HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 909 Property Insurance
SPONSOR(S): Regulatory Affairs Committee; Insurance & Banking Subcommittee; Wood
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Callaway	Cooper
2) Regulatory Affairs Committee	13 Y, 2 N, As CS	Callaway	Hamon

SUMMARY ANALYSIS

The bill addresses the following property insurance issues: assignment of post-loss benefits, required reporting on non-catastrophic losses for Citizens Property Insurance Corporation (Citizens), public adjuster fees and conduct, and sinkholes.

Generally, an assignment of benefits allows a third party to collect insurance proceeds owed to the policyholder directly from the insurer and can be made pre-loss and post-loss. Under current law, insurance policies can contain a provision prohibiting the policyholder from making a pre-loss assignment without consent of the insurer, but post-loss assignments are not prohibited. The bill allows a property insurance policy to prohibit a post-loss assignment, with an exception for assignment of public adjuster fees and voids the assignment if the policy prohibits assignment of post-loss benefits, but one is made anyway.

Public adjuster fees for claims filed against Citizens are increased by the bill. Current law setting the maximum public adjuster fees for all other property insurance claims is maintained by the bill. The bill applies the disciplinary provisions in current law to public adjusters who exceed the fee restrictions and places new restrictions on public adjuster conduct.

Regarding sinkholes, the bill allows insurers to offer sinkhole loss coverage limits that are lower than the policy limit. This is not allowed under current law. Current law allows insurers to offer 1%, 2%, 5%, and 10% sinkhole deductibles. The bill requires insurers to offer 2%, 5%, and 10% sinkhole deductibles. The bill requires insurers to pay for sinkhole repairs directly to the repair contractor selected by the policyholder, if the property has no liens. The bill repeals current law allowing a policyholder in a sinkhole claim to collect attorney fees if the claim goes to neutral evaluation and the insurer timely complies with the neutral evaluator's recommendation, but the policyholder declines to resolve the claim and opts to proceed to court and obtains a judgment more favorable than the recommendation.

The bill has no fiscal impact on state or local governments, but impacts the private sector. Policyholders with insurance policies that prohibit post-loss assignments may incur out of pocket expenses to pay the repair contractor or vendor up front; however, the policyholder should be reimbursed for these expenses by the insurer when the claim is paid. Citizens may incur additional costs relating to the report required for non-catastrophic losses. The sinkhole deductible and coverage limit changes could increase or decrease a homeowner's out of pocket expenses for a sinkhole claim and the premium for sinkhole loss coverage, depending on which deductible or coverage limit is chosen. The change to the attorney fee provision relating to neutral evaluations may reduce legal expenses for sinkhole claims incurred by insurers and paid to plaintiff attorneys. The changes to the public adjuster fees for Citizens' claims will increase fees paid to public adjusters in these claims and decrease the claim payment made to the homeowner.

The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Assignment of Benefits in Property Insurance

Generally, an assignment of benefits allows a third party to collect insurance proceeds owed to the policyholder directly from the insurance company. Thus, the proceeds are not paid to the policyholder. Assignment of benefits are commonly used in health insurance and personal injury protection insurance. In health insurance, a policyholder typically assigns his or her benefits to payment for a covered medical service to the health care provider. Thus, the treating physician gets paid directly from the insurer.

According to proponents of the bill, assignment of benefits are becoming increasingly common in property insurance claims, especially in water damage claims where a homeowner assigns his or her right to receive benefits on their property insurance to a contractor or vendor who repairs the damaged property. Some insurers assert assignment of benefits to a contractor or vendor in a water damage claim can be problematic because if the contractor or vendor submits an invoice to the insurer that is more than what the insurer estimates it should cost to remediate and dry-out the policyholder's residence, the insurer must investigate the claim, determine why the invoice is higher than estimated by the insurer, and identify whether all the work indicated in the invoice was performed. Insurance policies typically provide authority for the insurer to take certain actions to investigate claims, such as requiring policyholders to file proofs of loss, to produce records, and to submit to examinations under oath. However, contractors or vendors obtaining an assignment of benefits for the claim many times allege they do not have to comply with the insurer's claims investigation authorized under the insurance policy because they agreed only to an assignment of the insurance benefits and did not agree to assume any of the duties under the insurance policy.

Assignment of benefits can be made in two circumstances, pre-loss assignment of benefits and post-loss assignment of benefits. Pre-loss assignments are made before a claim arises and post-loss assignments are made after a first party loss. Under Florida law[1], insurers can include a provision prohibiting the policyholder from making pre-loss assignments without consent of the insurer.[2] In other words, an insurer can include a prohibition in a property insurance policy that prohibits a policyholder from assigning his or her policy to a third party. However, such a prohibition does not prohibit the policyholder from assigning his or her rights under the policy once a claim arises.[3] Thus, even if the policy contains a provision prohibiting pre-loss assignment of benefits, the policyholder can still make a post-loss assignment of benefits.[4] One reason post-loss assignments are valid despite a provision prohibiting assignment without consent of the insurer in the policy is that once a loss occurs; the assignment is for moneys due under the policy and owed the policyholder (i.e., the policyholder's rights under the policy). If a post-loss assignment of benefits is made, the party receiving the assignment (assignee) cannot assert new rights of his or her own did not belong to the person assigning the rights (assignor). Also, the full extent of the assignor's claim is assignable so the assignee can collect the full value of the assignor's claim against the insurer.[5]

