed.

The bill authorizes the FHCF to provide for a "cash build-up factor" which would increase the reimbursement premiums that the FHCF charges property insurers for the mandatory layer of coverage provided by the FHCF. This cash build-up factor would allow an increase to the reimbursement premium that would be imposed in non-compounded escalating increments of five percent each year, until the total increase reached is 25 percent over a five-year period. The first year (2009) rate would be five percent above the base year; the second year rate would be ten percent above the base year, etc., until the fifth year (2013) rate is reached which would be 25 percent above the base year. After the fifth year, the 25 percent increase would become a permanent component of the reimbursement premium for the mandatory layer. On average, this factor is estimated to increase residential property insurance premiums about 0.5 percent and increase Citizens' policyholder premiums approximately 0.7 percent for contract year 2009-10, according to the OIR and Citizens.

The bill initiates a phasing out period for the optional FHCF coverage layer, the "Temporary Increase in Coverage Limit" (TICL), over a six year period. Beginning in the 2009-2010 contract year, the current \$12 billion of coverage available through the TICL option would be reduced by \$2 billion a year until no TICL coverage remains for year six. Ten billion of TICL coverage would be available in 2009, \$8 billion would be available in 2010, etc., until the TICL coverage is completely phased out in year 2014.

As the TICL layer is being reduced incrementally, the price for those layers that remain will increase each year beginning in the 2009-2010 contract year. The price for the remaining layers

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<sup>17</sup> Limited apportionment companies are defined in s. 627.351(6)(c), F.S., to mean insurers with a surplus as to policyholders of \$25 million or less writing 25 percent or more of their total countrywide property insurance premiums in Florida. Twenty-two limited apportionment companies purchased coverage in 2008.

<sup>18</sup> Representatives with FHCF state that there were 21 insurers that purchased up to \$10 million in optional coverage for the 2008-09 contract year.

<sup>19</sup> According to officials with the OIR, there were 13 insurers in 2008 which were approved to participate in the Capital Build-Up Incentive Program pursuant to s. 215.5595, F.S.

will increase by an additional multiple each year until the TICL layer is completely phased out in 2014. For 2009, the price will be 2 times the current price, for 2010 the price will be 3 times the current price, until the last remaining \$2 billion layer in 2013 will be priced at 6 times the current price. The table below shows the availability and the pricing during the phase out period.

YEAR	AMOUNT OF TICL COVERAGE AVAILABLE	PRICE
2009	\$10 billion	2X current price
2010	\$8 billion	3X current price
2011	\$6 billion	4X current price
2012	\$4 billion	5X current price
2013	\$2 billion	6X current price
2014	\$0	N/A

**Section 2.** Amends s. 627.062, F.S., relating to the prohibition on insurers using the “use and file” option for property insurance rate increases. The bill extends the prohibition for one additional year, to December 31, 2010.

The bill provides that insurers are authorized to make a separate expedited rate filing with the OIR for residential property insurance which would be exempt from the rate filing requirements under s. 627.062, F.S. Specifically, the bill authorizes insurers to make a separate filing for residential property insurance which is limited to the recovery of: (1) the incremental cost increase of the cash build-up factor for the FHCF; (2) the incremental cost resulting from the increase in the price for the remaining TICL layers; and, (3) the incremental cost of replacing reinsurance layers that formerly had been covered by TICL with coverage for the same layer by a private reinsurance company up to a maximum of 10 percent statewide and 12 percent for any one policyholder. The rate filing is not exempt from the rate filing provisions of s. 627.062, F.S., if it exceeds the overall premium increase (10 percent statewide and 12 percent per policyholder) in any 12-month period. This provision does not limit the authority of the OIR to disapprove a rate as inadequate or to disapprove a filing for the use of unfairly discriminatory rating factors.

An insurer electing to implement a rate change under this provision must file its rate filing with the OIR at least 40 days before the effective date of the rate change and the OIR has 30 from the date of submission to determine if the rate is inadequate or uses unfairly discriminatory rating factors. The rate filing is approved absent a finding by the OIR within the 30-day period that the rate is inadequate or that the insurer used unfairly discriminatory rating factors. However, if the OIR finds that the filing will result in inadequate premiums or otherwise endanger the insurer’s insolvency, the rate increase shall proceed pending additional action by the OIR to ensure the adequacy of the rate.

**Section 3.** Amends s. 627.0621, F.S., which pertains to “transparency” in rate regulation provision. Currently, the OIR is required to provide information as to every rate filing on a publicly accessible website. Further, the transparency provision prevents OIR from applying attorney client privilege or work product confidentiality to OIR attorney communications when challenged as to its actions on a rate filing, unless the communication occurred exclusively for litigation purposes and only after a notice of intent to deny a rate filing had been issued or an

administrative proceeding had begun. The bill removes the provisions pertaining to attorney client privilege and work product confidentiality.

