

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 799 Property Insurance for Wind and Flood

**SPONSOR(S):** State Administration & Technology Appropriations Subcommittee, Insurance & Banking Subcommittee, Griffiths

**TIED BILLS:**           **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Fortenberry	Lloyd
2) State Administration & Technology Appropriations Subcommittee	13 Y, 0 N, As CS	Perez	Topp
3) Commerce Committee			

### SUMMARY ANALYSIS

**Windstorm Coverage:** Residential property insurers must provide credits, discounts, other rate differentials, or appropriate reductions in deductibles to reduce insurance premiums for certain mitigation measures, including construction techniques or items installed to protect a structure against windstorm damage or loss. Wind uplift is the upward-acting pressure on the parts of a roof caused by wind traveling across the roof. When wind uplift exceeds the limits of a building system design, a roof deck could detach from a supporting structure. Engineers and builders follow the applicable building code for each jurisdiction to attempt to prevent wind uplift damage.

The bill establishes that, in addition to mitigation measures to reduce hurricane losses, an insurer's residential rate filing with the Office of Insurance Regulation must allow for appropriate discounts for mitigation measures that reduce the potential for windstorm losses. The bill also adds wind uplift prevention to the list of fixtures or construction techniques for which an actuarially reasonable discount, credit, or other rate differential, or appropriate reduction in deductibles, must be included in a rate filing for residential property insurance.

**Flood Coverage:** In December 2022, the Legislature mandated that Citizens Property Insurance Corporation (Citizens) require personal lines residential policyholders and applicants to maintain flood insurance coverage that is at least equivalent to the coverage provided by the National Flood Insurance Program. Citizens has expressed concerns with the ability to implement the flood coverage requirements because of the way in which dwelling value is calculated for issuance of policies. The bill makes technical changes to the statutory language establishing when certain Citizens policyholders must obtain flood coverage so that Citizens can implement the flood coverage requirements. This does not change flood coverage requirements enacted in December 2022.

Property insurance policies generally do not include flood coverage. Damage from flooding, including flooding from hurricane-generated storm surge, is not covered under a standard commercial, standard homeowners, condominium owners, or renters insurance policy. However, some property insurers include language in property insurance policies providing windstorm coverage that requires that an insured or applicant maintain flood coverage in order for the windstorm coverage to be valid, if a claim is made for windstorm damage.

The bill establishes that, if the insurer requires an insured or applicant to have flood coverage when the insurer issues a policy containing wind coverage, the insurer must verify that the insured or applicant has flood coverage. If the insurer fails to verify that the insured or applicant has flood coverage, the insurer may not issue a policy containing wind coverage. The bill also establishes that a master flood policy issued to someone other than the insured or applicant, and that includes the insured or applicant as an intended third-party beneficiary is acceptable proof of flood coverage.

The bill provides a \$750,000 nonrecurring appropriation from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to conduct a wind-loss mitigation study. The bill has no impact on local government revenues or expenditures. It will likely have a positive direct economic impact on the private sector.

The bill is effective on July 1, 2023, except as otherwise provided.

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

STORAGE NAME: h0799b.SAT

DATE: 3/30/2023

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Windstorm Coverage

##### **Background**

##### APPROVAL OF INSURANCE RATE FILINGS

In general, insurers must file a copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes to these documents, for approval by the Office of Insurance Regulation (OIR).<sup>1</sup> OIR must review insurers' rate filings to determine whether rates are excessive, inadequate, or unfairly discriminatory.<sup>2</sup> In doing so, OIR must consider factors including, but not limited to, the following:

- Past and prospective loss experience in and out of Florida.
- Past and prospective expenses.
- Degree of competition among insurers for particular risk to be insured.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits allowed or returns to policyholders, members or subscribers in Florida.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors.
- Conflagration and catastrophe hazards, if applicable.
- Projected hurricane losses.
- Projected flood losses.
- Reasonable margin for underwriting profit and contingencies.

Rate filings must also account for factors that should result in premium discounts or credited for policyholders. A residential property insurance rate filing must account for mitigation measures that policyholders undertake to reduce hurricane losses.<sup>3</sup>

##### MITIGATION CREDITS IN RESIDENTIAL PROPERTY INSURANCE RATE FILINGS

Residential property insurers must provide credits, discounts, other rate differentials, or appropriate reductions in deductibles to reduce insurance premiums for properties with mitigation features.<sup>4</sup> Mitigation features are construction techniques used or items installed to protect a structure against windstorm damage or loss.<sup>5</sup> These features must be accounted for in residential property insurance rate filings submitted to the OIR for approval.<sup>6</sup> Such features include, but are not limited to, measures that enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to foundation strength, or appropriate protection, window, door, and skylight strength.<sup>7</sup> Examples of items that might be installed to protect a structure include hurricane shutters, a hip roof, or a specific type of roof covering.

##### WIND UPLIFT

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<sup>1</sup> S. 627.062(2)(a), F.S.

