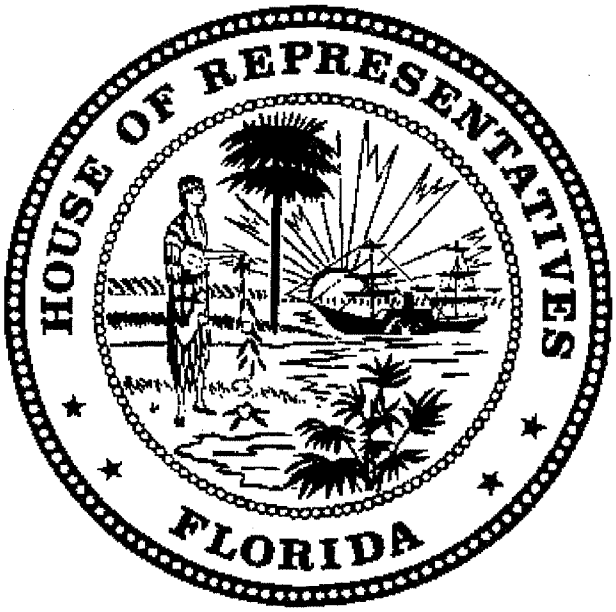

Insurance & Banking Subcommittee

Tuesday, April 5, 2011
4:00 PM - 6:00 PM
404 HOB

REVISED

Dean Cannon
Speaker

Bryan Nelson
Chair

The Florida House of Representatives

Economic Affairs Committee

Insurance & Banking Subcommittee

Dean Cannon
Speaker

Bryan Nelson
Chair

AGENDA

April 5, 2011
404 House Office Building
4:00 p.m. – 6:00 p.m.

I. Introductory Remarks

II. PCS for HB 803 **Property and Casualty Insurance**

III. Adjournment

204 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850)414-7365 Fax: (850)414-5048

PCS for HB 803

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 803 Property and Casualty Insurance
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Callaway	Cooper

SUMMARY ANALYSIS

This bill makes numerous changes to the laws related to property and casualty insurance, primarily residential property insurance. The bill addresses the following major issues:

- Losses, amounts, and expenses that are not reimbursable by the Florida Hurricane Catastrophe Fund.
- Increased surplus requirements for property insurance companies to obtain and maintain a certificate of authority to transact insurance.
- Public adjuster fees, advertisement, solicitation, and other conduct.
- Exemption from adjuster licensure for persons adjusting property claims on foreclosed properties for financial institutions.
- Time period for filing a notice of claim due to hurricanes or windstorms.
- Payment of acquisition costs by insurance companies.
- Certification of additional or supplemental information provided to a property insurance rate filing at the request of the Office of Insurance Regulation (OIR).
- Reduced policyholder notice of nonrenewal for nonrenewals due to an insurance company's problematic financial condition.
- Insurer verification of mitigation discount forms submitted by policyholders or insurance agents.
- Change of policy terms of property or casualty insurance by insurers at policy renewal under specified conditions.
- Procedure and payment timing related to payment of replacement costs to policyholders for partial dwelling losses.
- Numerous revisions to the laws governing sinkholes claims, including adding definitions, changing the adjusting of claims and the payment of testing and reporting, changing repair requirements, and modifying the neutral evaluation process.
- Repeal of the sinkhole database.
- Payment of sinkhole claims by the Florida Insurance Guaranty Association.

The bill has no fiscal impact on state or local governments. Some of the provisions in the bill have fiscal impacts on consumers and the insurance industry. Some of the provisions restrict insurance coverage and some may impact rates and premiums. (See Fiscal Analysis Section of the staff analysis).

The bill is effective upon becoming a law unless provided otherwise in the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill makes numerous changes for property and casualty insurance, primarily property insurance.

Florida Hurricane Catastrophe Fund

The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt trust fund created after Hurricane Andrew as a form of reinsurance for residential property insurers.[1] The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must participate in the FHCF. (s. 215.555(4)(a), F.S. and s. 215.555(2)(c), F.S.). Residential property is defined in s. 627.4025(1), F.S. to include personal lines and commercial lines residential coverage. This coverage entails the following insurance policies: homeowner's, mobile homeowner's, dwelling, tenant's, condominium unit owner's, condominium association, cooperative association, and apartment building.

The FHCF is administered by the State Board of Administration and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses to residential property above the insurer's retention (deductible).[2] A reimbursement contract between the FHCF and the property insurer governs an insurer's participation in the FHCF and the percentage of the insurer's reimbursement. Reimbursement contracts run from June 1st – May 30th.

Current law only specifies losses for fair rental value, rental income, or business interruption losses are not reimbursable by the FHCF. The bill adds the following additional losses, amounts, and expenses that are not reimbursable by the FHCF:

- Liability coverage losses.
- Property losses that are not proximately caused by a hurricane.
- Amounts paid because the insurer voluntarily expanded coverage, such as the waiver of a deductible.
- Reimbursement to the policyholder for an assessment levied by a condominium association or homeowners' association.
- Bad faith awards, punitive damage awards, and court-imposed fines, sanctions, or penalties.
- Amounts paid in excess of the insurance policy coverage limit.
- Allocated and unallocated loss adjustment expenses.

The FHCF has not historically reimbursed insurers for these losses, amounts, and expenses.

The bill also specifies the exceptions to the FHCF definition of "losses" first apply to the reimbursement contracts between the FHCF and the insurer that takes effect on June 1, 2011.

Insurer Surplus Requirements

Florida law specifies certain minimum surplus and capital requirements for property and casualty insurers to transact insurance in the state. Surplus is the reserves an insurer has available to pay claims and is a critical component in measuring the financial strength of a company.[3] The current

[1] s. 215.555, F.S.

[2] Retention is defined to mean the amount of losses below which an insurer is not entitled to reimbursement from the fund. A retention is calculated for each insurer based on its proportionate share of fund premiums.

[3] An insurer's surplus is the remainder after a company's liabilities are subtracted from its assets.

surplus and capital requirements for property and casualty insurers have not been changed since 1993.[4]

Surplus Needed To Obtain A Certificate of Authority

With limited exceptions, a certificate of authority from the Office of Insurance Regulation (OIR) is needed to act as an insurer and transact insurance.[5] Generally, a new property and casualty company that is not a pup company must have the greater of $5 million in surplus or ten percent of the insurer's liabilities to obtain a certificate of authority.[6]

Under the bill, an insurance company that is formed under Florida law, that is licensed after the bill takes effect to write residential property insurance, and that is not a pup company of an existing insurer must have $15 million in surplus to obtain a certificate of authority, rather than the greater of $5 million or ten percent of the insurer's liabilities.

Surplus Needed To Maintain A Certificate of Authority

Once a property and casualty insurer is licensed in Florida, the minimum surplus required to keep a certificate of authority is the greater of $4 million or ten percent of the insurer's liabilities.[7] In addition, generally, a property and casualty insurer's written premium to surplus ratio must not exceed 4 to 1 for net written premiums or 10 to 1 for gross written premiums.[8]

Under the bill, an insurance company formed under Florida law and licensed after July 1, 2011, to write residential property insurance must have the greater of ten percent of the insurer's liabilities or $15 million, rather than $4 million, in surplus to keep a certificate of authority. However, residential property insurance companies licensed before July 1, 2011, must keep the greater of ten percent of the insurer's liabilities or:

- $5 million, rather than $4 million, in surplus until June 30, 2016;
- $10 million, rather than $4 million, in surplus until June 30, 2021; and
- $15 million, rather than $4 million, in surplus after June 30, 2021.

Thus, companies writing residential property insurance and licensed before July 1, 2011, must incrementally meet increased surplus requirements, whereas, companies licensed after July 1, 2011, must immediately meet increased surplus requirements.

The OIR can reduce the required surplus under three circumstances:

- the insurer is not writing new business;
- the insurer has residential property insurance premiums less than $1 million per year; or
- the insurer is a mutual insurance company[9].

The bill does not increase surplus requirements for property insurers writing nonresidential property insurance. These companies have to have $4 million or 10 percent of the insurer's liabilities in surplus in order to keep a certificate of authority.

Public Adjusters

Background

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

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[4] Ch. 1993-410, L.O.F.
[5] s. 624.401(1), F.S.
[6] ss. 624.407(1)(a) and (d), F.S. The $5 million surplus requirement is increased to $50 million for pup companies writing residential property insurance in Florida. Pup companies are wholly owned Florida subsidiaries of an insurer domiciled in another state.
[7] s. 624.408(1)(a), F.S.
[8] s. 624.4095(1), F.S. Net Premiums = Gross Premiums minus reinsurance premiums ceded
[9] A mutual insurance company is defined in s. 628.031, F.S.

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 that as of January 31, 2011, Florida licenses almost 32,500 resident adjusters and almost 45,000 non-resident adjusters.[10] Of these, 2,086 are resident public adjusters and 380 are non-resident public adjusters.[11]

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.

Generally, public adjusters are paid a percentage of the claim payment. The fee percentage is usually negotiated between the public adjuster and the policyholder, except in residential property and condominium association property claims. For these claims, public adjuster fees are limited by law to a specified percentage 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 claims for residential property or condominium associations, the public adjuster fee cannot be based on the amount paid to the policyholder on the previous claim. Independent and company employee adjusters do not charge policyholders a fee for adjusting 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.[12] Public adjusters must also present a $50,000 bond to DFS in order to be licensed.[13] No bond is required of company employee or independent adjusters.

Administrative rules relating to public adjusters, in part, address public adjuster contract cancellation, public adjuster actions relating to business referrals, and public adjuster actions relating to the hiring of other professionals to help with the claim.[14] Administrative rules also govern the solicitation of business and advertising by public adjusters and the contract used by public adjusters.[15] Public adjusters must also abide by general ethical rules applicable to all types of adjusters.[16]

2008 Legislation Relating to Public Adjusters

In 2008, the Legislature enacted legislation imposing restrictions and regulations on public adjusters in residential property and condominium association property insurance cases.[17] The legislation restricted public adjuster fees to: 20 percent on non-hurricane claims, 10 percent on hurricane claims filed during the year after the hurricane, and 20 percent on hurricane claims filed later than a year after a hurricane. The 2008 legislation also prohibited a public adjuster from including the amount paid to a policyholder in a previous claim in the fee calculation on a supplemental claim.

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[10] Information obtained from the DFS dated 2/25/11, on file with staff of the Insurance & Banking Subcommittee.

[11] According to DFS, there are 15,010 licensed resident independent adjusters (13,847 non-resident independent adjusters); 15,399 licensed resident company employee adjusters (30,675) non-resident company employee adjusters).

[12] Similar qualifications apply to independent and company adjusters.

[13] s. 626.865(2), F.S.

[14] Rule 69B-220.201(4) and (5), F.A.C.

[15] Rule 69B-220.051, F.A.C.

[16] s. 626.878, F.S.

[17] Ch. 2008-220, L.O.F. The 2008 legislation resulted from findings of the Task Force on Citizens Property Insurance Claims Handling and Resolution created in 2007 to make recommendations to the legislative and executive branches relating to the appropriate handling, service and resolution of the open 2004/2005 hurricane claims of Citizens Property Insurance Corporation (Citizens). During review of Citizens' hurricane claims, the Task Force became aware of the impact public adjusters have on the claims process. The Task Force found that while the services of public adjusters can be beneficial to policyholders who have suffered a loss, the laws in place in 2007 did not adequately protect consumers from unscrupulous public adjusters. The Task Force heard testimony that some public adjusters were not properly trained or qualified to represent insureds. Also, these adjusters charged exorbitant fees which oftentimes were not apparent to insureds because the fees were not prominently displayed in the public adjuster contract. Stakeholders also testified that there was a need for an apprentice type program for public adjusters so that individuals would be knowledgeable and experienced when they because public adjusters. In an effort to remedy concerns expressed about abuses by some public adjusters, the Task Force proposed legislation in 2008.

The legislation in 2008 made numerous changes relating to public adjuster client solicitation and business practices. The legislation prohibited public adjusters from soliciting directly or indirectly between the hours of 8:00 pm and 8:00 am Monday through Saturday and all day on Sunday. Public adjusters were also prohibited from directly or indirectly contacting any policyholder until 48 hours after an event that triggered a claim, unless contacted by the policyholder. However, this provision was recently struck down by the First District Court of Appeal which ruled the restriction on soliciting customers within 48 hours of a disaster or other insurance claims event violated commercial speech protected by the state Constitution.[18] The First District Court of Appeal decision was appealed to the Florida Supreme Court and is currently pending.[19]

In 2008, public adjusters were prohibited from giving or offering to give a monetary loan or advance to a client or prospective client and were prohibited from giving or offering to give anything with a value in excess of $25 for advertising or as an inducement to enter into a contract with the public adjuster. In addition, the 2008 legislation enacted time periods for cancellation a public adjuster contract without penalty. The legislation also made public adjuster circulation or dissemination of untrue, deceptive, or misleading information relating to insurance an unfair and deceptive insurance trade practice.