**Section 4.** Amends s. 627.0629, F.S. relating to residential property rate filings. The bill provides that an insurer may include in its rate the actual cost of purchasing private reinsurance that duplicates the TICL coverage for the layers of coverage for which TICL is available. The insurer may include the cost of reinsurance in its rate even if the insurer does not purchase the TICL layer. However, the cost for reinsurance shall not include any additional expense or profit load or result in a total annual base rate increase in excess of 10 percent.

**Section 5.** Amends s. 627.351, F.S., pertaining to Citizens Property Insurance Corporation. The bill deletes the provision which required that as of January 1, 2010, the prospective purchaser of a personal lines residential property with an insured value of \$500,000 or more, insured by Citizens and located in the wind-borne debris region, be informed of the structure's windstorm mitigation rating based on the uniform home grading scale adopted under s. 215.55865, F.S. There is a similar provision in current law which pertains to Citizens and non-Citizens purchasers of residential property (s. 689.262, F.S., conveyances of land) which provides that effective January 1, 2011, a purchaser of residential property located in the wind-borne debris region must be informed of the windstorm mitigation rating of the structure (based on the uniform home grading scale), either in the contract for sale or as a separate document attached to the contract. The Financial Services Commission is authorized to adopt rules, including the form of the disclosure and the requirements for the inspection or report that is required.<sup>20</sup>

The bill implements a recommendation of the Citizens' Mission Review Task Force<sup>21</sup> to provide that upon the expiration of the Citizens rate freeze (January 1, 2010), the corporation shall implement a "glide path" to impose annual rate increases up to the level that is actuarially sound. The bill provides that Citizens implement an annual rate increase which does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. The implementation of this increase must cease when Citizens has achieved actuarially sound rates.

The bill provides that beginning January 1, 2010, and each year thereafter, Citizens must transfer 10 percent of the funds received from its rate increase to the General Revenue Fund; however, such transfer must cease once Citizens has implemented actuarially sound rates.

In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the five percent annual cash build-up factor being added to the price of the mandatory layer of the FHCF coverage as explained above under Section 1.

Under current law, Citizens must reduce the boundaries of the high risk area (HRA) in order to reduce the 100-year probable maximum loss (PML) attributable to wind-only coverages by 25 percent as of February 1, 2010, and by 50 percent as of February 1, 2015, compared to the benchmark as set forth in s. 627.351(6)(x)1, F.S. The bill extends until February 1, 2013 (from

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<sup>20</sup> Both provisions were enacted in 2008 (chapter 2008-66, L.O.F.)

<sup>21</sup> The Mission Review Task Force was created by the Legislature in 2008 to study and recommend statutory and operational changes to Citizens (chapter 2008-66, L.O.F.).

February 1, 2010), the requirement that Citizens reduce the high-risk area boundaries by 25 percent and extends until February 1, 2018 (from February 1, 2015), the requirement that Citizens reduce the high-risk area boundaries by 50 percent.

**Section 6.** Amends s. 627.3512, F.S. relating to recoupment of residual market deficit assessments to address the means through which insurers are allowed to recoup assessments that have been imposed by Citizens. The bill requires that an insurer or insurer group must begin its recoupment process within 180 days of receiving an assessment from Citizens, or it will forfeit its entitlement to recoup the assessment from its policyholders. It prohibits insurers from using a recoupment factor that is more than 3 percentage points above the ratio of the deficit assessment to the Florida direct written premium for the assessed lines of business. The bill allows the OIR 30 days to review a recoupment factor filing. If the assessed insurer or insurer group over-recoups the assessment by any amount, it must forward the excess to Citizens, where it will be held to offset future assessments. The bill requires the insurer or insurer group to file a final accounting report with OIR, documenting the recoupment process. The bill specifies the information that must be submitted in the final accounting report by the insurer and requires the chief executive officer or chief financial officer to certify under oath, and subject to the penalty of perjury, that the report is true and accurate based on his or her knowledge.

**Section 7.** Amends s. 627.712, F.S., relating to residential windstorm coverage, to allow insurers to offer ex-wind policies to homeowners within the boundaries of Citizens high risk account (HRA) area who are no longer eligible for coverage by Citizens because the replacement value of the home exceeds \$2 million or because the replacement value of the home exceeds \$750,000, but the home does not have hurricane shutters.