In addition, a contractual provision prohibiting an assignment of rights under the contract does not prohibit assignment of causes of action under the contract.[6]

[1] s. 627.422, F.S.
[2] This is usually done by an "consent to assignment clause." See Cordis Corporation v. Sonics International, 427 So.2d 782 (Fla. 3rd DCA 1983) noting "contractual provisions assignability are generally enforceable in Florida."
[3] Highlands Insurance Company v. Kravecas, 719 So.2d 320, (Fla. 3rd DCA 1998).
[4] Slominski v. Citizens Property Insurance Corporation, 99 So.3d 973(4th DCA 2012), citing Kroener v. Florida Insurance Guaranty Association, 63 Sol.3d 914 (Fla. 4th DCA 2011)).
[5] Highlands Insurance Company v. Kravecas, 719 So.2d 320, (Fla. 3rd DCA 1998).
[6] Cordis Corporation v. Sonics International, 427 So.2d 782 (Fla. 3rd DCA 1983).

The bill allows a property insurance policy to prohibit the policyholder from post-loss assignment of rights, causes of action, or benefits under the policy. An exception is made for assignment of public adjuster fees. A post-loss assignment made is void if the policy prohibits the assignment.

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

As of January 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies extending approximately $418 billion of property coverage to Floridians.[7] Citizens insures over 444,000 residential and commercial policies in Florida's coastal areas and over 835,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas. As of June 30, 2012, Citizens represented approximately 23 percent of the residential property admitted market based on number of policies.[8]

Citizens was created by the Legislature in 2002 by the merger of two existing property insurance associations: The Florida Residential Property and Casualty Joint Underwriting Association (FRPCJUA) and the Florida Windstorm Underwriting Association (FWUA). The FRPCJUA provided full-coverage personal and commercial residential property policies in all counties of Florida while the FWUA provided personal and commercial residential property wind-only coverage in designated territories.

Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts within the corporation:

1. Personal Lines Account (PLA) – Multiperil Policies[9]
   Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2. Commercial Lines Account (CLA) – Multiperil Policies
   Consists of condominium association, apartment building, homeowner's association policies, and commercial non-residential multiperil policies on property located outside the Coastal Account area; and
3. Coastal Account – Wind-only[10] and Multiperil Policies
   Consists of wind-only and multiperil policies for personal residential, commercial residential, and commercial non-residential issued in limited eligible coastal areas.

A major eligibility requirement for insurance in Citizens provided in current law is a 15 percent premium restriction. This restriction prevents a homeowner from buying insurance in Citizens if an insurer in the private market offers the homeowner insurance for a premium 15 percent or less than the Citizens' premium.[11] In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage. Thus, a homeowner can buy insurance from Citizens only if the private insurer's premium is more than 15 percent than the Citizens' premium.

Citizens' Financial Resources to Pay Claims[12]

[7] https://www.citizensfla.com/ (last viewed February 22, 2013).
[8] "Florida Property Insurance Market Analysis and Recommendations," presentation to the Senate Committee on Banking and Insurance by Locke Burt, Chairman and President, Security First Insurance Company, dated February 6, 2013. Data based on the OIR QUASR Report. Citizens represents over 21% of the market based on total insured value and 20% of the homeowner's residential market based on 2011 written premium. (See "Principle-Based Reforms for Florida's Property Insurance Market," presentation to the Senate Committee on Banking and Insurance by Kevin M. McCarty, Insurance Commissioner, Florida Office of Insurance Regulation, dated January 16, 2013.).
[9] A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (http://www2.iii.org/glossary/) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.
[10] A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.
[11] s. 627.351(6)(c)5.a., F.S. Commercial non-residential property is not subject to this eligibility restriction.
[12] All Citizens' projections about claims paying capacity for the 2012 hurricane season are found in meeting materials from Citizens presented at the Insurance & Banking Subcommittee meeting held on January 15, 2013. Citizens has not finalized its plan of finance for risk transfer and liquidity for

Citizens' financial resources include both resources typically available to private insurance companies and resources uniquely available to Citizens as a governmental entity with the statutory authority to levy assessments in the event of a deficit in Citizens' financial resources. Like typical private insurance companies, Citizens' financial resources include:

- insurance premiums;
- investment income;
- accumulated surplus;
- reimbursements from the Florida Hurricane Catastrophe Fund due to Citizens' purchase of reinsurance from the Florida Hurricane Catastrophe Fund; and
- reimbursements from private reinsurance companies if Citizens purchases private reinsurance.

Financial resources unique to Citizens include: Citizens Policyholder Surcharges, regular assessments, and emergency assessments.

Citizens projects the corporation will have $6.2 billion in surplus to pay claims during the 2012 hurricane season. In addition, Citizens could be reimbursed $6.9 billion for claims it pays by the Florida Hurricane Catastrophe Fund and $1.5 billion from private reinsurers claims paid in the Coastal Account. Thus, the maximum amount Citizens has to pay claims without levying assessments for the 2012 hurricane season is approximately $14.6 billion.[13]

As of January 31, 2013, Citizens' total exposure is over $418 billion. Citizens estimates the 1-in-100 year hurricane would cost almost $24 billion.[14] The $9.4 billion difference between Citizens' resources to pay claims ($14.6 billion) and its 1-in-100 year exposure ($24 billion) would be covered by assessments levied by Citizens on its own policyholders and on policyholders of most property and casualty insurance.