<sup>2</sup> S. 627.062(1), F.S.

<sup>3</sup> S. 627.062(2)(j), F.S.

<sup>4</sup> See s. 627.0629, F.S.

<sup>5</sup> See *id.*

<sup>6</sup> S. 627.0629(1), F.S.

<sup>7</sup> *Id.*

Wind uplift is the upward-acting pressure on the parts of a roof caused by wind traveling across the roof.<sup>8</sup> It is a force measure in pounds per square foot and occurs when the pressure below a roof exceeds the pressure above it.<sup>9</sup> Wind uplift can intensify during high winds, as air enters a building, causing an increase in the air pressure below the roof, while the speed of wind over the roof reduces the pressure above the roof.<sup>10</sup> When wind uplift exceeds the limits of a building system design, a roof deck could detach from a supporting structure.<sup>11</sup> Engineers and builders follow the applicable building code for each jurisdiction to attempt to prevent wind uplift.<sup>12</sup> The standards vary based on building location and likelihood of exposure to high winds.<sup>13</sup>

### ***Effect of the Bill***

The bill establishes that, in addition to mitigation measures to reduce hurricane losses, an insurer's rate filing must allow for appropriate discounts for mitigation measures that policyholders undertake to reduce the potential for windstorm losses.

The bill adds wind uplift prevention to the list of fixtures or construction techniques for which an actuarially reasonable discount, credit, or other rate differential, or appropriate reduction in deductibles, must be included in a rate filing for residential property insurance.

The bill also provides an appropriation for the OIR to procure a wind-loss mitigation study. The study is required to evaluate roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protections, and window, door, and skylight strength. The findings of the study shall be reported to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Commissioner of Insurance Regulation no later than July 1, 2024.

### **Flood Coverage**

#### ***Citizens Property Insurance Corporation***

##### BACKGROUND

Until December 2022 Citizens Property Insurance Corporation (Citizens) could not require a policyholder or applicant to obtain flood insurance as a condition of coverage from Citizens if a policyholder or applicant signed a form affirming that Citizens does not provide flood insurance coverage, and that, if the policyholder or applicant did not obtain flood coverage in addition to a policy from Citizens, the risk was not covered for flood damage.<sup>14</sup> A Citizens policyholder who did not obtain flood coverage and executed such a form, and who made a claim for water damage against Citizens, had the burden of proving the damage was not caused by flooding.<sup>15</sup> Additionally, Citizens could deny coverage to a policyholder or applicant who refuses to execute the form.<sup>16</sup>

Under s. 627.715, F.S., authorized insurers may issue personal lines residential flood coverage. Such coverage includes, but is not limited to, standard flood insurance, which is equivalent to that provided

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<sup>8</sup> Certified Commercial Property Inspectors Association, *How Wind Uplift can Affect a Commercial Building's Roof*, <https://ccpia.org/how-wind-uplift-can-affect-a-commercial-buildings-roof/> (last visited Mar. 6, 2023).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* Changes to Florida's treatment of wind load were made in the 7<sup>th</sup> edition of the Florida Building Code in 2020. See Wind Loads- Impacts from ASCE 7-16 (June 2020), [https://floridabuilding.org/fbc/thecode/2020\\_7edition/ASCE\\_7-16\\_Fact\\_Sheet\\_final\\_2\\_column\\_format052820final.pdf](https://floridabuilding.org/fbc/thecode/2020_7edition/ASCE_7-16_Fact_Sheet_final_2_column_format052820final.pdf) (last visited Mar. 6, 2023).

<sup>14</sup> S. 627.351(6)(aa), F.S. (2021).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

by the National Flood Insurance Program (NFIP), and preferred and customized flood insurance, which provide additional coverage from that provided by standard flood coverage.<sup>17</sup>

A bill passed on December 2022 (SB 2-A) mandated that Citizens require personal lines residential policyholders and applicants to purchase and maintain flood insurance coverage that is at least equivalent to the coverage provided by the NFIP. The policyholder or applicant must execute a form affirming that Citizens does not provide flood insurance and that if the policyholder or applicant does not obtain flood insurance, his or her risk will not be eligible for coverage from Citizens. Citizens may deny coverage to a personal lines residential policyholder or applicant who refuses to purchase and maintain flood insurance.

SB 2-A implemented the purchase of flood coverage by personal lines residential policyholders and applicants as follows:

- Policyholders whose Citizens' policies do not provide wind coverage are not required to purchase flood coverage as a condition of maintaining their Citizens' policies.
- All policyholders whose property insured by Citizens is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:
  - At the time of initial policy issuance for all new policies issued by Citizens on or after April 1, 2023.
  - By the time of policy renewal for all personal lines residential policies renewing on or after July 1, 2023.
- All other policyholders must have flood coverage in place for policies effective on or after:
  - January 1, 2024, for property valued at \$600,000 or more.
  - January 1, 2025, for property valued at \$500,000 or more.
  - January 1, 2026, for property valued at \$400,000 or more.
  - January 1, 2027, for all other personal lines residential property insured by Citizens.