Changes to public adjuster licensure, the creation of a public adjuster apprenticeship program and license, and amendments to continuing education requirements for public adjusters were also enacted in 2008.

2009 Legislation Relating to Public Adjusters

In 2009, the Legislature enacted further changes related to the activity of public adjusters.[20] The 2009 legislation prohibited public adjusters or public adjuster apprentices from paying fees for referrals of business to the public adjuster. The legislation also required public adjuster apprentices to obtain a certain claims adjuster designation before applying for an apprentice license. Furthermore, the number of active apprentices employed by a public adjusting firm was limited to 12 and the number of apprentices supervised by a public adjuster limited to three.

The 2009 legislation also required the Office of Program Policy Analysis and Government Accountability (OPPAGA) to do a study on public adjusters. This report was completed in January 2010 (Report 10-06) with the following primary findings:[21]

- The number of licensed public adjuster in Florida has grown significantly in the last six years, and the incidence of complaints, regulatory actions, and allegations of fraud involving public adjusters is generally low;
- Florida's public adjuster laws are comparable to and in some cases more restrictive than those of other similar states;
- According to Citizens' claims data, cases took longer to reach a settlement but received higher payments when policyholders used public adjusters for claims file in 2008 and 2009; and
- Public adjusters represented policyholders in 26 percent of non-catastrophe and 39 percent of catastrophe claims filed in 2008 and 2009 against Citizens.

[18] *Kortum v. Sink*, 2010 WL 5381934 (Fla. 1st DCA 2010). In the lawsuit challenging the constitutionality of the 48 hour restriction, the plaintiff, a public adjuster, argued the first 48 hours are of vital importance because policyholders may make decisions that affect how much they could receive from an insurer during this time.

[19] *Atwater v. Kortum,* Case number SC11-133

[20] Ch. 2009-87, L.O.F.

[21] http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-06 (last viewed March 4, 2011).

Proposed Changes Relating to Public Adjusters

The bill makes significant changes to the regulation of public adjusters in residential property and condominium unit owner property insurance claims.

Advertising or Solicitation by Public Adjusters
Section 626.854(8), F.S., makes public adjuster circulation or dissemination of advertisements, statements, or announcements that contain untrue, deceptive, or misleading assertions, representations, or statements relating to insurance an unfair and deceptive trade practice. The bill sets forth specific statements that are deceptive or misleading if the statements are contained in advertising or solicitation of public adjusters. Thus, if a public adjuster uses these statements in advertising or solicitation, the adjuster commits an unfair and deceptive trade practice. The penalty for commission of an unfair and deceptive trade practice is found in s. 626.9521, F.S., and is a fine no more than $5,000 for each nonwillful violation and a fine no more than $40,000 for each willful violation.[22]

The bill provides the following statements by a public adjuster are an unfair and deceptive trade practice:

- Statement inviting a policyholder to file a property insurance claim when the policyholder may not have property damage covered by an insurance policy;
- Statement inviting a policyholder to file a property insurance claim by offering monetary or other valuable inducement to a policyholder;
- Statement inviting a policyholder to file a property insurance claim by stating there is "no risk" to a policyholder to file a property insurance claim; and
- Statement or use of a logo or shield that implies or could be construed to mean the adjuster's solicitation was issued or distributed by a governmental agency or is sanctioned or endorsed by a governmental agency.

The bill also requires any written advertisements[23] by public adjusters to contain a specific disclaimer in bold print and capital letters in a specific typeface. The disclaimer identifies the advertisement as a solicitation for business.

Public Adjuster Fees
Initial Claims: The bill clarifies current law relating to public adjuster fees on initial residential and condominium association property insurance claims. Starting June 1, 2011, public adjusters can be 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. Public adjusters can be paid a maximum of 20 percent of the claim payment for claims from a hurricane if the claim is made anytime in the year after the declaration. The bill applies these fee caps to condominium unit owner claims, rather than condominium association claims.

Current law allowing public adjusters to be paid a maximum of 20 percent of a claim payment for claims not resulting from hurricanes is not changed by the bill. However, the bill applies the current law relating to fee caps on non-hurricane related claims to condominium unit owner claims, rather than condominium association claims, starting June 1, 2011.

Reopened or Supplemental Claims: The only restriction in current law relating to public adjuster fees on reopened or supplemental claims against residential and condominium association property insurance policies is in s. 626.854(11)(a), F.S. This statute allows a public adjuster to be paid a fee only on the amount paid on the reopened or supplemental claim. Thus, the claim payment amount on the initial claim is not included in the public adjuster fee on a reopened or supplemental claim. There is no cap in current law, however, on the public adjuster fee that can be paid on reopened or supplemental claims. The fee amount is negotiated between the public adjuster and the policyholder.

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[22] The total amount of fines that can be assessed is $50,000 for all nonwillful violations arising out of the same action or $250,000 for all willful violations arising out of the same action (s. 626.9521(3)(c), F.S.).
[23] "Written advertisement" is defined in the bill as newspapers, magazines, flyers, brochures, and bulk mailers.

Starting June 1, 2011, the bill adds a fee cap to reopened or supplemental claims on residential and condominium unit owner policies, rather than condominium association policies, involving public adjusters. The public adjuster fee on these types of claims cannot exceed 20 percent of the claim payment obtained on the reopened or supplemental claim.

Action Required of Public Adjusters and Insurance Companies
When a public adjuster becomes involved in certain types of property insurance claims, the bill requires the public adjuster to ensure:

- prompt notice of the claim is given to the insurance company;
- the public adjuster contract is timely given to the insurance company;
- the property insured is made available to the insurance company for inspection; and
- the insurance company is allowed to interview the policyholder about the claim.

The insurance company must also be allowed to obtain information required to investigate or respond to the claim and must meet or communicate with the public adjuster in order to reach an agreement on the claim.

The public adjuster cannot restrict the insurance company, or anyone acting on the company's behalf, from reasonable access to the policyholder or the damaged property. The insurance company, or anyone acting on the company's behalf, must give the policyholder or public adjuster 48 hours' notice before meeting with the policyholder or inspecting the damaged property. If the required notice is not given, the policyholder can deny access to the property. Both parties can waive the 48 hour notice requirement. The insurance company cannot exclude the public adjuster from its in-person meetings with the policyholder.

Public adjusters are forbidden from obstructing or preventing the insurance company or the company's adjuster from timely inspection of the damaged property. Public adjusters are allowed to be present when an insurance company inspects a damaged property. However, the insurance company is allowed access to the property for an inspection even if the public adjuster or policyholder is not able to be at the property for the inspection, if waiting for the adjuster or policyholder to attend the inspection delays a timely inspection.

Actions by Contractors and Subcontractors
Contractors licensed by the Department of Business and Professional Regulation or subcontractors are not allowed to adjust property insurance claims unless the contractor is also licensed as a public adjuster and is compliant with the public adjuster licensing requirements. Contractors, however, are allowed to prepare or submit a bid to repair damaged property and to discuss the bid with the policyholder or the insurance company if the contractor is preparing or submitting a bid at the request of the insurance company or the policyholder and the contractor is doing the bid submission for the contractor's usual and customary fee.

Adjuster Licensure

The bill exempts persons providing claims adjusting services solely to institutions holding or guaranteeing mortgages[24] from the insurance adjuster licensing law as long as the claims adjusting services are provided to mortgage properties.

Under current law, because the definition of "public adjuster" is so broad, persons who assist financial institutions in pursuing property insurance claims for financial institutions arising from damage or losses to foreclosed properties must be licensed as public adjusters.[25] In the property insurance context, generally, public adjusters represent homeowners, rather than represent financial institutions.

[24] Fannie Mac guarantees mortgages.
[25] In a pending case in United States District Court, Northern District of Florida, a out of state company providing insurance claim review and adjusting to large financial institutions that hold mortgages on property located in Florida sued the CFO of Florida for declaratory and injunctive relief to prevent application of the Florida non-resident public adjuster law to the company due to the law's disparate treatment between Florida residents and residents of other states applying for Florida licensure as a public adjuster. A preliminary injunction was entered in the case on August 25, 2010 preventing the DFS from enforcing any requirements of s. 626.8732, F.S. (the non-resident public adjuster law) that are not included in s.

Filing Time Frame for Windstorm or Hurricane Claims

Although no time frame for filing property insurance claims is found in the Insurance Code,[26] s. 95.11, F.S., requires actions on contracts to be brought within five years. An insurance policy is a contract so the five year statute of limitations in s. 95.11, F.S., applies to insurance policies. Thus, when an insurance company breaches the insurance contract, the policyholder has five years from the breach to file suit.

Starting June 1, 2011, the bill requires notice of any claim, supplemental claim, or reopened claim resulting from windstorm or a hurricane event to be filed with the insurance company within three years after the event first made landfall or caused the damage resulting in the claim. This claim filing deadline applies only to personal lines residential policies.[27] The bill specifies the three year claim filing time frame added by the bill does not affect the five year statute of limitations under s. 95.11, F.S. Thus, policyholders still have five years after the insurance company breaches the insurance contract, which is typically denial of a property insurance claim, to file suit for breach of the insurance contract[28]

Payment of Acquisition Costs by Insurance Companies

An insurer's acquisition costs are typically costs associated with acquiring, maintaining and renewing insurance business. These costs include agent commissions, company sales expenses, and other related expenses. Agent commissions may vary based on numerous factors - the line of business, the agent's expertise, the functions the agent must perform, and competition among other insurers. Agents are prohibited from charging the policyholder any part of their commission. Agent commissions are typically based on a percentage of the total premium; however, insurers can apply the agent's percentage to only a portion of the premium (for example, the non-catastrophe portion).

Under current law the OIR cannot prohibit any insurer from paying acquisition costs based on the full amount of the premium or prohibit an insurer from including the full amount of acquisition costs in a rate filing, however, representatives of insurance agents allege the OIR has questioned the amount of acquisition costs, namely agent commissions, in recent rate hearings and has encouraged insurers to reduce these costs.[29] Therefore, the bill specifies the OIR cannot directly or indirectly prohibit an insurer from paying acquisition costs that are lawfully paid. The bill also prohibits the OIR from certain actions relating to an insurer's acquisition of policyholders, advertisement, agent commissions or agent appointment for property and casualty insurance.

Standard Rating Territories

The bill repeals language requiring the OIR to develop a proposed standard rating territory plan and submit the plan to the Legislature by January 15, 2006. Language in current law restricting implementation of the standard rating territory plan unless authorized by the Legislature is also repealed. The plan required by law was submitted to the Legislature in 2006 and the Legislature has not authorized implementation of standard rating territories since the plan submission.

Certification of Rate Filings

Current law requires all property insurance rate filings to include a certification from the insurance company's chief executive officer or chief financial officer and the chief actuary of the insurance company. The certification must be under oath, subject to the penalty of perjury, and on a form

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626.865, F.S. (the public adjuster qualifications law). The injunction only applies to only persons providing public adjuster services solely to financial institutions for foreclosed property. (See Dimont & Associates, Inc. v. Alex Sink, CFO, Civil Action No. 4:10-CV-181-SPM-WCS)

[26] The Insurance Code is comprised of chapters 624-632, 634, 635, 636, 641, 642, 648, and 651.

[27] Personal lines residential policies include homeowner, mobile homeowner, dwelling, tenant's, condominium unit owner's, and cooperative unit owner's policies.

[28] *See* Saenz v. State Farm Fire and Casualty Company et al, 861 So.2d 64 (Fla. 3rd DCA 2003); Passman v. State Farm Fire and Casualty Company, 779 So.2d 323 (Fla. 2nd DCA 1999).

[29] s. 627.062(2)(i), F.S.

approved by the Financial Services Commission.[30] Contents of the certification are provided in s. 627.062(9)(a), F.S. Knowingly making a false certification subjects the officer and actuary to penalties under the Insurance Code. A property insurance rate filing must be disapproved if the filing does not contain a certification. The bill provides a rate filing certification is not rendered false if the insurance company, at the request of the OIR, provides the OIR with additional or supplementary information after the rate filing is submitted for approval. The bill further requires the insurer actuary submitting the additional information, rather than the chief actuary, the CEO, or the CFO, to provide the same certification for the additional information that is required under current law for all property insurance rate filings. The actuary certifying the additional information is subject to the same penalties under current law relating to the certification.

Nonrenewal Notice For Property Insurance

Under current law,[31] personal lines or commercial lines residential property insurers must give policyholders a notice of cancellation, nonrenewal, or termination at least 100 days prior to the effective date of the cancellation, nonrenewal, or termination. The notice period is extended to 180 days if the property has been insured for at least a five year period immediately prior to the date of the notice. Further, for any cancellation, nonrenewal, or termination that takes effect between June 1st and November 30th, an insurer must provide at least 100 days written notice, or notice by June 1st, whichever is earlier.