Assessments Levied by Citizens

In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute.[15] The three Citizens' accounts calculate deficits and resulting assessment needs independently. The three types of assessments Citizens can levy are:

1. Citizens Policyholder Assessments,
2. Regular Assessments, and
3. Emergency Assessments.

Citizens Policyholder Assessments

If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15 percent of premium per account in deficit, for a maximum total of 45 percent.

Regular Assessments

2013, although it has approval from their governing board to seek risk transfer of $1.75 billion for 2013 for the Coastal Account with the risk transfer methods of continuation of 2012 capital market transactions and private reinsurance, replacement of 2012 traditional reinsurance, and new capital market transactions. The board also approved a $600 million pre-event liquidity financing program for the Coastal Account. No risk transfer methods were requested or approved for the PLA and CLA due to the significant amount of surplus in these accounts. (See meeting materials from the Citizens' Board of Governors meeting on February 14, 2013, available at https://www.citizensfla.com/about/mDetails_boardmtgs.cfm?event=504&when=Past (last viewed February 22, 2013)).

[13] Citizens has also issued $5.1 billion in pre-event bonds to create additional liquidity to pay claims during the 2012 hurricane season. If these funds are used to pay claims during the 2012 hurricane season, then monies drawn must be repaid and assessments will likely be levied by Citizens to provide funds for repayment. Thus, pre-event bonding is not included in this calculation of the amount of funds Citizens has to pay claims because this calculation is the amount available to pay claims without assessing policyholders.

[14] A 1-in-100 year hurricane has a 1 percent probability of occurring. Information on probable maximum loss is contained in the meeting packet from the Insurance & Banking Subcommittee meeting on January 15, 2013.

[15] s. 627.351(6)(b)3.a.,d., and i., F.S.

If the Coastal Account incurs a deficit that the levy of a Citizens Policyholder Assessment does not cure, then Citizens may levy another assessment, a regular assessment, of up to 2 percent of premium or 2 percent of the remaining deficit in the Coastal Account.[16] The regular assessment is levied on virtually all property and casualty policies in the state, but not on Citizens' policies. The assessment is also not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

Regular assessments cannot be levied for deficits in the PLA or CLA. Only Citizens Policyholder Assessments and emergency assessments can be levied to cure deficits in these accounts.

Emergency Assessments
If the PLA or CLA incurs a deficit that a Citizens Policyholder Assessment levy does not cure, then Citizens may levy another assessment, an emergency assessment, to cure the deficit. An emergency assessment may also be levied for deficits in the Coastal Account that a Citizens Policyholder Assessment and regular assessment do not cure. Emergency assessments are limited to 10 percent of premium or 10 percent of the deficit per account, for a maximum total of 30 percent.[17] This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies. However, this assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

Effect of Proposed Changes
Currently, there is no required reporting on non-catastrophic losses for any insurer, including Citizens. The bill requires Citizens to prepare a report by January 15th of each year on non-catastrophic losses. Specifically, the report must provide Citizens' loss ratio for non-catastrophic losses on a statewide and county basis. A loss ratio is the percentage of each premium dollar an insurer spends on claims.[18] For example, a loss ratio of 115 means for every $1 in premium collected by the insurer, the insurer pays out $1.15 in losses on a claim. The report must be provided to the OIR and posted on the Citizens Internet website.

Public Adjusters

Chapter 626, F.S., regulates insurance field representatives and operations. Part VI of the chapter governs insurance adjusters. The law recognizes various types of adjusters, including public adjusters, independent adjusters, company employee adjusters, and catastrophe or emergency adjusters. Adjusters can be further classified as resident or nonresident. Resident adjusters are those who reside in Florida and are licensed in Florida, whereas, nonresident adjusters reside outside of Florida and are licensed by their home state.

The Department of Financial Services (DFS) regulates all types of adjusters. The DFS reports Florida currently licenses almost 33,000 resident adjusters and approximately 51,500 non-resident adjusters.[19] Of these, 1,095 are resident public adjusters and 336 are non-resident public adjusters. The rest are resident and nonresident independent adjusters and company employee adjusters.[20]

A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim the policyholder files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies.

[16] s. 627.351(6)(b)3.a., F.S.
[17] s. 627.352(6)(b)3.d., F.S.
[18] http://www2.iii.org/glossary/l/ (last viewed March 24, 2013).
[19] Information obtained from the DFS dated March 20, 2013, on file with staff of the Insurance & Banking Subcommittee.
[20] According to DFS, there are 15,035 licensed resident independent adjusters (16,214 non-resident independent adjusters); 16,015 licensed resident company employee adjusters (35,014) non-resident company employee adjusters).

Current law provides numerous restrictions and parameters on activities of public adjusters.[21] Administrative rules also address public adjuster activities.[22] Public adjuster activities addressed by current law include: advertisement and solicitation, referrals, referral fees, loans to clients or prospective clients, notice of property loss claims, and allowing access to damaged property by other parties involved in the claim.