Citizens has expressed concerns with the ability to implement the flood coverage requirements for the policyholders who must have flood coverage in place on or after January 1, 2024, because of the way in which dwelling value is calculated for issuance of policies.<sup>18</sup>

#### EFFECT OF THE BILL

The bill makes technical changes to the statutory language establishing when certain Citizens policyholders must obtain flood coverage so that Citizens can implement the flood coverage requirements. It does not change the flood coverage requirements that were signed into law in December 2022.

#### ***Flood Coverage Required by Windstorm Policies***

##### BACKGROUND

Property insurance policies generally do not include flood coverage. Damage from flooding, including flooding from hurricane-generated storm surge, is not covered under a standard commercial policy, including a Commercial Package Policy or a Business Owners Policy.<sup>19</sup> Standard homeowners, condominium owners, and renters insurance policies do not provide flood coverage, including damage from storm surge.<sup>20</sup> However, some property insurers include language in property insurance policies providing windstorm coverage that requires that an insured or applicant maintain flood coverage in order for the windstorm coverage to be valid if a claim is made for windstorm damage. Compliance with

<sup>17</sup> Current NFIP personal lines flood policies have limits of \$250,000 per claim.

<sup>18</sup> Current law used the phrase "property valued at . . .," but Citizens issues policies based on the replacement cost of a structure or unit (e.g. single-family home or condominium).

<sup>19</sup> Insurance Information Institute, *Does my Business Need Flood Insurance?*, <https://www.iii.org/article/does-my-business-need-flood-insurance> (last visited Mar. 7, 2023).

<sup>20</sup> Insurance Information Institute, *Hurricane Insurance FAQ: What Your Insurance Does—and does not—Cover*, <https://www.iii.org/article/hurricane-insurance-faq> (last visited Mar. 7, 2023).

this requirement may be problematic if an insurance agent has not made an insured or applicant aware of it at the time a property insurance policy is purchased.

#### EFFECT OF THE BILL

For residential and commercial property insurance policies issued or renewed on or after October 1, 2023, the bill establishes that if the insurer requires an insured or applicant to have flood coverage when the insurer issues a policy containing wind coverage, the insurer must verify that the insured or applicant has flood coverage at the time of policy issuance or renewal. If the insurer fails to verify that the insured or applicant has flood coverage, the insurer may not issue a policy containing wind coverage.

Prior to issuing a policy containing wind coverage, but after verifying that the insured or applicant has flood coverage, the insurer must obtain a written acknowledgment from the insured or applicant that he or she understands that the policy containing wind coverage requires that the insured or applicant maintain flood coverage.

In addition to flood coverage directly obtained by the insured or applicant, the bill establishes that a master flood policy issued to someone other than the insured or applicant, but that covers the insured or applicant as an intended third-party beneficiary is acceptable proof of flood coverage.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 627.062, F.S., relating to rate standards.

**Section 2.** Amends s. 627.0629, F.S., relating to residential property insurance; rate filings.

**Section 3.** Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

**Section 4.** Creates s. 627.7155, F.S., relating to wind and flood coverage in residential and commercial property insurance policies.

**Section 5.** Provides an appropriation.

**Section 6.** Provides an effective date of July 1, 2023, except as otherwise provided.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill provides a \$750,000 nonrecurring appropriation from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to conduct a wind-loss mitigation study. The findings of the study shall be reported to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Commissioner of Insurance Regulation no later than July 1, 2024.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely have a positive direct economic impact on the private sector if rates are reduced due to the consideration required by the bill.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 9, 2023, the Insurance & Banking Subcommittee considered a proposed committee substitute for the bill, and reported the bill favorably as a committee substitute. The proposed committee substitute made the following changes to the bill:

- Made technical changes to the statutory language establishing when certain Citizens policyholders must obtain flood coverage so that Citizens can implement the flood coverage requirements. This did not change flood coverage requirements enacted in December 2022.
- Established that, if an insurer requires an insured or applicant to have flood coverage when issuing a policy containing wind coverage, the insurer must verify that the insured or applicant has flood coverage. If the insurer fails to verify the flood coverage, it may not issue a policy containing wind coverage.
- Stated that a master flood policy issued to someone other than an insured or applicant, but that includes the insured or applicant as a third-party beneficiary, is acceptable proof of flood coverage.

On March 29, 2023, the State Administration and Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute for a committee substitute. The amendment:

- Provides a \$750,000 nonrecurring appropriation to the OIR to procure a wind loss mitigation study. The findings of the study shall be reported to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Commissioner of Insurance Regulation no later than July 1, 2024.

The analysis is drafted to the committee substitute for a committee substitute as passed by the State Administration and Technology Appropriations Subcommittee.