The bill allows a 45-day notice of cancellation or nonrenewal, rather than the 100-day or 180-day notice required under current law, if the OIR determines early cancellation of some or all of an insurer's property insurance policies is necessary to protect the best interest of the public or the policyholders. The OIR must approve the insurer's plan for early cancellation or nonrenewal in order for the 45 day notice to apply. The OIR may base its finding on the insurer's financial condition, reinsurance inadequacy, or other relevant factor. The OIR's finding may be conditioned on the insurer's consent to be placed in administrative supervision or its consent to the appointment of a receiver.

Hurricane Mitigation Discounts and Premium Credits

Since 2003, insurers have been required to provide mitigation credits, discounts, other rate differentials, or reductions in deductibles (mitigation discounts) to reduce residential property insurance premiums for properties with mitigation features.[32] In 2003, the Office of Insurance Regulation (OIR) computed suggested mitigation discount amounts to apply to each mitigation feature installed on the property. Insurers must use the discount amounts computed by the OIR unless the insurer provides detailed alternate studies supporting modification of the discount amounts suggested by the OIR.[33]

Mitigation discounts were initially given at 50 percent of the actuarial value of the discount.[34] In 2006, the Legislature amended the mitigation discount law (s. 627.0629(1)(a), F.S.) to require the OIR to reevaluate the mitigation discounts and require insurers to give full actuarial value for them.[35] Thus, the OIR amended the mitigation discount administrative rule[36] to require insurers to provide mitigation discount amounts equal to 100 percent of the mitigation discount amount.[37] In 2008, the OIR obtained

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[30] The Financial Services Commission is comprised of the Governor and Cabinet (s. 20.121(3), F.S.)

[31] s. 627.4133(2), F.S.

[32] s. 627.0629(1)(a), F.S. Mitigation features are construction techniques used or items purchased and installed by a property owner to protect a structure against windstorm damage and loss. (e.g., hurricane shutters, hip roof, specified roof covering).

[33] Rule 69O-170.017, F.A.C.

[34] In an Informational Memorandum issued on January 23, 2003, the OIR notified insurance companies of its suggested mitigation credits for new and existing construction based on its analysis of the 2002 study completed by Applied Research Associates. However, the OIR tempered the mitigation credits derived from the study by 50 percent. As stated by the OIR in the memorandum, the 50 percent tempering of the credits was due to the large rate decreases that could result from application of the credits, the approximations needed to produce practical results, and the potential for differences in results using different hurricane models. The OIR cautioned in the memorandum that the tempering implemented would be curtailed in the future.

[35] Section 14, Ch. 2006-12, L.O.F.

[36] Rule 69O-170.017, F.A.C.

[37] The rule allowed insurance companies to modify the mitigation discounts if the insurer provided detailed alternate studies supporting the modification and allowed the OIR to review all assumptions used in the studies supporting the modification.

a new study to evaluate the appropriate mitigation discount amounts, however, the OIR has not changed the mitigation discount amounts due to the results of the 2008 study.

Section 627.711, F.S., requires insurers to clearly notify an applicant for or policyholder of a personal lines residential property insurance policy of the availability and range of each premium discount, credit, other rate differential, or reduction in deductibles, for wind mitigation. The notice must be provided when the policy is issued and renewed.

Typically, policyholders are responsible for substantiating to their insurers the insured property has mitigation features. Policyholders submit a completed uniform mitigation verification inspection form to the insurer to substantiate mitigation features. Insurers can require mitigation forms provided to the insurer by mitigation inspectors or a mitigation inspection company be independently verified for quality assurance purposes before accepting the mitigation form as valid. The insurer must pay for the independent verification.[38] The bill allows the insurer to also independently verify, for quality assurance purposes, mitigation forms submitted by policyholders or insurance agents. The bill maintains current law requiring the insurer to incur the costs associated with independent verification of mitigation forms.

Change of Policy Terms In Insurance Policies

Under the 5th District Court of Appeals' holding in the case of U.S. Fire Insurance Co. and Hartford Insurance Company of the Southeast v. Southern Security Life Insurance Co., 710 So.2d 130 (Fla. 5th DCA 1998), when an insurance company changes a term or terms of a policy, the change constitutes a nonrenewal of the entire policy by the insurer and thus the insurer must send notice of the policy's nonrenewal to the policyholder in accordance with s. 627.4133, F.S. According to the court, providing the policyholder with a new policy that contains the changed policy term is not sufficient notice of the policy changes.

In response to the court's decision in this case, the bill allows insurance companies to change terms contained in a personal lines insurance policies or casualty policy without nonrenewing the entire policy and thus having to send a notice of nonrenewal in accordance with current law. To effectuate a change in policy terms, the insurer must give the policyholder a written "Notice of Change in Policy Terms" with the policy renewal notice and the policy renewal notice must be provided to the policyholder in accordance with current law. A policyholder is deemed to accept the policy term change if the renewal premium is paid. If the insurer does not provide a "Notice of Change in Policy Terms" to the policyholder, the terms of the insurance policy are not changed. The OIR still must approve the change in policy terms via a form filing.[39]

Payment of Replacement Costs In Property Insurance Claims

Property insurance claims are adjusted on the basis of replacement costs or actual cash value, whichever method is provided in the property insurance policy. Property insurers must offer policyholders an option for replacement cost coverage.[40] If a claim is adjusted by the actual cash value method, the policyholder is paid the depreciated value of the property damaged or lost that is being replaced or repaired.

Until 2005, if a claim was adjusted by the replacement cost method, insurers could make an initial payment on the claim based on the actual cash value of the claim and require the policyholder to complete the repair before the insurer paid the balance of the full replacement cost. Following the multiple hurricanes of 2004 and 2005, regulators received complaints from policyholders who were given the actual cash value of the property damaged or lost, but could not afford to fund the balance necessary to make the repairs or replacements. In 2005, the Legislature addressed this issue by requiring if a claim was adjusted by the replacement cost method, the insurer must pay the full replacement cost up front, whether or not the policyholder replaces or repairs the damaged property.

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[38] s. 627.711(8), F.S.

[39] With limited exceptions, s. 627.410, F.S., requires every insurance policy, application, endorsement, or rider to be filed with and approved by the OIR prior to use by the insurance company.

[40] s. 627.7011, F.S.

Requiring insurers to pay the full replacement cost under replacement cost policies, without holding back depreciated value until the property is replaced or repaired, benefits policyholders who can collect such payments and then decide whether to actually replace or repair the property. But, this also likely increases loss payments by insurers and could cause an increase in fraudulent claims, both of which may increase premiums. Paying replacement costs whether the dwelling or property is replaced may also result in damaged property not being repaired, which could negatively impact financial institutions that hold mortgages and the secondary mortgage market.

The bill changes current law relating to the payment of replacement costs. For partial dwelling losses, the insurer must initially pay at least the actual cash value of the claim, less any insurance deductible. After receiving payment for actual cash value, the policyholder must enter into a repair contract to repair the damage to the dwelling. The remaining amount owed on the claim (i.e., the difference between the initial amount paid and the replacement cost) is paid by the insurer periodically as the repair work is done and expenses are incurred by the policyholder. The policyholder has one year after the payment of actual cash value to make a claim for replacement cost for the damaged property. The bill prohibits an insurer, contractor, or subcontractor from requiring the policyholder to make advance payment for dwelling repairs. However, a policyholder is responsible for payment of incidental expenses to mitigate further damage to the dwelling. An insurer has the option to waive the requirement a policyholder enter into a repair contract.

For total dwelling losses, the bill maintains current law which requires the insurer to pay full replacement cost up front without reservation or holdback of any depreciation, whether or not the policyholder replaces the dwelling.

For personal property losses (i.e., contents), the bill maintains current law which requires the insurer to pay full replacement cost up front without reservation or holdback of any depreciation, whether or not the policyholder replaces or repairs the personal property damaged or destroyed.

Payment of Property Insurance Claims

With limited exceptions, s. 627.70131(5), F.S., requires insurance companies to pay or deny property insurance claims or portions of claims within 90 days of receipt of a notice of the claim from the policyholder. Insurance companies are excused from the 90-day claims payment requirement if factors beyond the control of the insurance company reasonably prevent payment within the 90-day period. The bill clarifies that the 90-day claims payment or denial requirement in current law applies to initial, reopened, or supplemental property insurance[41] claims. Current law does not specify whether the claim payment or denial provision applies to only initial claims, only to reopened claims, only to supplemental claims, or to all three types of claims.

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.[42] 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.[43] 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

[41] Though not defined in law, initial claims are the first claim filed for a loss. Supplemental or reopened claims are claims derived from the same loss, but that are filed after the initial claim.
[42] s. 627.706(2)(b), F.S.
[43] Ch. 1981-280, L.O.F.

property insurance policy.[44] However, insurers must also offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents.[45] Sinkhole loss coverage includes repairing the home, repairing the foundation, and stabilizing the underlying land.

Generally, insurers that currently offer sinkhole loss coverage in the base property insurance policy must nonrenew all their property insurance policies in order to change the policy to only include catastrophic ground cover collapse in the base policy and to offer sinkhole loss coverage for an additional premium. Current law, however, provides one exception to this nonrenewal rule. Property insurers can nonrenew policies in only Pasco and Hernando counties that contain sinkhole loss coverage in the base property insurance policy and offer policyholders in these two counties 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.

Effect of Proposed Changes

The bill maintains current law requiring coverage for catastrophic ground cover collapse in the base property insurance policy and requiring insurers to offer sinkhole loss coverage for an additional premium. However, the bill allows insurers to restrict catastrophic ground cover collapse and sinkhole loss coverage to the property's principal building. The bill also allows insurers to require an inspection of the property before the insurer provides sinkhole loss coverage.

In addition, in all counties, the bill allows insurers to nonrenew policies that contain sinkhole loss coverage in the base policy and offer the policyholder a policy covering only catastrophic ground cover collapse in the base policy but also offer the policyholder an endorsement providing insurance coverage for sinkhole loss for an additional premium. Thus, the provision in current law on this issue that applies only to policies in Pasco and Hernando counties is extended statewide.

Increase in Sinkhole Claims

Sinkhole insurance claims have increased substantially in number and cost over the last several years.[46] Both increases negatively impact the financial stability of property insurers, including Citizens, and have been used by property insurers to justify recent property insurance rate increases.[47]

Frequency and Cost of Sinkhole Claims on the Insurance Industry

In 2010, because of anecdotal evidence of increasing sinkhole claims and costs in recent years, the OIR conducted a data call to collect specific information about sinkhole claims from 211 insurers, including Citizens. The OIR compiled and analyzed the data collected to determine claim payment trends and other related data.

On November 8, 2010, the OIR reported its findings from the data call.[48] The report indicates the OIR received information on 8,959 open sinkhole claims and 15,712 closed sinkhole claims (24,671 total claims) for 2006-2009. Specifically, the data showed:

- Total sinkhole claims increased from 2,360 in 2006 to 6,694 in 2010.[49]
- Total sinkhole costs for open and closed claims combined increased from $209 million in 2006 to $406 million in 2009.[50]
- Total costs for open and closed claims exceeded $1.4 billion over the 4-year period.[51]
- One percent of the closed claims were for catastrophic ground collapse.[52]

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[44] Section 30, Ch. 2007-1, L.O.F.
[45] s. 627.706, F.S.
[46] The increase in claims frequency and severity is based on data collected from 211 insurers by the Office of Insurance Regulation (OIR) in the Fall of 2010, (*Report on Review of the 2010 Sinkhole Data Call* (OIR Report).
[47] Testimony at the Insurance & Banking Subcommittee Meeting on February 9, 2011.
[48] http://www.floir.com/pdf/2010_Sinkhole_Data_Call_Report.pdf (last viewed February 12, 2011).
[49] 2010 Sinkhole Data Call Report pg. 6.
[50] 2010 Sinkhole Data Call Report pg. 5.
[51] 2010 Sinkhole Data Call Report pg .5.
[52] 2010 Sinkhole Data Call Report pg. 8.