Public adjusters are licensed by the DFS if they meet the statutory qualifications for licensure found in s. 626.865, F.S. Qualifications include age, residency, testing, experience, and trustworthiness.[23] Public adjusters must also present a $50,000 bond to DFS in order to be licensed.[24] No bond is required of company employee or independent adjusters.

Report by the Office of Program Policy Analysis and Government Accountability (OPPAGA) on Public Adjusters

In January 2010, the OPPAGA, at the request of the Legislature,[25] issued Report Number 10-06 on public adjuster representation in Citizens' claims.[26] The report examined data related to public adjuster representation in general and data related to public adjuster representation in Citizens' claims. The report found Citizens' claims filed in 2008 and 2009 with public adjuster involvement took longer to reach a settlement and had higher claims payments than those without public adjuster involvement.[27]

Public Adjuster Fees[28]

Generally, public adjusters are typically paid a percentage of the claim payment, meaning the policyholder's claim payment amount is reduced by the public adjuster's fee. Independent and company employee adjusters do not charge policyholders a fee for adjusting the claim. The public adjuster fee percentage is usually negotiated between the public adjuster and the policyholder, except in residential property and condominium unit owner property claims. For these claims, public adjuster fees are limited by law to a specified percentage of the claim amount which varies depending on whether the claim is hurricane or non-hurricane related and if the claim is hurricane-related, depending on how soon after the hurricane the claims is filed. In addition with supplemental or reopened claims for residential property or condominium unit owners, the public adjuster fee cannot be based on the amount paid to the policyholder on the previous claim. Claims filed against Citizens apply a different public adjuster fee.

The Legislature first restricted fees charged by public adjusters in property insurance claims in 2008. The Legislature made further changes in 2011. Currently, the maximum fee for a public adjuster is different depending on if the claim is an initial claim, a reopened or supplemental claim, or a claim against Citizens. The fees are as follows:

Initial Claims: For initial residential and condominium unit owner property insurance claims, public adjusters are paid a maximum of ten percent of the insurance claim payment for claims resulting from a declaration of a state of emergency (i.e., claims from a hurricane) if the initial claim is made in the year after the declaration. For claims made after this time, public adjusters are paid a maximum of 20 percent of the claim payment.

[21] Laws enacted in 2008 (Ch. 2008-220, L.O.F.), in 2009 (Ch. 2009-87, L.O.F.), and 2011 (Ch. 2011-39, L.O.F.) provided significant changes relating to public adjusters.
[22] Rule 69B-220.201(4) and (5), F.A.C.
[23] Similar qualifications apply to independent and company adjusters.
[24] s. 626.865(2), F.S.
[25] Ch. 2009-87, L.O.F. The legislation directed the OPPAGA report to address specific questions about public adjuster regulation in Florida, public adjuster regulation in Florida compared to other states, and the frequency and outcome on claims processing and payments resulting from public adjuster representation of Citizens' policyholders.
[26] Report available at http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-06 (last viewed March 20, 2013).
[27] The OPPAGA report found claims processing took between 132 and 296 days longer than claims without public adjuster representation and found the typical claim payment for a claim related to the 2004 hurricanes against Citizens involving a public adjuster was $22,266 for claims filed in 2008 and 2009 whereas the typical claim payment for a claim related to the 2004 hurricanes against Citizens not involving a public adjuster during the same time period was $18,659. For claims related to the 2005 hurricanes, the difference in claim payment was larger, with claims involving public adjusters resulting in claim payments that were 747% higher.
[28] Public adjuster fee restrictions are found in s. 626.854(11), F.S.

Public adjusters are paid a maximum of 20 percent of a claim payment for initial residential and condominium unit owner property insurance claims not resulting from hurricanes.

Reopened or Supplemental Claims: The public adjuster fee for reopened or supplemental claims on residential and condominium unit owner property insurance policies cannot exceed 20 percent of the claim payment obtained on the reopened or supplemental claim. Unlike initial claims, there is no difference in the fee restriction for reopened or supplemental claims based on whether or not the claim resulting from a hurricane.

Claims Filed Against Citizens Property Insurance Corporation: For all claims against Citizens, a public adjuster representing a Citizens' policyholder is paid a maximum fee of 10 percent of the additional claim amount paid over the amount originally offered by Citizens. This fee restriction applies to initial claims resulting from hurricanes, initial claims not resulting from hurricanes, and reopened or supplemental claims.

Effect of Proposed Changes

The bill makes several changes to the public adjuster law. The changes relate to conduct of the public adjuster and public adjuster fees. The bill adds language requiring the public adjuster to meet with the insurer to try to reach an agreement on the scope of the loss. Current law only requires the insurer to meet with the public adjuster. The bill also prohibits a pubic adjuster from acquiring any interest in salvaged property unless the policyholder consents. This is a codification of an administrative rule.[29]

The bill also makes one change to the amount of public adjuster fees. The bill repeals the law restricting fees paid to public adjusters representing a Citizens' policyholder to ten percent of the additional claim amount paid over the amount originally offered by Citizens. Thus, public adjusters representing Citizens' policyholders will be paid the same fees for representing Citizens' policyholders as when they represent non-Citizens' policyholders. This effect of this change is an increase in public adjuster fees.