**Section 8.** Amends s. 631.57, F.S., pertaining to the powers and duties of the Florida Insurance Guaranty Association (FIGA). The bill repeals the current provisions and specifications for requiring an insurer to submit to OIR a rate filing within 90 days of being notified of an assessment by FIGA.

**Section 9.** Amends s. 631.64, F.S., relating to the Florida Insurance Guaranty Association (FIGA), to address the recoupment process for an insurer or insurer group when an assessment has been levied by the FIGA. The bill requires that an insurer or insurer group must begin its recoupment process within 180 days of receiving an assessment from FIGA, or it will forfeit its entitlement to recoup the assessment from its policyholders. It prohibits insurers from using a recoupment factor that is more than 2 percentage points above the ratio of the deficit assessment to the Florida direct written premium for the assessed lines of business. The bill allows the OIR 30 days to review a recoupment factor filing. If the assessed insurer or insurer group over-recoups the assessment by any amount, it must forward the excess to FIGA, where it will be held to offset future assessments. The bill requires the insurer or insurer group to file a final accounting report with OIR, documenting the recoupment process. The bill specifies the information that must be submitted in the final accounting report by the insurer and requires the chief executive officer or chief financial officer to certify under oath, and subject to the penalty of perjury, that the report is true and accurate based on his or her knowledge.

**Section 10.** Amends s. 631.65, F.S., relating to prohibited advertisements. Under current law, persons are prohibited from making, publishing or placing before the public in a newspaper,

magazine or other publication or in a notice, pamphlet, letter or poster, or over the radio, television, or in any other way, any advertisement or statement which uses the existence of the Florida Insurance Guaranty Association (FIGA) for the purpose of solicitation or inducement to purchase any form of insurance. The bill specifies that this provision does not prohibit a licensed insurance agent from explaining the existence or function of FIGA to policyholders, prospects or applicants for insurance coverage.

**Section 11.** Provides that the receipt of funds transferred to the General Revenue Fund by Citizens (under Section 5) are appropriated on a nonrecurring basis from the Fund to the Insurance Regulatory Trust Fund in the Department of Financial Services for the purposes of the My Safe Florida Home Program (MSFH) under s. 215.5586, F.S. The MSFH program must use the funds solely for the provision of mitigation grants for single family homes insured by Citizens.

**Section 12.** Provides that the act will take effect June 1, 2009.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will have an effect on the rates paid by Florida homeowners. Senate professional staff have gathered data from various stakeholders to provide estimates of the bill's likely impact. These estimates are based on assumptions that are subject to variation. The amount of the rate impact is dependent on a number of factors including which insurer is providing the coverage.

For Citizens policyholders, the rate increase (for the glide path and the cash build up programs) will likely be between 10 and 11 percent on any single policyholder. These estimates assume no changes in the amount of coverage.

For those policyholders with coverage in the private market, the rate impact is subject to wider variation. Upon the effective date of the bill, an insurer could obtain a rate increase based on the effect of changes to the FHCF. Some insurers will replace the minimum amount of FHCF coverage by purchasing private reinsurance based on the reduction of the TICL layer. For those companies, the impact on their policyholders is likely to be in the range of 3 to 5 percent on a statewide average.

Other insurers, however, could choose to obtain a maximum allowable amount of additional private reinsurance. For an insurer replacing the maximum amount of TICL coverage with private reinsurance, the rate impact of the bill on a statewide average basis cannot exceed 10 percent or a maximum of 12 percent for any single policyholder. Any private insurer, however, continues to be able to file for rate increases subject to OIR approval. The estimates contained herein pertain to only those changes reflected in the bill.

**C. Government Sector Impact:**

The bill has created opportunities for insurers to obtain modest annual increases based on an expedited rate review process with the OIR. Over time, this could result in reduced rate setting scrutiny.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on April 6, 2009:**

- Eliminates the provision authorizing the State Board of Administration to invest in revenue bonds from the FHCF.
- Deletes the provision that allows insurers to make an annual expedited rate filing with the OIR for residential property insurance in order to increase its rates in an amount equal to an “inflation trend factor” published by the OIR.
- Provides that licensed insurance agents may explain the existence and function of the Florida Insurance Guaranty Association to policyholders, prospects or applicants for insurance coverage.
- Removes the provision that required, as of January 1, 2010, a prospective purchaser of a personal lines residential property with an insured value of \$500,000 or more, insured by Citizens, and located in the wind-borne debris region, be informed of the structure's windstorm mitigation rating based on the uniform home grading scale.

- Authorizes staggered terms of office for members of the Board of Governors of Citizens.
- Changes the bill's effective date to June 1, 2009 from July 1, 2009.
- Makes other conforming changes.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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