The data indicates a wide variation in the frequency of claims, depending on the geographic region. Over 88 percent of the sinkhole claims reported to the OIR occurred in eleven counties: Hernando, Pasco, Hillsborough, Pinellas, Marion, Polk, Orange, Alachua, Citrus, Miami-Dade, and Broward, with 66 percent (11,872) of the claims are concentrated in three counties: Hernando, Pasco and Hillsborough.[53] Sinkhole claims are increasing in Miami-Dade and Broward counties, according to the data collected by the OIR. These counties represented 2.9 percent of total sinkhole claims from 2006-2009, but increased to 4.2 percent through the third quarter of 2010. This is significant because sinkhole activity is not typically found in these counties.[54]

Sinkhole testing under Florida law includes an inspection and a report by a geologist or engineer. The data collected by the OIR indicates insurers incur testing costs for most sinkhole claims. Insurers conducted testing procedures in order to adjust a sinkhole claim in over 80 percent of the sinkhole claims and more than one testing procedure was used to test for sinkhole activity in most claims. In 2006, insurers incurred expenses of $20.4 million for the sinkhole inspection and engineering report. By 2009, that amount increased to almost $58 million. This increase is likely due to the increase in the number of sinkhole claims from 2006 to 2009. Despite the large increase in the aggregate amount of expenses for inspections and engineering reports from 2006-2009, these expenses on a per claim basis were fairly steady during the time period (approximately $8,000 – 9,300 per claim).[55]

Frequency and Severity of Sinkhole Claims Filed Against Citizens

Like insurers in the private market, Citizens has seen an increase in the number of sinkhole claims filed in recent years. Statewide, the number of sinkhole claims filed on personal residential policies insured by Citizens increased from 660 in 2005 to 1,519 in 2009 and 1,145 in 2010.[56] The increase in sinkhole claims is the primary cost driver for Citizens' significant sinkhole losses. In 2009, Citizens incurred almost $84 million in sinkhole losses plus adjustment expenses, yet obtained a little over $22 million in earned sinkhole premium to cover those losses.[57]

The increase in Citizens' sinkhole claims has occurred even though significant numbers of Citizens' policyholders dropped sinkhole loss coverage after it became an optional endorsement in 2007. The percent of Citizens' statewide policies with sinkhole loss coverage fell from 100 percent in 2006 (when it was mandatory) to 61 percent in 2009 and 60 percent in 2010.[58] In 2009, only 37 percent of policyholders in Hernando County and 22 percent of policyholders in Pasco County purchased Citizens' policies with sinkhole loss coverage. In 2010, these percentages increased slightly to 40 percent and 23 percent respectively.[59]

Of the sinkhole claims reported in the OIR data call in Hernando, Pasco, and Hillsborough counties, Citizens insured 36 percent of the claims (4,261). Citizens' data shows the sinkhole loss ratio for Hernando County in 2009 is about 647 percent, meaning for every $1 in premium Citizens collects in Hernando County, $6.47 is paid for a sinkhole claim in the county. Citizens' 2009 loss ratio is almost 285 percent in Pasco County and is almost 526 percent in Hillsborough County. The loss ratio for all other counties combined is 175 percent.

Impact on Property Value of Increase in Sinkhole Claims

Sinkholes negatively impact property values. Sinkhole claims reduce the property value of the land which contains the alleged sinkhole and on neighboring property, even if the sinkhole is stabilized or repaired and even if the sinkhole is not verified.[60] For example, the Pasco County Property Appraiser's office indicated a property which contains a repaired sinkhole has a five percent reduction in value and

[53] 2010 Sinkhole Data Call Report pg. 12.
[54] 2010 Sinkhole Data Call Report pg. 13.
[55] 2010 Sinkhole Data Call Report pg. 10.
[56] Information received from Citizens on March 2, 2011, on file with the Insurance & Banking subcommittee. In 2009, Citizens received 118 sinkhole claims on commercial residential and commercial nonresidential policies located outside the wind zones and in 2010 received 57 claims on these policies.
[57] Information received from Citizens on March 2, 2011, on file with the Insurance & Banking subcommittee.
[58] Information received from Citizens on March 2, 2011, on file with the Insurance & Banking subcommittee.
[59] Information received from Citizens on March 2, 2011, on file with the Insurance & Banking subcommittee.
[60] Testimony at the Insurance & Banking Subcommittee Meeting on February 9, 2011.

in some cases, neighboring property has a three percent reduction in value.[61] Pasco County has a total property value loss of almost $55 million due to unrepaired sinkholes, a total property value loss of over $14 million to stabilized sinkholes, and a total property value loss of over $4 million to unverified sinkhole loss.[62] Reductions in property value directly reduce local government revenue.

Effect of Proposed Changes

The bill provides legislative findings relating to sinkhole issues and the impact of the increasing number of sinkhole claims and the severity of the claims on the property insurance market, on the local property tax base, and on the real estate market. Legislative intent is also proposed.

In addition, the bill requires notice of all sinkhole claims, including initial, reopened, or supplemental claims to be given to the insurer in accordance with policy terms within three years of the policyholder knowing about the sinkhole loss or within three years from when the policyholder reasonably should have known about the sinkhole loss. Although no time frame for filing property insurance claims, which includes sinkhole claims, is found in the Insurance Code,[63] s. 95.11, F.S., requires actions on contracts to be brought within five years. An insurance policy is a contract so the five year statute of limitations in s. 95.11, F.S., applies to insurance policies. Thus, when an insurance company breaches the insurance contract, the policyholder has five years from the breach to file suit. The three year time period to file notice of a sinkhole claim is consistent with the time period provided in the bill for filing notice of claims resulting from windstorms or hurricanes.

Insurance Adjusting of Sinkhole Claims

The Legislature in 2005 and 2006 substantially amended the laws on sinkhole claims in response to a continuing crisis regarding the availability and affordability of sinkhole coverage. Prior to 2005, the law governing sinkhole claims was very general. The 2005 and 2006 legislation enacted a specific process for investigation of sinkhole claims by insurance companies according to standards in the law, for completion and utilization of sinkhole reports in the adjusting and settling of sinkhole claims, for reporting sinkhole claims to the county clerk of courts for recording and to future buyers of the property subject to the sinkhole claim, and for utilization of an alternative dispute procedure for resolution of sinkhole insurance claims.

Under current law, when a claim is made for sinkhole loss, the insurer must inspect the premises and determine whether there has been physical damage to a structure that may be the result of sinkhole activity. "Sinkhole loss" is defined by statute as "structural damage to the building, including the foundation, caused by sinkhole activity." "Sinkhole activity," used in the definition of "sinkhole loss," is defined in statute, but "structural damage" used in the definition is not. The lack of a statutory definition of "structural damage" has led to disparate definitions of the term being used in sinkhole claims and has led to litigation over the meaning of the term.[64]

Following the insurer's initial inspection, the insurer must provide written notice to the policyholder that details the insurer's initial determination, when the insurer is required to engage a professional engineer or professional geologist to perform testing, and a statement of the policyholder's right to demand certain testing to be conducted by a geologist or engineer. If the insurer is unable to determine the cause of the damage during the inspection or if the inspection reveals damage consistent with sinkhole loss, then the insurer must retain a qualified engineer or geologist to perform testing on the property.

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 within reasonable professional probability and to allow the engineer to make recommendations

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[61] Testimony at the Insurance & Banking Subcommittee Meeting on February 9, 2011.

[62] Information received from the Pasco County Property Appraiser's office for the Insurance & Banking Subcommittee Meeting on February 9, 2011, available at http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2607&Session=2011&DocumentType=Meeting Packets&FileName=IBS 02_9_2011_online.pdf. (last viewed March 13, 2011).

[63] The Insurance Code is comprised of chapters 624-632, 634, 635, 636, 641, 642, 648, and 651.

[64] For example, see Thomas Harris and Richard Braunshweig v. Homewise Preferred Insurance Company, CA-10-153 (Fla. Cir. Ct, Hernando County).

regarding any necessary building stabilization and foundation repair. The most common testing procedures used in the closed sinkhole claims reported to the OIR during the data call were 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 verifying sinkhole loss or eliminating sinkhole activity as the cause of damage to the property.[65] Florida law specifies the contents of the sinkhole report and gives the findings of the report a presumption of correctness.

Currently on appeal before the Florida Supreme Court is *Warfel v. Universal Ins. Co. of N.A.*,[66] in which the Supreme Court will determine whether the presumption of correctness for sinkhole reports shifts the burden of proof to the policyholder or merely requires the policyholder to produce evidence regarding the facts at issue, at which point the presumption disappears. The Second District Court of Appeal's decision in *Warfel,*[67]which is on appeal to the Florida Supreme Court, eliminated the presumption in favor of the insurer when the report was challenged in court. The Second District Court of Appeal (DCA) held the sinkhole report presumption was a "vanishing" or "bursting bubble" presumption, rather than a public policy-related presumption that shifted the burden of proof to the policyholder. Thus, the Second DCA determined the sinkhole report's presumption of correctness vanished when the homeowner in the case presented credible evidence contradicting facts giving rise to the presumption. With vanishing presumptions, the jury is not told of the presumption and must decide the case based on the evidence presented by the parties as though no presumption ever existed.

If the insurer determines there is no sinkhole loss, the insurer can deny the sinkhole claim. If the insurer denies the sinkhole claim without performing testing, the policyholder can demand testing and the insurer must provide testing.

If the insurer verifies there is a sinkhole loss, the insurer must pay to stabilize the land and building and repair the foundation in accordance with the recommendation of the professional engineer and in consultation with the policyholder.[68] The insurer must pay for repairs to the structure and contents as required in the insurance policy.

In cases of a verified sinkhole loss, the insurer can limit its payment for the sinkhole loss to actual cash value of the loss until the policyholder enters into a contract for building stabilization or foundation repairs. However, payment for the underpinning or grouting or other repair technique performed below the foundation cannot be limited to actual cash value.[69] Once the policyholder enters into a contract for stabilization or repair of the damaged property, the insurer can pay the repair costs as the repair work is completed. The insurer cannot require the policyholder to advance any funds for the repair work. Repair payments may be paid by the insurer directly to the repair contractor, if written approval is obtained from the policyholder or property lienholder. If the required sinkhole repairs are started, but a determination is made before the repairs are complete that the repair costs will exceed the property insurance policy limits, the insurer must either complete the repair work recommended by the engineer or tender policy limits to the policyholder, without reducing the amount tendered for the repair costs already incurred. Accordingly, insurers can pay over policy limits for sinkhole claims.

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. The OIR and insurers believe sinkhole claims are increasing because homeowners that settle sinkhole claims

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[65] s. 627.7073, F.S.

[66] SC 10-948 (oral argument held on February 11, 2011).

[67] 36 So.3d 136 (2nd DCA 2010).

[68] The meaning of the term "in consultation with the policyholder" has caused confusion as to its meaning which has resulted in litigation. Insurers assert that the phrase means providing notice to the policyholder regarding payment of claim proceeds to conduct repairs. Some policyholders and their representatives assert the phrase requires the insurer and policyholder to essentially agree on the method of repair to be used to remediate the confirmed sinkhole.

[69] Under the grouting procedure, a grout mixture (composed of cement, sand, fly ash, and water) is injected into the ground to stabilize the subsurface soils to minimize further subsidence damage by densifying the soils beneath the building as well as sealing the top of the limestone surface to minimize future raveling. Underpinning consists of steel pipes drilled or pushed into the ground to stabilize the building's foundation.

are not required to use claim settlements to repair or remediate the home and land.[70] Thus, 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. The OIR noted in its data call repairs were initiated in only 20 percent of the total claims reported.

Insurers cannot nonrenew a property insurance policy because a sinkhole claim was filed as long as the property was repaired in accordance with the engineer's recommendation, the claim filed was for partial loss, and the total payment for the sinkhole claim or claims did not exceed the policy limits of the property insurance policy.

Insurers who pay a claim for sinkhole loss must file a copy of the engineer or geologist report and a certification, including the legal description of the property, with the county clerk of court. The clerk must record the report and certification. 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.

Effect of Proposed Changes

Changes to Definitions Applying in Sinkhole Claims

The bill limits the current definition of "catastrophic ground cover collapse" to structural damage to the covered building, rather than any building. Similarly, the bill limits the current definition of "sinkhole loss" to structural damage to the covered building, rather than any building. The current definition of "sinkhole activity" is amended to require weakening of the earth supporting property due to contemporaneous movement or raveling of soils, sediments, or rock materials. The current definition does not include contemporaneous movement.

The qualifications of professional engineers and professional geologists that are used in sinkhole claims are revised by the bill. For professional engineers, the bill requires successful completion of at least five courses in geotechnical engineering, structural engineering, soil mechanics, foundations, or geology, instead of a specialty in geotechnical engineering. For professional geologists, the bill removes the requirement that the geologist have expertise in the geology of Florida in order to be qualified to opine in sinkhole claims.

The bill provides a definition of "structural damage." The definition provided is based on descriptions of structural damage in the Florida Building Code that are applicable to sinkholes. Current law does not have a definition of "structural damage," even though the definitions of "catastrophic ground cover collapse" and "sinkhole loss" in current law are conditioned on structural damage. The lack of a definition of "structural damage" has lead to disparate definitions being used in sinkhole claims and has resulted in litigation.[71]

Changes to Insurance Adjusting of Sinkhole Claims and Payment of Sinkhole Testing and Sinkhole Report Fees and Costs

When a sinkhole claim is filed, the bill requires the insurer to inspect the property to determine if there is structural damage resulting from sinkhole activity. Current law requires an inspection to determine if there is physical damage to the structure, instead of structural damage.

The bill maintains current law providing if the insurer's inspection of damaged property confirms 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. However, the bill adds testing in these circumstances is required only if the insurance policy covers sinkhole loss. Current law does not require sinkhole loss to be covered by the policy in order for testing to occur. Thus, a policyholder can demand testing for sinkhole damage paid for by the insurer even if the

[70] Testimony at the Insurance & Banking Subcommittee Meeting on February 9, 2011.
[71] See footnote #64.

policyholder would not be covered for sinkhole damage if the testing revealed sinkhole damage was present.