The bill also applies the disciplinary provisions in s. 626.8698, F.S., to public adjusters who violate the statutory fee restrictions through any maneuver, shift, or device. Disciplinary actions include a fine, license suspension, license revocation, and license denial.

Sinkholes

Background

A sinkhole is defined in Florida law as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater.[30] Sinkholes occur in certain parts of Florida due to the unique geological structure of the land. Sinkholes are geographic features formed by movement of rock or sediment into voids created by the dissolution of water-soluble rock. This type of subsidence formation may be aggravated and accelerated by urbanization and suburbanization, by water usage and changes in weather patterns.

Since 1981, insurers offering property coverage in Florida have been required by law to provide coverage for property damage from sinkholes.[31] In 2007, Florida law was amended to require insurers in Florida to cover only catastrophic ground cover collapse, rather than all sinkhole loss, in the base property insurance policy.[32] However, insurers must also offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents.[33] At a minimum, sinkhole loss coverage includes repairing the covered building, repairing the foundation, and stabilizing the underlying land. By law, sinkhole loss coverage by Citizens does not cover sinkhole losses to appurtenant structures, driveways, sidewalks, decks, or patios. All property insurers can restrict catastrophic ground cover collapse and sinkhole loss coverage to the property's

[29] Rule 69B-220.201(4)(e), F.A.C.
[30] s. 627.706(2)(b), F.S.
[31] Ch. 1981-280, L.O.F.
[32] Section 30, Ch. 2007-1, L.O.F.
[33] s. 627.706, F.S.

principal building. Furthermore, insurers can require an inspection of the property before providing sinkhole loss coverage.

For sinkhole loss coverage in residential property insurance, current law allows insurers to include a deductible that applies only to sinkhole loss in the following amounts: 1% of policy dwelling limits, 2% of policy dwelling limits, 5% of policy dwelling limits, or 10% of policy dwelling limits. The insurer has the option to choose which sinkhole loss deductible is offered to policyholders and currently, most insurers, including Citizens, offer policyholders only a 10% sinkhole loss deductible.

Property insurers can nonrenew policies that contain sinkhole loss coverage in the base property insurance policy and offer policyholders a base policy containing coverage for only catastrophic ground cover collapse and offer coverage for sinkhole loss as an endorsement to the base policy for an additional premium.

Notice of all sinkhole claims, including initial, reopened, or supplemental claims must be given to the insurer in accordance with policy terms within two years of the policyholder knowing about the sinkhole loss or within two years from when the policyholder reasonably should have known about the sinkhole loss.

Substantial changes to Florida's sinkhole law occurred in 2005, 2006, and 2011.[34] In 2011, the Legislature reviewed the sinkhole law and enacted comprehensive reforms addressing all areas of the law. Data collected by the Office of Insurance Regulation (OIR) in 2010, before the reforms were enacted, showed a significant increase in the number and cost of sinkhole claims from 2006 to 2010.[35] These increases impacted the financial stability of property insurers in Florida, including Citizens Property Insurance Corporation (Citizens), and were used by insurers to justify property insurance rate increases.

The sinkhole reforms enacted in 2011 were in response to the increasing number and cost of sinkhole claims. The goal of the reforms was to keep sinkhole loss insurance available to homeowners while providing more certainty in sinkhole claims for homeowners and insurers in terms of coverage, costs, repairs, and exposure.

The first complete year the reforms were in effect was 2012.[36] No data has been collected on an industry-wide basis on the number of claims, claim severity, or claim costs since the reforms were enacted, so their impact on sinkhole claims and costs on an industry-wide basis is unknown. However, Citizens performed a sinkhole study in 2012 to compute the impact of the 2011 reforms on their policies.[37] This study looked at actual sinkhole claim files from Citizens and readjusted the losses and expenses associated with the claims as if the 2011 reforms had been in effect. The actuarial analysis which accompanied the study projected the 2011 reforms would reduce Citizens' expected incurred sinkhole losses for 2013 by almost 55 percent.

Insurance Adjusting of Sinkhole Claims

Under current law, when a claim is made for sinkhole loss, the insurer must inspect the property to determine if there is structural damage resulting from sinkhole activity.[38] The definition in current law for "structural damage" was enacted in 2011 and is based on descriptions of structural damage in the Florida Building Code that are applicable to sinkholes.

Following the insurer's initial inspection, the insurer must provide written notice to the policyholder detailing:[39]

[34] Ch. 2005-111, L.O.F.; Ch. 2006-12, L.O.F.; Ch. 2011-39, L.O.F.

[35] Report on Review of the 2010 Sinkhole Data Call by the Office of Insurance Regulation, dated November 8, 2010, link available at http://www.floir.com/Office/DataReports.aspx (last viewed March 10, 2013).

[36] The reforms were effective on May 17, 2011 when the bill (CS/CS/CS/SB 408) was signed by the Governor.

[37] Citizens Property Insurance Corporation Senate Bill 408 Sinkhole Analysis, prepared by Insurance Services Office, dated July 19, 2012, link available at https://www.citizensfla.com/about/mDetails_boardmtgs.cfm?event=419&when=Past (last viewed March 10, 2013).

[38] S. 627.707(1), F.S.

[39] S. 627.707(3), F.S.

- the insurer's initial determination of the cause of the damage, if a determination is made,
- when the insurer must hire a professional engineer or professional geologist to verify or eliminate sinkhole loss,
- when the insurer must hire an engineer to recommend land and building stabilization and foundation repairs,
- a statement of the policyholder's right to demand certain testing be conducted by a geologist or engineer,
- when the policyholder can demand testing, and
- when a policyholder has to pay for testing.

For insurance policies covering sinkhole loss, if the insurer's inspection of the damaged property confirms structural damage to the property, but does not identify the cause of the damage, or if the damage seen on inspection is consistent with sinkhole loss, the insurer must hire, and pay for, an engineer or geologist to conduct sinkhole testing to determine the cause of the damage to the property.[40] The engineer or geologist must issue a report on his or her findings (the report is discussed below).

If the insurer determines there is no sinkhole loss, the insurer can deny the sinkhole claim.[41] If an insurer determines there is no sinkhole loss and denies the sinkhole claim without sinkhole testing, the policyholder can demand testing. Policyholders can demand testing only if the insurance policy covers sinkhole loss. This prevents insurers from having to pay for sinkhole testing if the policy would not cover the damage. The policyholder's demand for testing must be communicated to the insurer within 60 days after the receipt of the denial of the sinkhole claim.[42] In addition, the policyholder demanding testing must pay the lesser of 50 percent of the sinkhole testing and sinkhole reporting costs or $2,500. But, the insurer must reimburse these costs to the policyholder if the testing reveals a sinkhole loss. However, if a policyholder submits a sinkhole claim without good faith grounds after sinkhole testing that reveals there is no sinkhole loss or that sinkhole activity did not cause the damage to the property, the policyholder must reimburse the insurer the lesser of 50 percent of the testing costs or $2,500.

Testing standards for sinkholes are established in s. 627.7072, F.S. The professional geologist or engineer must perform whatever tests are sufficient to determine the presence or absence of sinkhole loss or cause of damage within reasonable professional probability and to allow the engineer to make recommendations regarding any necessary building stabilization and foundation repair. Typically, the testing procedures used are shallow boring, ground penetrating radar, and deep boring.

Once testing is complete, the engineer or geologist performing the testing issues a report and certification to the insurance company and policyholder.[43] The requirements of the sinkhole report and certification are found in s. 627.7073(1), F.S. and are based upon sinkhole testing. If sinkhole loss is verified in the sinkhole report and certification, in addition to the other statements required by law, the report and certification must state structural damage to the covered building has been identified within a reasonable professional probability. In addition to other statements required by current law, if there is no structural damage or if sinkhole activity is eliminated as the cause of damage to a covered building, the report and certification must state there is no structural damage or the cause of structural damage found is not sinkhole activity within a reasonable professional probability. Florida law gives a presumption of correctness to specified information contained in the report.[44]

If the insurer verifies there is a sinkhole loss, the insurer must pay to stabilize the land and building and repair the foundation pursuant to the policy coverage and terms and in accordance with the recommendation of the professional engineer.[45] The policyholder is also given notice of the repairs to be done.

[40] S. 627.708(2), F.S.
[41] S. 627.707(4)(a), F.S.
[42] ss. 627.707(4)(b) and (6), F.S.
[43] S. 627.7073(1), F.S.
[44] S. 627.7073(1)(c), F.S. See Universal Insurance Company of North America v. Warfel, 82 So.3d 47 (Fla. 2012) for a discussion of the presumption of correctness in sinkhole cases.
[45] S. 627.707(5),F.S.

Regarding repair of sinkholes paid for by the insurer, the insurer can initially pay actual cash value of the sinkhole claim, except for the underpinning and other below foundation repair costs, until the policyholder enters into a contract to repair the sinkhole damage.[46] However, the insurer must pay for only repairs recommended in the sinkhole report prepared by the insurer's geologist or engineer.[47] The insurer must obtain approval of the property lienholder, and not the policyholder, in order to pay repair costs directly to the repair contractor. The policyholder chooses who makes the repairs.

For verified sinkholes, the policyholder must repair the property in accordance with the repair recommendations made by the insurer's engineer in the insurer's sinkhole report. The policyholder must enter into a contract to stabilize the building and repair the foundation within 90 days after the insurer confirms coverage for the sinkhole loss and notifies the policyholder of the confirmation.[48] Once the contract is entered into, the insurer pays the amount needed to begin repair work. The insurer continues to pay for repair work as the work is completed and repair costs incurred. The policyholder cannot be required to advance money for the repairs.

Sinkhole repairs must be complete within 12 months after the repair contract is entered into. The exceptions to this 12-month limitation are: mutual agreement between the insurer and the policyholder, neutral evaluation of the claim, litigation of the claim, or appraisal or mediation of the claim. Once the repairs are completed, the engineer overseeing the repairs must issue a report certifying the repairs are properly performed.

If after repairs are started, the insurer's engineer determines that repairs cannot be completed within policy limits, the insurer must either complete the repairs or pay policy limits to the policyholder, without reducing the payment for repair costs already paid. In this case, insurers pay over policy limits on a sinkhole claim.