If an insurer determines there is no sinkhole loss and denies the sinkhole claim without sinkhole testing, current law allows the policyholder to demand testing. In such case, the bill requires the policyholder's demand for testing to be communicated to the insurer within 60 days after the receipt of the denial of the sinkhole claim. Current law does not include a time period during which the policyholder must demand testing. In addition, before the testing can occur, the policyholder demanding testing must pay the lesser of 50 percent of the sinkhole testing and sinkhole reporting costs or $2,500. But, the policyholder can be reimbursed for these testing costs by the insurer if the testing reveals a sinkhole loss. Current law requires the policyholder to reimburse the insurer the lesser of 50 percent of the testing costs or $2,500 if the policyholder submitted the sinkhole claim without good faith grounds. This requirement is not changed by the bill and occurs after the testing requested by the policyholder is completed. Finally, the bill allows the policyholder to demand testing only if the insurance policy covers sinkhole loss to prevent insurers from having to pay for sinkhole testing if the policy would not cover sinkhole damage.

The bill adds a requirement to the sinkhole report and certification rendered after and based upon sinkhole testing. Current requirements of the report and certification are found in s. 627.703(1), F.S. If sinkhole loss is verified in the sinkhole report and certification, in addition to the other statements required by law, the sinkhole report and certification issued by the engineer or geologist 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 sinkhole 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.

In addition to the information about sinkhole claims required to be filed under current law by the insurer with the clerk of court, the bill also requires the insurer to file with the clerk of court the neutral evaluation report verifying sinkhole activity as the cause of the damage to the property, a copy of the certification indicating sinkhole stabilization has been completed, and the amount paid on a sinkhole claim. The bill also requires the policyholder to 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.

Changes to the Sinkhole Repair Requirement

The bill also makes changes to current law relating to the repair of sinkholes paid for by the insurer. The bill maintains current law allowing the insurer to 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. However, the bill requires the insurer to pay for only repairs recommended in the sinkhole report prepared by the insurer's geologist or engineer. The insurer must obtain approval of only the property lienholder, rather than the policyholder and the lienholder, in order to pay repair costs directly to the repair contractor.

The bill requires the policyholder to enter into a contract to repair the sinkhole damage within 90 days after the insurer confirms coverage for the sinkhole loss and notifies the policyholder of the confirmation. The 90-day time period is tolled during the neutral evaluation and begins again 10 days after the neutral evaluation is completed. Current law does not prescribe a time period for the policyholder to enter into a repair contract for sinkhole damage.

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. Current law does not prescribe a time period for completing sinkhole repairs.

The bill prohibits the homeowner from accepting a rebate from any person doing sinkhole repair on the property, makes the homeowner's property insurance coverage void if a rebate is accepted, and

provides offering or accepting a rebate is insurance fraud punishable as a third degree felony. The homeowner must also refund the rebate to the insurer.

Alternative Dispute Resolution Process for Sinkhole Claims

Background on the Alternative Dispute Resolution Process

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. The 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 optional and nonbinding. Either the policyholder or insurer can decline to participate. If either party desires neutral evaluation, the request for neutral evaluation must be filed with the DFS on the appropriate form. The request must state the reason why neutral evaluation is being sought and include an explanation of all issues in dispute. The filing of a request for neutral evaluation tolls the time period for filing suit for 60 days following the conclusion of neutral evaluation or the time prescribed in s. 95.11, F.S., whichever is later.[72]

Once the DFS receives a request for neutral evaluation, the department provides each party with a list of certified neutral evaluators. The neutral evaluators are professional engineers or professional geologists who have completed an alternative dispute resolution course designed or approved by the DFS. The evaluators are fair and impartial and attempt to resolve the dispute at issue. The parties mutually select a neutral evaluator from the list, with the DFS choosing the evaluator if the parties cannot agree.

Because the neutral evaluation is an informal process, the formal rules of evidence and procedure do not apply and rules of procedure adopted by the DFS apply. All parties must participate in the neutral evaluation process in good faith. The neutral evaluation conference must be held within 45 days of the department's receipt of a request. The neutral evaluator must notify the policyholder and insurer when and where the neutral evaluation conference will be conducted. The conference may be held by telephone. A party does not have to attend the neutral evaluation if a representative attends and has the authority to make a binding decision on behalf of the party. If a policyholder is not represented by an attorney, a consumer affairs specialist of the DFS or an employee of the DFS designated as the primary contact for consumers on issues related to sinkholes must be available to consult with the policyholder.

For matters not resolved by the parties during the neutral evaluation, the neutral evaluator must prepare a report stating whether the sinkhole loss has been verified or eliminated. If a sinkhole loss is verified, the report must include the evaluator's opinion regarding the need for and estimated costs of stabilizing the land and any covered structures as well as appropriate remediation or structural repairs. The evaluator's report must be sent to all parties in attendance at the neutral evaluation and to the DFS. The recommendation of the neutral evaluator is admissible in any subsequent action or proceeding relating to the sinkhole claim.

Evidence of an offer to settle a sinkhole claim during the neutral evaluation process, or other relevant conduct or statements made concerning an offer to settle are inadmissible to prove or disprove liability or a sinkhole claim's value. However, the recommendation of the neutral evaluator is admissible in any subsequent action or proceeding, but only for a determination regarding the award of attorney's fees.

If a policyholder does not follow the recommendations of the neutral evaluator, the insurer is not liable for attorney's fees under the Insurance Code or s. 627.428, F.S., unless the policyholder obtains a judgment that is more favorable than the neutral evaluator's recommendation. Further, the insurance company is not liable for extra contractual damages on a sinkhole claim related to the issues

[72] Section 95.11, F.S., requires all suits filed for breach of contract to be filed within five years of the breach. Because insurance policies are contracts, a policyholder must file a lawsuit within five years of the insurance company's breach of the policy.

determined by the neutral evaluator. If the neutral evaluator verifies a sinkhole and recommends costs that exceed the amount the insurer has offered to pay the policyholder, the insurer is liable for up to $2,500 in attorney's fees for the policyholder's attorney's participation in the neutral evaluation.

Effect of Proposed Changes

Appraisal Clause

An appraisal clause is found in all insurance policies. The purpose of the appraisal clause is to establish a procedure to allow disputed amounts to be resolved by disinterested parties. The appraisal clause is used only to determining disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers cannot agree on the amount of damages, they together choose a mutually acceptable umpire.[73]
- Once the umpire has been chosen, the appraisers each present their loss assessment.
- The umpire will subsequently provide a written decision to both parties.

If the two parties agree to the amount of the loss, that amount becomes the claim amount. However, if one of the parties does not agree, then the case can still be litigated in court.

Although the neutral evaluation used in sinkhole claims supersedes the mediation procedures for property insurance claims contained in s. 627.7015, F.S.,[74] the bill specifies the neutral evaluation will not invalidate the appraisal clause in the property insurance policy. Thus, a sinkhole claim can go to appraisal and neutral evaluation.

Changes to the Neutral Evaluation Process

The bill makes the alternative dispute resolution process for sinkhole claims available to either party if a sinkhole report is issued. The bill also requires any court proceeding related to the sinkhole claim to be stayed during the neutral evaluation and for five days after the neutral evaluation report is filed with the court.

The bill allows either party to request disqualification of the neutral evaluators on the list provided to the parties by the DFS. Two neutral evaluators can be disqualified without cause by either party. Furthermore, the bill allows disqualification of a neutral evaluator for cause and specifies what grounds constitute cause. The DFS must appoint a neutral evaluator from the neutral evaluator list if the parties cannot agree to a neutral evaluator within 14 days of receiving the neutral evaluator list.

The neutral evaluator must notify the parties of the specifics of the neutral evaluation within 7, rather than 5, business days after the referral of the sinkhole claim to neutral evaluation. The neutral evaluation must be held within 90, rather than 45, days after the DFS receives the request for neutral evaluation from either party. Neutral evaluation of a sinkhole claim can still be held outside the 90 day time period.

The bill sets forth issues that must be decided by the neutral evaluator. The bill allows the neutral evaluator access to inspect the property alleged to be damaged by a sinkhole. The homeowner or

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[73] An umpire must also be a disinterested party, and must be impartial, of good moral character and possessing a good reputation. No umpire should be chosen that has any financial interest in the outcome of the appraisal. If the two appraisers cannot agree on the selection of an umpire, either side may appeal to the local court for the appointment of someone to serve in that capacity.

[74] This mediation procedure is run by the Department of Financial Services and is a nonbinding process for the insurance company and the policyholder to meet with an neutral third party (the mediator) to discuss their property insurance claim disputes. The mediation facilitates discussions and negotiations between the insurance company and the policyholder but does not render an opinion or determine a resolution of the issues in dispute.

homeowner's agent must provide all sinkhole reports received to the neutral evaluator before the neutral evaluator inspects the damaged property.

If a neutral evaluator who is not qualified to determine all the issues in dispute in the sinkhole claim is chosen, the evaluator can obtain assistance from another neutral evaluator on the neutral evaluator list, as long as the evaluator to provide assistance has not been disqualified. The evaluator chosen to assist the original evaluator must be qualified to decide the issues in dispute the original evaluator is not qualified to decide. Professional engineers and geologists and building contractors can also assist the original neutral evaluator, even if these professionals are not certified neutral evaluators. However, professional engineers and geologists and building contractors can be disqualified from assisting the neutral evaluator on the claim for the same reasons a neutral evaluator can be disqualified.

The bill provides what issues must be contained and decided by the neutral evaluator in the neutral evaluation report. The neutral evaluation report must be sent to all parties and to the DFS within 14 days of the completion of the neutral evaluation conference.

The bill provides neutral evaluators immunity from suit as agents of the state under s. 44.107, F.S. This is consistent with current law relating to mediators.

The Florida Geological Survey and the Florida Sinkhole Database

The Florida Geological Survey (Survey) within the Department of Environmental Protection (DEP) is the state agency responsible for identifying, tracking, and investigating mines, minerals, sinkholes, the water supply, and other natural resources in the state. The State Geologist, a registered professional geologist, is designated as the head of the Survey.[75]

There is currently no single state agency in Florida with responsibility and authority for sinkhole inspections, although the Survey maintains a database of reported sinkholes. This database is available through the website of the Department of Environmental Protection (DEP), along with a form to be used to report suspected new sinkholes. The Survey reports that it lacks sufficient staff to visit all new sinkholes, although some of the state's water management districts have staff available to check local sinkholes, particularly if they contain water.[76]

The sinkhole database maintained by the Survey dates to the early 1950s, but it contains only those sinkholes officially reported by observers. As a result, the Survey notes the sinkholes reported and included in the database tend to cluster in populated areas where they are readily seen and commonly affect roads and dwellings. However, sinkholes also occur in more remote and less populated areas, and are unseen and unreported.[77]

Section 627.7065, F.S., enacted in 2005,[78] creates a sinkhole information database for the purpose of tracking sinkhole claims made against property insurance policies. The Department of Financial Services (DFS) is primarily responsible for the development of this database, with input from the DEP and the Survey. The DEP must investigate reports of sinkhole activity and report its findings to the DFS sinkhole database.

The DFS can require insurers to report past and present sinkhole claims to the DFS sinkhole database. Administrative rules requiring property insurers to report sinkhole and catastrophic ground cover collapse claim information to the DFS database were promulgated by the DFS in 2009. The rules require all sinkhole and catastrophic ground cover collapse claim information for claims closed by the insurer from January 1, 2005 – April 28, 2010 to be reported to the database by April 28, 2011. In addition, for claims closed after April 28, 2010, insurers must report claim information to the DFS

[75] s. 377.075, F.S.
[76] Florida Geological Survey; Department of Environmental Protection; *Sinkholes: Frequently Asked Questions*, available at http://www.dep.state.fl.us/geology/feedback/faq.htm#9, (last viewed February 27, 2011).
[77] *Id.*
[78] Section 18, Ch. 2005-111, L.O.F.

database within 60 days after the claim is closed.[79] According to a representative of the DFS, insurers are complying with the rules and reporting claim information on sinkhole and catastrophic ground cover collapse claims for the DFS sinkhole database.

Although the DFS sinkhole database is not yet available on the internet, information about claims in the database can be obtained by calling the DFS or by filing a public records request with DFS for sinkhole claim information.

This bill repeals the DFS sinkhole database. Accordingly, insurers will no longer have to report sinkhole information to the sinkhole database and information relating to sinkhole and catastrophic ground cover collapse claims filed against property insurance policies will no longer be compiled and kept by the DFS and available to the public.

Guaranty Associations - Background

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.[80] Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation in the DFS is responsible for rehabilitating or liquidating insurance companies.[81]

Florida operates five insurance guaranty funds to ensure policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[82] A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums[83] to policyholders. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

The bill makes changes to the Florida Insurance Guaranty Association which is the guaranty association for property and casualty insurance.