Although current law requires the homeowner to repair the property affected by a verified sinkhole, often times the insurer and homeowner settle the sinkhole claim before repair work is started.[49] Homeowners that settle sinkhole claims are not required to use claim settlements to repair or remediate the home and land. Thus, arguably, homeowners are incentivized to file sinkhole claims, reach a settlement with the insurer, and use the settlement proceeds for something other than repair and replacement of the sinkhole and resulting damage.

Insurers are not allowed to nonrenew a property insurance policy because a sinkhole claim is filed if the sinkhole claim payment equals or is less than policy limits or if the property was repaired. But, insurers can nonrenew a property insurance policy if policy limits or more are paid.

Insurers who pay a claim for sinkhole loss must file a copy of the engineer or geologist report and certification with the county clerk of court. Information filed must also include:

- the legal description of the property,
- the neutral evaluation report verifying sinkhole activity as the cause of the damage to the property, if the claim has gone to neutral evaluation,
- a copy of the certification indicating sinkhole stabilization has been completed, and
- the amount paid on the sinkhole claim.

The clerk must record the report and certification. The policyholder must also file a copy of any sinkhole report prepared for the policyholder with the clerk of court before accepting payment from the insurer on a sinkhole claim. When sinkhole repairs are completed, the engineer overseeing the repairs must issue a report to the property owner specifying what repairs were done and certifying the repairs

[46] S. 627.707(5)(a), F.S.
[47] S. 627.707(5), F.S. Although a sinkhole report can be prepared by an engineer or a geologist, only an engineer can recommend sinkhole repairs. Furthermore, insurers are allowed in the law to hire professional structural engineers to recommend repairs on the damaged structure.
[48] The 90-day time period is tolled during the neutral evaluation and begins again 10 days after the neutral evaluation is completed.
[49] The OIR noted in its report on the 2010 data call sinkhole repairs were initiated in only 20 percent of the total claims reported.

were done properly. A copy of this report must also be filed by the engineer with the clerk of court who records the report.

When property that is the subject of a paid sinkhole claim is sold, the seller who filed the sinkhole claim must disclose to the buyer that a sinkhole claim has been paid. In addition, the seller must disclose whether or not the full amount of claim payment was used to repair the sinkhole damage.

The Alternative Dispute Resolution Process for Sinkhole Claims
Section 627.7074, F.S., provides an alternative dispute resolution process for sinkhole claims. The process supersedes the mediation procedures for property insurance claims contained in s. 627.7015, F.S., but does not invalidate the appraisal clause in the property insurance policy. Thus, a sinkhole claim can go through the neutral evaluation process and subsequently go through the appraisal process. The neutral evaluation process begins once an insurer receives the sinkhole report under s. 627.7073, F.S., or denies a sinkhole claim. When either occurs, the insurer must notify the policyholder of the right to participate in the neutral evaluation process. The insurer must also send a pamphlet on the neutral evaluation process prepared by the DFS to the policyholder.

Participation in the neutral evaluation process is mandatory if one party requests it, however, it is nonbinding. Either the policyholder or the insurer can request neutral evaluation of a sinkhole claim. At the conclusion of the neutral evaluation, the neutral evaluator prepares a report containing recommendations about the validity of the sinkhole claim. The specific areas the neutral evaluator must opine on in the report is set forth in s. 627.7074(12), F.S. The recommendation of the neutral evaluator is not binding on either party, thus, either party can opt to litigate the sinkhole claim in court regardless of the neutral evaluator's recommendation on the claim. If the insurer timely agrees to comply with the neutral evaluator's recommendations in writing and does so, but the policyholder declines to resolve the claim and opts to proceed to court on the claim, the insurer is not liable for extracontractual damages for issues determined by the neutral evaluator and the insurer's actions to comply with the recommendation is not a confession of judgment that can be used in the court proceeding as an admission of liability on the part of the insurer. Furthermore, in the court proceeding, the insurer is not liable for attorney's fees unless the policyholder obtains a court judgment more favorable than the neutral evaluator's recommendation.

Effect of Proposed Changes Relating to Sinkhole Claims
The bill makes several changes to current law relating to sinkhole claims. First, it requires insurers to offer a deductible amount of two percent, five percent, or 10 percent of the policy dwelling limits, with appropriate discounts offered with each deductible amount. This new requirement replaces the current statutory authorization which permits insurers to offer a deductible amount of one percent, two percent, five percent, or 10 percent. The effect of this change is that homeowners, if they choose a lower deductible, will pay more in premium, but will have to self-insure for less.

The bill also requires insurers to offer sinkhole coverage for 50 percent, 75 percent, and 100 percent of the policy dwelling limits, with appropriate premium discounts offered with each coverage limit. Currently, insurers are not authorized to offer any limit on the amount of sinkhole loss coverage lower than 100 percent of the policy dwelling limit. With this change, homeowners will have a choice to accept an amount of sinkhole loss coverage lower than the insured value of the dwelling and will experience lower premium as a result. Conversely, if the sinkhole damage exceeds the coverage limits, the homeowner will not be insured for that amount over the limit.

The third change in the bill relates to direct payments for repair work. Currently, if there is a lienholder on the damaged property, insurers, with the lienholder's approval, may make payments directly to the repair person. The bill requires such direct payment if the lienholder approves. The bill also makes insurers directly pay the repair person, if there is no lienholder.

The bill also changes current law regarding attorney fees. In matters relating to the neutral evaluation process, insurers currently are not liable for attorney fees unless the policyholder obtains a judgment that is more favorable than the recommendation of the neutral evaluator. The bill removes an insurer's liability for attorney fees in this situation.

B. SECTION DIRECTORY:

Section 1: Amends s. 626.854, F.S., relating to "public adjuster" defined; prohibitions.

Section 2: Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 3: Amends s. 627.422, F.S., relating to assignment of policies.

Section 4: Amends s. 627.706, F.S., relating to sinkhole insurance; catastrophic ground cover collapse; definitions.

Section 5: Amends s. 627.707, F.S., relating to investigation of sinkhole claims; insurer payment; nonrenewals.

Section 6: Amends s. 627.7074, F.S., relating to alternative procedure for resolution of disputed sinkhole insurance claims.

Section 7: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Policyholders with insurance policies that prohibit post-loss assignments may incur out of pocket expenses to pay the repair contractor or vendor up front; however, the policyholder should be reimbursed for these expenses by the property insurer when the claim is paid.

Citizens may incur additional costs, including staff time, to calculate and publish the report required for non-catastrophic losses.

The changes to the sinkhole deductible and coverage limit could increase or decrease a homeowner's out of pocket expenses for a sinkhole claim and the premium for sinkhole loss coverage, depending on which deductible or coverage limit the homeowner chooses.

The change to the attorney fee provision relating to neutral evaluations may reduce legal expenses for sinkhole claims incurred by insurers and paid to plaintiff attorneys.

The changes to the public adjuster fees will increase fees paid to public adjusters in Citizens' claims and decrease the claim payment made to the homeowner.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities 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:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2013, the Insurance & Banking Subcommittee heard a proposed committee substitute (PCS), adopted one amendment to the PCS, and reported the bill favorably with a committee substitute. The PCS retained no provisions of the filed version of the bill and added provisions to the bill relating to: public hearings on rate filings, assignment of post-loss benefits, reporting on non-catastrophic losses for Citizens, and sinkholes.

For public hearings on rate filings, the PCS gave the OIR discretion to hold a public hearing for property insurance rate filings with rate increases of 15% or more, instead of requiring a public hearing on these filings.

The PCS required Citizens to prepare a report by January 15th of each year on non-catastrophic losses.

The PCS allowed a property insurance policy to prohibit the policyholder from post-loss assignment of rights, causes of action, or benefits under the policy. An exception was made for assignment of public adjuster fees. Further, the bill voided a post-loss assignment if the policy prohibited the assignment.

The PCS amended the sinkhole law. The PCS allowed insurers to offer sinkhole loss coverage limits in specified amounts which are lower than the policy limit. The PCS required insurers to offer sinkhole deductibles of 2%, 5%, and 10% of the policy dwelling limits. Current law allowing a 1% sinkhole deductible was repealed by the PCS. The PCS required insurers to make payments for sinkhole repairs directly to the repair contractor selected by the policyholder if the property has no liens against it. Finally, the PCS repealed current law allowing a policyholder in a sinkhole claim to collect attorney fees if the claim goes to neutral evaluation and the insurer timely complies with the neutral evaluator's recommendation, but the policyholder declines to resolve the claim and opts to proceed to court and obtains a judgment more favorable than the recommendation.

The amendment adopted to the PCS added provisions to the PCS relating to the statutory cap on public adjuster fees. Specifically, the amendment:

- Prohibited a public adjuster from receiving compensation from any source over the statutory fee.
- Repealed the public adjuster fee cap of 20% of the claims payment for initial claims resulting from a hurricane if the claim is filed after one year following the hurricane. Thus, the statutory fee cap for initial claims resulting from a hurricane, whenever filed, is 10%.
- Reduced from 20% to 15% the public adjuster fee cap for initial claims not resulting from a hurricane.
- Applied disciplinary provisions in current law for public adjusters to violations of the fee cap by any maneuver, shift, or device.
- Required the public adjuster to meet or communicate with the insurer in order to try to reach an agreement on the scope of the covered loss.
- Prohibited a public adjuster, a public adjuster apprentice, or any person acting on their behalf from contracting with or accepting a power of attorney for the right to choose the repair contractor.
- Prohibited a public adjuster from acquiring an interest in salvaged property, unless the policyholder agrees.
- Repealed the 10% fee cap on public adjuster fees for public adjusters representing Citizens' policyholders.

The staff analysis was updated to reflect the committee substitute.

On April 16, 2013, the Regulatory Affairs Committee heard the bill, adopted four amendments, and reported the bill favorably with a committee substitute. The amendments:

- Removed the provision from the bill giving the Office of Insurance Regulation discretion to hold a public hearing on property insurance rate filings.
- Restored current law relating to public adjuster fees for claims resulting from hurricanes and for claims not resulting from hurricanes.
- Removed the provision in the bill prohibiting a public adjuster from accepting a power of attorney for the right to choose the repair contractor.
- Made an assignment of post-loss benefits void if a property insurance policy prohibits an assignment of post-loss benefits and the policyholder makes an assignment anyway.

The staff analysis was updated to reflect the committee substitute.