Florida Insurance Guaranty Association (FIGA)

Statutory provisions relating to FIGA, which was created in 1970, are contained in part II of chapter 631, F.S. FIGA operates under a board of directors and is a nonprofit corporation. FIGA is composed of all insurers licensed to sell property and casualty insurance in the state.

By law, FIGA is divided into two accounts:

- the auto liability account and auto physical damage account; and

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[79] A Notice of Development of Rulemaking to change the time period for claim reporting to the database was filed on October 8, 2010 with a rule workshop held on October 27, 2010. No proposed rule changes have been published to date.

[80] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).

[81] Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

[82] The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of an insolvent Health Maintenance Organization (HMO) and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association protects policyholders of insolvent individual self-insured employers for workers' compensation claims. The Florida Insurance Guaranty Association is responsible for paying claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

[83] The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for six months or one year, and which is still owed on the unexpired potion of the policy.

- the account for all other included insurance lines (the all-other account).[84]

When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures policyholders that have paid premiums for insurance are not left without valid claims being paid. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

The maximum claim amount FIGA will pay is $300,000 but special limits apply to damages to structure and contents on homeowners', condominium, and homeowners' association claims. For damages to structure and contents on homeowners' claims FIGA pays an additional $200,000, for a total of $500,000. For condominium and homeowners' association claims FIGA pays the lesser of policy limits or $100,000 multiplied by the number of units in the association. All claims are subject to a $100 FIGA deductible, in addition to any deductible in the insurance policy.

FIGA obtains funds to pay claims of insolvent insurance companies primarily from the liquidation of assets of these companies done by the Division of Rehabilitation and Liquidation in the Department of Financial Services. FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states but having claims in Florida.

In addition, after insolvency occurs, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds to pay claims – regular and emergency[85] assessments. FIGA assesses member insurance companies directly for both assessments and the insurance company is allowed by law (s. 631.57(3)(a), F.S.) to pass the assessment on to their policyholders.

FIGA only pays "covered claims" as defined by s. 631.54(3), F.S. Current law provides two exceptions to the definition of "covered claims." One prevents FIGA from paying subrogation, contribution, or indemnification claims of the insolvent insurer. The other exception prevents FIGA from paying claims that have been rejected by another state's guaranty fund for payment because the policyholder's net worth is more than what is allowed under the other state's guaranty law. FIGA cannot pay these claims even if the claim otherwise meets the definition of "covered claim" in Florida law.

The bill adds another exception to the definition of "covered claim" for FIGA. The added exception prevents FIGA from paying sinkhole claims of insolvent insurers but allows payment of sinkhole testing or sinkhole repair up to policy limits. The bill further prohibits FIGA from paying attorney's fees or public adjuster fees associated with sinkhole claims.

B. SECTION DIRECTORY:

Section 1: Amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund.

Section 2: Provides application for the changes made in Section 1 of the bill.

Section 3: Amends s. 624.407, F.S., relating to surplus required of new insurers.

Section 4: Amends s. 624.408, F.S., relating to surplus required for current insurers.

Section 5: Amends s. 626.852, F.S., providing an exception for adjuster licensure.

Section 6: Amends s. 626.854, F.S., relating to public adjusters, effective June 1, 2011.

Section 7: Amends s. 626.854, F.S., relating to pubic adjusters, effective January 1, 2012.

Section 8: Creates s. 626.70132, F.S., relating to notice of windstorm or hurricane claim, effective June 1, 2011.

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[84] s. 631.55(2), F.S.

[85] Emergency assessments can only be issued to pay claims of insurers rendered insolvent due to a hurricane.

Section 9: Amends s. 627.062, relating to rate standards, including repealing obsolete language relating: to use of "use and file" rate filings for property insurance, to the OIR developing a plan for standard rating territories, and to a presumed factor for medical malpractice insurance rates due to legislative changes made during the 2003 Special Session D.

Section 10: Amends s. 627.0629, F.S., relating to residential property insurance rate filings to repeal obsolete language relating to a rate filing for mitigation credits, discounts, or other rate differentials or reductions in deductibles and to repeal obsolete language relating to the development of a method to correlate mitigation discounts, credits, or other rate differentials to the uniform home grading scale by the OIR.

Section 11: Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

Section 12: Creates s. 627.43141, F.S., relating to a Notice of change in policy terms.

Section 13: Amends s. 627.7011, F.S., relating to replacement cost coverage for homeowners' policies.

Section 14: Amends s. 627.70131, F.S., relating to insurer's duty to acknowledge communications regarding claims and investigation of claims.

Section 15: Provides legislative intent and findings relating to sinkholes and sinkhole insurance.

Section 16: Amends s. 627.706, F.S., relating to sinkhole insurance, catastrophic ground cover collapse, and definitions applicable to catastrophic ground cover collapse and sinkhole loss claims.

Section 17: Repeals s. 627.7065, relating to the sinkhole database established by DFS.

Section 18: Amends s. 627.707, F.S., relating to investigation of sinkhole claims, insurer payment of sinkhole claims, and nonrenewals of property insurance due to sinkhole claims.

Section 19: Amends s. 627.7073, F.S., relating to sinkhole reports.

Section 20: Amends s. 627.704, F.S., relating to alternative procedure for resolution of disputed sinkhole insurance claims.

Section 21: Amends s. 627.711, F.S., relating to the uniform mitigation verification form.

Section 22: Amends s. 631.54, relating to the definitions used for FIGA.

Section 23: Provides a severability clause.

Section 24: Provides an effective date of upon becoming a law, unless provided otherwise in the bill. Sections 6 and 8 of the bill are effective June 1, 2011, and section 7 of the bill is effective January 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

Repeal of Sinkhole Database
Repeal of the sinkhole database should not have a fiscal impact on the DFS. The DFS receives no funding or FTEs for the database and implements the database within existing resources.[86]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Impact of Increased Surplus To Obtain And Keep A Certificate of Authority
Certain insurance companies will need more funds to start an insurance company. Likewise, certain licensed insurance companies will need more funds to maintain their licensure. Increased surplus means companies have more funds to pay claims.

Impact of Revisions to Procedure and Payment of Replacement Costs
Revising the procedures relating to payment of replacement costs for property insurance claims for partial dwelling losses ensures policyholders make necessary repairs to their dwellings that are partially damaged in order to receive full payment on the claim. However, policyholders who do not repair their dwelling will not receive the full replacement cost for the dwelling, even though the policyholder purchased full replacement cost.

If the revisions to the procedure and payment of replacement costs reduce the amount of losses paid by insurers on property claims, rates should correspondingly decrease given the loss reduction.

Impact of Allowing Insurers To Pay Acquisition Costs Without OIR Interference
Insurance agents should benefit under the bill because the OIR is precluded from directly or indirectly impeding or compromising an insurer's right to acquire policyholders, advertise, or appoint agents, including the amount of agent commissions, during a rate filing procedure for property and casualty insurance.

If the OIR has questioned the amount an insurer is paying in acquisition costs and pressured insurers to cut these costs, as representatives of insurance agents allege, and OIR's questioning has resulted in lower costs, then prohibiting OIR from interfering with the payment of these costs may result in higher costs which are included in an insurer's rate filing and correspondingly lead to increased insurance rates.

Impact of Repeal of the Sinkhole Database
The repeal of the sinkhole database will prevent insurance companies from having to expend funds to collect and report the required sinkhole claim information to the database.

Impact of Restricting Public Adjuster Fees
The fee restrictions on reopened or supplemental claims contained in the bill could reduce the income of public adjusters.

The restrictions on public adjuster solicitation could deter policyholders from obtaining the claims adjusting services provided by public adjusters which could reduce the claim payment obtained by the policyholder.

Impact of Time Frame for Windstorm or Hurricane Claims

[86] Conversation with representative from DFS on March 2, 2011.

Imposing a 3-year time period for claims from a windstorm or hurricane to be filed with the insurer will help insurers quantify the amount of exposure on these claims.

Impact of Changing Sinkhole Laws
Taken as a whole, the revisions to the sinkhole laws provided by the bill should reduce the number of sinkhole claims and disputes, ultimately reducing the costs associated with such claims. The revisions also provide for a more thorough and meaningful neutral evaluation which may cause more resolution of sinkhole claims by neutral evaluation.

Policyholders who elect to drop sinkhole loss coverage from the base property insurance policy and have only catastrophic ground cover collapse coverage in the base policy should incur reduced premium costs for property insurance.

In limited instances, policyholders could incur fees and costs associated with sinkhole testing and reports.

Policyholders have to abide by the 90-day and 12-month time periods for sinkhole repair provided in the bill.

Adding a definition of "structural damage" to the sinkhole law should reduce sinkhole claims and give insurers more certainty regarding whether a sinkhole claim is covered.

Allowing catastrophic ground cover collapse and sinkhole loss coverage to apply to only principal buildings should reduce sinkhole claim costs and sinkhole exposure for insurers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This 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:

B. RULE-MAKING AUTHORITY:

Repeal of Correlation of Mitigation Discounts to the Home Grading Scale
The bill repeals current law requiring the Financial Services Commission to adopt rules requiring insurers to make rate filings to correlate mitigation discounts to the home grading scale by October 1, 2011. The rulemaking is repealed because the substantive law requiring the correlation of mitigation discounts to the home grading scale is repealed.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 7181 also repeals the correlation of mitigation discounts to the home grading scale.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to property and casualty insurance; amending s. 215.555, F.S.; providing exceptions to definitions; providing application of exceptions to definitions; amending s. 624.407, F.S.; revising the amount of surplus funds required for domestic insurers applying for a certificate of authority after a certain date; amending s. 624.408, F.S.; revising the minimum surplus that must be maintained by certain insurers; authorizing the Office of Insurance Regulation to reduce the surplus requirement under specified circumstances; amending s. 626.852, F.S.; limiting the scope of adjuster licensure; amending s. 626.854, F.S.; providing limitations on the amount of compensation that may be received by a public adjuster for a reopened or supplemental claim; providing statements that may be considered deceptive or misleading if made in any public adjuster's advertisement or solicitation; providing a definition for the term "written advertisement"; requiring that a disclaimer be included in any public adjuster's written advertisement; providing requirements for such disclaimer; requiring certain persons who act on behalf of an insurer to provide notice to the insurer, claimant, public adjuster, or legal representative for an onsite inspection of the insured property; authorizing the insured or claimant to deny access to the property if notice is not provided; requiring the public adjuster to ensure prompt notice of certain property loss claims;

providing that an insurer be allowed to interview the insured directly about the loss claim; prohibiting the insurer from obstructing or preventing the public adjuster from communicating with the insured; requiring that the insurer communicate with the public adjuster in an effort to reach an agreement as to the scope of the covered loss under the insurance policy; prohibiting a public adjuster from restricting or preventing persons acting on behalf of the insured from having reasonable access to the insured or the insured's property; prohibiting a public adjuster from restricting or preventing the insured's adjuster from having reasonable access to or inspecting the insured's property; authorizing the insured's adjuster to be present for the inspection; prohibiting a licensed contractor or subcontractor from adjusting a claim on behalf of an insured if such contractor or subcontractor is not a licensed public adjuster; providing an exception; creating s. 626.70132, F.S.; requiring that notice of a claim, supplemental claim, or reopened claim be given to the insurer within a specified period after a windstorm or hurricane occurs; providing a definition for the terms "supplemental claim" or "reopened claim"; providing applicability; amending s. 627.062, F.S.; deleting an obsolete provision; prohibiting the Office of Insurance Regulation from, directly or indirectly, impeding the right of an insurer to acquire policyholders, advertise or appoint agents, or regulate agent commissions for property and casualty insurance; deleting obsolete provisions

relating to legislation enacted during the 2003 Special Session D of the Legislature; amending s. 627.0629, F.S.; deleting obsolete provisions; deleting a requirement that the Office of Insurance Regulation propose a method for correlating discounts, credits, and other rate differentials for hurricane mitigation to the uniform home grading scale by a certain date; deleting a requirement that the Financial Services Commission adopt rules correlating discounts, credits, and other rate differentials for hurricane mitigation to the uniform home grading scale by a certain date; conforming provisions to changes made by the act; amending s. 627.4133, F.S.; authorizing an insurer to cancel policies after 45 days' notice if the Office of Insurance Regulation determines that the cancellation of policies is necessary to protect the interests of the public or policyholders; creating s. 627.43141, F.S.; providing definitions; requiring the delivery of a "Notice of Change in Policy Terms" under certain circumstances; specifying requirements for such notice; specifying actions constituting proof of notice; authorizing policy renewals to contain a change in policy terms; providing that receipt of payment by an insurer is deemed acceptance of new policy terms by an insured; providing that the original policy remains in effect until the occurrence of specified events if an insurer fails to provide notice; providing intent; amending s. 627.7011, F.S.; requiring that an insurer pay the actual cash value of an insured loss for a dwelling, less any applicable

deductible, under certain circumstances; requiring that a policyholder enter into a contract for the performance of building and structural repairs in order to receive payment; requiring that an insurer pay certain remaining amounts; restricting insurers and contractors from requiring advance payments for certain repairs and expenses; providing an exception to requiring advance payments; requiring an insurer to pay the replacement costs if a total loss occurs; amending s. 627.70131, F.S.; specifying application of certain time periods to initial or supplemental property insurance claim notices and payments; providing legislative findings with respect to 2005 statutory changes relating to sinkhole insurance coverage and statutory changes in this act; amending s. 627.706, F.S.; authorizing an insurer to limit coverage for catastrophic ground cover collapse and sinkhole loss coverage to the principal building; allowing insurers to inspect property before issuing sinkhole loss coverage; revising definitions; defining the term "structural damage"; placing a 3-year statute of repose on claims for sinkhole coverage; repealing s. 627.7065, F.S., relating the establishment of a sinkhole database; amending s. 627.707, F.S.; revising provisions relating to the investigation of sinkholes by insurers; providing a time limitation for demanding sinkhole testing by a policyholder and entering into a contract for repairs; requiring the policyholder to incur the costs of certain analyses and services; providing for reimbursement of

costs incurred by the policyholder; requiring all repairs to be completed within a certain time; providing exceptions; prohibiting rebates to policyholders from persons performing repairs; voiding coverage if a rebate is received; requiring policyholders to refund rebates from persons performing repairs to insurers; providing a criminal penalty on a policyholder for accepting rebates from persons performing repairs; limiting a policyholder's liability for reimbursement of the costs related to certain analyses and services; amending s. 627.7073, F.S.; revising provisions relating to inspection reports; requiring an insurer to file a neutral evaluator's report and other specific information; requiring the policyholder to file certain reports as a precondition to accepting payment; requiring certain filing and recording costs to be borne by a policyholder; specifying that a policyholder's recording of a report does not legally affect title or create certain causes of action relating to real property; amending s. 627.7074, F.S.; revising provisions relating to neutral evaluation; requiring evaluation in order to make certain determinations; requiring that the neutral evaluator be allowed access to structures being evaluated; providing grounds for disqualifying an evaluator; allowing the Department of Financial Services to appoint an evaluator if the parties cannot come to agreement; revising the timeframes for scheduling a neutral evaluation conference; authorizing an evaluator to enlist another evaluator or other

professionals; providing a time certain for issuing a report; providing that the evaluator is an agent of the department for the purposes of immunity from suit; requiring the department to adopt rules; amending s. 627.711, F.S.; allowing insurer to independently verify mitigation forms from additional sources; amending s. 631.54, F.S.; revising the definition of a covered claim; providing severability; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (2) of section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(d) "Losses" means direct incurred losses under covered policies, including ~~which shall include losses for~~ additional living expenses not to exceed 40 percent of the insured value of a residential structure and ~~or~~ its contents ~~and shall exclude loss adjustment expenses~~. The term ~~"Losses"~~ does not include:

1. Losses for fair rental value, loss of rent or rental income, or business interruption losses;~~.~~

2. Losses under liability coverages;

3. Property losses that are proximately caused by any peril other than a covered event, including, but not limited to, fire, theft, flood or rising water, or a windstorm that does not constitute a covered event;

4. Amounts paid as the result of a voluntary expansion of

coverage by the insurer, including, but not limited to, a waiver of an applicable deductible;

5. Amounts paid to reimburse a policyholder for condominium association or homeowners' association loss assessments or under similar coverages for contractual liabilities;

6. Amounts paid as bad faith awards, punitive damage awards, or other court-imposed fines, sanctions, or penalties;

7. Amounts in excess of the coverage limits under the covered policy; or

8. Allocated or unallocated loss adjustment expenses.

Section 2. The amendments made by this act to s. 215.555, Florida Statutes, apply first to the Florida Hurricane Catastrophe Fund reimbursement contract that takes effect on June 1, 2011.

Section 3. Section 624.407, Florida Statutes, is amended to read:

624.407 Surplus ~~Capital funds~~ required; new insurers.—

(1) To receive authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer applying for its original certificate of authority in this state after November 10, 1993, ~~the effective date of this section~~ shall possess surplus as to policyholders at least ~~not less than~~ the greater of:

(a) ~~Five million dollars~~ For a property and casualty insurer, $5 million, or $2.5 million for any other insurer;

(b) For life insurers, 4 percent of the insurer's total liabilities;

(c) For life and health insurers, 4 percent of the insurer's total liabilities, plus 6 percent of the insurer's liabilities relative to health insurance; ~~or~~

(d) For all insurers other than life insurers and life and health insurers, 10 percent of the insurer's total liabilities; or

(e) Notwithstanding paragraph (a) or paragraph (d), for a domestic insurer that transacts residential property insurance and is:

1. Not a wholly owned subsidiary of an insurer domiciled in any other state, $15 million.

2. ~~however, a domestic insurer that transacts residential property insurance and is~~ A wholly owned subsidiary of an insurer domiciled in any other state, ~~shall possess surplus as to policyholders of at least~~ $50 million.

(2) Notwithstanding subsection (1), a new insurer may not be required~~, but no insurer shall be required under this subsection~~ to have surplus as to policyholders greater than $100 million.

(3) ~~(2)~~ The requirements of this section shall be based upon all the kinds of insurance actually transacted or to be transacted by the insurer in any and all areas in which it operates, whether or not only a portion of such kinds of insurance are ~~to be~~ transacted in this state.

(4) ~~(3)~~ As to surplus as to policyholders required for qualification to transact one or more kinds of insurance, domestic mutual insurers are governed by chapter 628, and domestic reciprocal insurers are governed by chapter 629.

(5) ~~(4)~~ For the purposes of this section, liabilities do ~~shall~~ not include liabilities required under s. 625.041(4). For purposes of computing minimum surplus as to policyholders pursuant to s. 625.305(1), liabilities ~~shall~~ include liabilities required under s. 625.041(4).

(6) ~~(5)~~ The provisions of this section, as amended by chapter 89-360, Laws of Florida ~~this act~~, ~~shall~~ apply only to insurers applying for a certificate of authority on or after October 1, 1989 ~~the effective date of this act~~.

Section 4. Section 624.408, Florida Statutes, is amended to read:

624.408 Surplus ~~as to policyholders~~ required; current ~~new and existing~~ insurers.—

(1) ~~(a)~~ To maintain a certificate of authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer in this state must ~~shall~~ at all times maintain surplus as to policyholders at least ~~not less than~~ the greater of:

(a) ~~1.~~ Except as provided in paragraphs (e), (f), and (g) ~~subparagraph 5. and paragraph (b)~~, $1.5 million.~~;~~

(b) ~~2.~~ For life insurers, 4 percent of the insurer's total liabilities.~~;~~

(c) ~~3.~~ For life and health insurers, 4 percent of the insurer's total liabilities plus 6 percent of the insurer's liabilities relative to health insurance.~~; or~~

(d) ~~4.~~ For all insurers other than mortgage guaranty insurers, life insurers, and life and health insurers, 10 percent of the insurer's total liabilities.

(e)~~5.~~ For property and casualty insurers, $4 million, except for property and casualty insurers authorized to underwrite any line of residential property insurance.

(f)~~(b)~~ For residential ~~any~~ property insurers not ~~and casualty insurer~~ holding a certificate of authority before July 1, 2011 ~~on December 1, 1993~~, $15 million. ~~the~~

(g) For residential property insurers holding a certificate of authority before July 1, 2011, and until June 30, 2016, $5 million; on or after July 1, 2016, and until June 30, 2021, $10 million; on or after July 1, 2021, $15 million.

(h) The office may reduce the surplus requirement in paragraphs (f) and (g) if the insurer is not writing new business, has premiums in force of less than $1 million per year in residential property insurance, or is a mutual insurance company. ~~following amounts apply instead of the $4 million required by subparagraph (a)5.:~~

~~1. On December 31, 2001, and until December 30, 2002, $3 million.~~

~~2. On December 31, 2002, and until December 30, 2003, $3.25 million.~~

~~3. On December 31, 2003, and until December 30, 2004, $3.6 million.~~

~~4. On December 31, 2004, and thereafter, $4 million.~~

(2) For purposes of this section, liabilities do ~~shall~~ not include liabilities required under s. 625.041(4). For purposes of computing minimum surplus as to policyholders pursuant to s. 625.305(1), liabilities ~~shall~~ include liabilities required under s. 625.041(4).

(3) This section does not require an ~~No~~ insurer ~~shall be required under this section~~ to have surplus as to policyholders greater than $100 million.

(4) A mortgage guaranty insurer shall maintain a minimum surplus as required by s. 635.042.

Section 5: Subsection (7) is added to section 626.852, Florida Statutes, to read:

626.852 Scope of this part.—

(7) Notwithstanding any other provision of law, a person providing claims adjusting services solely to institutions servicing or guaranteeing mortgages shall be exempt from licensure as an adjuster for services provided to the mortgage institution with regards to policies covering the mortgaged properties.

Section 6. Effective June 1, 2011, subsection (11) of section 626.854, Florida Statutes, is amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(11)(a) If a public adjuster enters into a contract with an insured or claimant to reopen a claim or ~~to~~ file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge,

compensation, payment, commission, fee, or other thing of value may be based only on the claim payments or settlement obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. The contracts described in this paragraph are not subject to the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments made by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the period of 1 year after the declaration of emergency. After that year, 20 percent of the amount of insurance claim payments made by the insurer.

2. Twenty percent of the amount of ~~all other~~ insurance claim payments made by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.

The provisions of subsections (5)-(13) apply only to residential property insurance policies and condominium unit owner ~~association~~ policies as defined in s. 718.111(11).

Section 7. Effective January 1, 2012, section 626.854, Florida Statutes, as amended by this act, is amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(1) A "public adjuster" is any person, except a duly licensed attorney at law as exempted under ~~hereinafter in~~ s. 626.860 ~~provided~~, who, for money, commission, or any other thing of value, prepares, completes, or files an insurance claim form for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts ~~or aids in any manner~~ on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. The term~~, and~~ also includes any person who, for money, commission, or any other thing of value, solicits, investigates, or adjusts such claims on behalf of a ~~any such~~ public adjuster.

(2) This definition does not apply to:

(a) A licensed health care provider or employee thereof who prepares or files a health insurance claim form on behalf of a patient.

(b) A person who files a health claim on behalf of another and does so without compensation.

(3) A public adjuster may not give legal advice or~~. A public adjuster may not~~ act on behalf of or aid any person in negotiating or settling a claim relating to bodily injury, death, or noneconomic damages.

(4) For purposes of this section, the term "insured"

includes only the policyholder and any beneficiaries named or similarly identified in the policy.

(5) A public adjuster may not directly or indirectly through any other person or entity solicit an insured or claimant by any means except on Monday through Saturday of each week and only between the hours of 8 a.m. and 8 p.m. on those days.

(6) A public adjuster may not directly or indirectly through any other person or entity initiate contact or engage in face-to-face or telephonic solicitation or enter into a contract with any insured or claimant under an insurance policy until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy unless contact is initiated by the insured or claimant.

(7) An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 3 business days after the date on which the contract is executed or within 3 business days after the date on which the insured or claimant has notified the insurer of the claim, by phone or in writing, whichever is later. The public adjuster's contract must ~~shall~~ disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that ~~which~~ provides proof thereof, to the public adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for ~~a period of~~ 1 year after the date of loss, the insured or

claimant has ~~shall have~~ 5 business days after the date on which the contract is executed to cancel a public adjuster's contract.

(8) It is an unfair and deceptive insurance trade practice pursuant to s. 626.9541 for a public adjuster or any other person to circulate or disseminate any advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading.

(a) The following statements, made in any public adjuster's advertisement or solicitation, are considered deceptive or misleading:

1. A statement or representation that invites an insured policyholder to submit a claim when the policyholder does not have covered damage to insured property.

2. A statement or representation that invites an insured policyholder to submit a claim by offering monetary or other valuable inducement.

3. A statement or representation that invites an insured policyholder to submit a claim by stating that there is "no risk" to the policyholder by submitting such claim.

4. A statement or representation, or use of a logo or shield, that implies or could mistakenly be construed to imply that the solicitation was issued or distributed by a governmental agency or is sanctioned or endorsed by a governmental agency.

(b) For purposes of this paragraph, the term "written advertisement" includes only newspapers, magazines, flyers, and bulk mailers. The following disclaimer, which is not required to

be printed on standard size business cards, must be added in bold print and capital letters in typeface no smaller than the typeface of the body of the text to all written advertisements by a public adjuster:

"THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD THIS ADVERTISEMENT."

(9) A public adjuster, a public adjuster apprentice, or any person or entity acting on behalf of a public adjuster or public adjuster apprentice may not give or offer to give a monetary loan or advance to a client or prospective client.

(10) A public adjuster, public adjuster apprentice, or any individual or entity acting on behalf of a public adjuster or public adjuster apprentice may not give or offer to give, directly or indirectly, any article of merchandise having a value in excess of $25 to any individual for the purpose of advertising or as an inducement to entering into a contract with a public adjuster.

(11)(a) If a public adjuster enters into a contract with an insured or claimant to reopen a claim or to file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge,

compensation, payment, commission, fee, or other thing of value may be based only on the claim payments or settlement obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. The contracts described in this paragraph are not subject to the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments made by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the period of 1 year after the declaration of emergency. After that year, 20 percent of the amount of insurance claim payments made by the insurer.

2. Twenty percent of the amount of insurance claim payments made by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.

(12) Each public adjuster must ~~shall~~ provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds. The public adjuster shall retain such written estimate for at least 5 years and shall make the ~~such~~ estimate available to the claimant or insured and the department

upon request.

(13) A public adjuster, public adjuster apprentice, or any person acting on behalf of a public adjuster or apprentice may not accept referrals of business from any person with whom the public adjuster conducts business if there is any form or manner of agreement to compensate the person, ~~whether~~ directly or indirectly, for referring business to the public adjuster. A public adjuster may not compensate any person, except for another public adjuster, ~~whether~~ directly or indirectly, for the principal purpose of referring business to the public adjuster.

(14) A company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim must provide at least 48 hours' notice to the insured or claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. The insured or claimant may deny access to the property if the notice has not been provided. The insured or claimant may waive the 48-hour notice.

(15) A public adjuster must ensure prompt notice of property loss claims submitted to an insurer by or through a public adjuster or on which a public adjuster represents the insured at the time the claim or notice of loss is submitted to the insurer. The public adjuster must ensure that notice is given to the insurer, the public adjuster's contract is provided to the insurer, the property is available for inspection of the loss or damage by the insurer, and the insurer is given an

opportunity to interview the insured directly about the loss and claim. The insurer must be allowed to obtain necessary information to investigate and respond to the claim.

(a) The insurer may not exclude the public adjuster from its in-person meetings with the insured. The insurer shall meet or communicate with the public adjuster in an effort to reach agreement as to the scope of the covered loss under the insurance policy. This section does not impair the terms and conditions of the insurance policy in effect at the time the claim is filed.

(b) A public adjuster may not restrict or prevent an insurer, company employee adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of the insurer from having reasonable access at reasonable times to an insured or claimant or to the insured property that is the subject of a claim.

(c) A public adjuster may not act or fail to reasonably act in any manner that obstructs or prevents an insurer or insurer's adjuster from timely conducting an inspection of any part of the insured property for which there is a claim for loss or damage. The public adjuster representing the insured may be present for the insurer's inspection, but if the unavailability of the public adjuster otherwise delays the insurer's timely inspection of the property, the public adjuster or the insured must allow the insurer to have access to the property without the participation or presence of the public adjuster or insured in order to facilitate the insurer's prompt inspection of the loss or damage.

(16) A licensed contractor under part I of chapter 489, or a subcontractor, may not adjust a claim on behalf of an insured unless licensed and compliant as a public adjuster under this chapter. However, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.

(17) The provisions of subsections (5)-(16) ~~(5)-(13)~~ apply only to residential property insurance policies and condominium unit owner policies as defined in s. 718.111(11).

Section 8. Effective June 1, 2011, section 626.70132, Florida Statutes, is created to read:

626.70132 Notice of windstorm or hurricane claim.—A claim, supplemental claim, or reopened claim under an insurance policy that provides personal lines residential coverage, as defined in s. 627.4025, for loss or damage caused by the peril of windstorm or hurricane is barred unless notice of the claim, supplemental claim, or reopened claim was given to the insurer in accordance with the terms of the policy within 3 years after the hurricane first made landfall or the windstorm caused the covered damage. For purposes of this section, the term "supplemental claim" or "reopened claim" means any additional claim for recovery from the insurer for losses from the same hurricane or windstorm which the insurer has previously adjusted pursuant to the initial claim. This section does not affect any applicable

limitation on civil actions provided in s. 95.11 for claims, supplemental claims, or reopened claims timely filed under this section.

Section 9. Section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(1) The rates for all classes of insurance to which the provisions of this part are applicable may ~~shall~~ not be excessive, inadequate, or unfairly discriminatory.

(2) As to all such classes of insurance:

(a) Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals that ~~to~~ allow the insurer a reasonable rate of return on the ~~such~~ classes of insurance written in this state. A copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes thereto, must ~~shall~~ be filed with the office under one of the following procedures ~~except as provided in subparagraph 3.~~:

1. If the filing is made at least 90 days before the proposed effective date and ~~the filing~~ is not implemented during the office's review of the filing and any proceeding and judicial review, ~~then~~ such filing is ~~shall be~~ considered a "file and use" filing. In such case, the office shall finalize its review by issuance of a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing. The notice of intent to approve and the notice of intent to disapprove constitute agency action for purposes of the Administrative Procedure Act. Requests for supporting

information, requests for mathematical or mechanical corrections, or notification to the insurer by the office of its preliminary findings does ~~shall~~ not toll the 90-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing.

2. If the filing is not made in accordance with ~~the provisions of~~ subparagraph 1., such filing must ~~shall~~ be made as soon as practicable, but within ~~no later than~~ 30 days after the effective date, and is ~~shall be~~ considered a "use and file" filing. An insurer making a "use and file" filing is potentially subject to an order by the office to return to policyholders those portions of rates found to be excessive, as provided in paragraph (h).

~~3. For all property insurance filings made or submitted after January 25, 2007, but before December 31, 2010, an insurer seeking a rate that is greater than the rate most recently approved by the office shall make a "file and use" filing. For purposes of this subparagraph, motor vehicle collision and comprehensive coverages are not considered to be property coverages.~~

(b) Upon receiving a rate filing, the office shall review the ~~rate~~ filing to determine if a rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the following factors:

1. Past and prospective loss experience within and without

this state.

2. Past and prospective expenses.

3. The degree of competition among insurers for the risk insured.

4. Investment income reasonably expected by the insurer, consistent with the insurer's investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the amount expected on unearned premium reserves and loss reserves. The commission may adopt rules using reasonable techniques of actuarial science and economics to specify the manner in which insurers ~~shall~~ calculate investment income attributable to ~~such~~ classes of insurance written in this state and the manner in which ~~such~~ investment income is ~~shall be~~ used to calculate insurance rates. Such manner must ~~shall~~ contemplate allowances for an underwriting profit factor and full consideration of investment income which produce a reasonable rate of return; however, investment income from invested surplus may not be considered.

5. The reasonableness of the judgment reflected in the filing.

6. Dividends, savings, or unabsorbed premium deposits allowed or returned to Florida policyholders, members, or subscribers.

7. The adequacy of loss reserves.

8. The cost of reinsurance. The office may ~~shall~~ not disapprove a rate as excessive solely due to the insurer having obtained catastrophic reinsurance to cover the insurer's

estimated 250-year probable maximum loss or any lower level of loss.

9. Trend factors, including trends in actual losses per insured unit for the insurer making the filing.

10. Conflagration and catastrophe hazards, if applicable.

11. Projected hurricane losses, if applicable, which must be estimated using a model or method found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in s. 627.0628.

12. A reasonable margin for underwriting profit and contingencies.

13. The cost of medical services, if applicable.

14. Other relevant factors that affect ~~which impact upon~~ the frequency or severity of claims or ~~upon~~ expenses.

(c) In the case of fire insurance rates, consideration must ~~shall~~ be given to the availability of water supplies and the experience of the fire insurance business during a period of not less than the most recent 5-year period for which such experience is available.

(d) If conflagration or catastrophe hazards are considered ~~given consideration~~ by an insurer in its rates or rating plan, including surcharges and discounts, the insurer shall establish a reserve for that portion of the premium allocated to such hazard and ~~shall~~ maintain the premium in a catastrophe reserve. ~~Any~~ Removal of such premiums from the reserve for purposes other than paying claims associated with a catastrophe or purchasing reinsurance for catastrophes must be approved by ~~shall be subject to approval of~~ the office. Any ceding commission

673 received by an insurer purchasing reinsurance for catastrophes
674 must ~~shall~~ be placed in the catastrophe reserve.
675 (e) After consideration of the rate factors provided in
676 paragraphs (b), (c), and (d), the office may find a rate ~~may be~~
677 ~~found by the office~~ to be excessive, inadequate, or unfairly
678 discriminatory based upon the following standards:
679 1. Rates shall be deemed excessive if they are likely to
680 produce a profit from Florida business which ~~that~~ is
681 unreasonably high in relation to the risk involved in the class
682 of business or if expenses are unreasonably high in relation to
683 services rendered.
684 2. Rates shall be deemed excessive if, among other things,
685 the rate structure established by a stock insurance company
686 provides for replenishment of surpluses from premiums, if ~~when~~
687 the replenishment is attributable to investment losses.
688 3. Rates shall be deemed inadequate if they are clearly
689 insufficient, together with the investment income attributable
690 to them, to sustain projected losses and expenses in the class
691 of business to which they apply.
692 4. A rating plan, including discounts, credits, or
693 surcharges, shall be deemed unfairly discriminatory if it fails
694 to clearly and equitably reflect consideration of the
695 policyholder's participation in a risk management program
696 adopted pursuant to s. 627.0625.
697 5. A rate shall be deemed inadequate as to the premium
698 charged to a risk or group of risks if discounts or credits are
699 allowed which exceed a reasonable reflection of expense savings
700 and reasonably expected loss experience from the risk or group

of risks.

6. A rate shall be deemed unfairly discriminatory as to a risk or group of risks if the application of premium discounts, credits, or surcharges among such risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.

(f) In reviewing a rate filing, the office may require the insurer to provide, at the insurer's expense, all information necessary to evaluate the condition of the company and the reasonableness of the filing according to the criteria enumerated in this section.

(g) The office may at any time review a rate, rating schedule, rating manual, or rate change; the pertinent records of the insurer; and market conditions. If the office finds on a preliminary basis that a rate may be excessive, inadequate, or unfairly discriminatory, the office shall initiate proceedings to disapprove the rate and shall so notify the insurer. However, the office may not disapprove as excessive any rate for which it has given final approval or which has been deemed approved for ~~a period of~~ 1 year after the effective date of the filing unless the office finds that a material misrepresentation or material error was made by the insurer or was contained in the filing. Upon being ~~so~~ notified, the insurer or rating organization shall, within 60 days, file with the office all information that ~~which~~, in the belief of the insurer or organization, proves the reasonableness, adequacy, and fairness of the rate or rate change. The office shall issue a notice of intent to approve or a notice of intent to disapprove pursuant to ~~the procedures of~~

paragraph (a) within 90 days after receipt of the insurer's initial response. In such instances and in any administrative proceeding relating to the legality of the rate, the insurer or rating organization shall carry the burden of proof by a preponderance of the evidence to show that the rate is not excessive, inadequate, or unfairly discriminatory. After the office notifies an insurer that a rate may be excessive, inadequate, or unfairly discriminatory, unless the office withdraws the notification, the insurer may ~~shall~~ not alter the rate except to conform to ~~with~~ the office's notice until the earlier of 120 days after the date the notification was provided or 180 days after the date of implementing ~~the implementation of~~ the rate. The office ~~may~~, subject to chapter 120, may disapprove without the 60-day notification any rate increase filed by an insurer within the prohibited time period or during the time that the legality of the increased rate is being contested.

(h) If ~~In the event~~ the office finds that a rate or rate change is excessive, inadequate, or unfairly discriminatory, the office shall issue an order of disapproval specifying that a new rate or rate schedule, which responds to the findings of the office, be filed by the insurer. The office shall further order, for any "use and file" filing made in accordance with subparagraph (a)2., that premiums charged each policyholder constituting the portion of the rate above that which was actuarially justified be returned to the ~~such~~ policyholder in the form of a credit or refund. If the office finds that an insurer's rate or rate change is inadequate, the new rate or rate schedule filed with the office in response to such a

finding is ~~shall be~~ applicable only to new or renewal business of the insurer written on or after the effective date of the responsive filing.

(i) Except as otherwise specifically provided in this chapter, the office may ~~shall~~ not, directly or indirectly:

1. Prohibit any insurer, including any residual market plan or joint underwriting association, from paying acquisition costs based on the full amount of premium, as defined in s. 627.403, applicable to any policy, or prohibit any such insurer from including the full amount of acquisition costs in a rate filing; or~~.~~

2. Impede, abridge, or otherwise compromise an insurer's right to acquire policyholders, advertise, or appoint agents, including the calculation, manner, or amount of such agent commissions, if any, in property and casualty insurance.

(j) With respect to residential property insurance rate filings, the rate filing must account for mitigation measures undertaken by policyholders to reduce hurricane losses.

(k)1. An insurer may make a separate filing limited solely to an adjustment of its rates for reinsurance or financing costs incurred in the purchase of reinsurance or financing products to replace or finance the payment of the amount covered by the Temporary Increase in Coverage Limits (TICL) portion of the Florida Hurricane Catastrophe Fund including replacement reinsurance for the TICL reductions made pursuant to s. 215.555(17)(e); the actual cost paid due to the application of the TICL premium factor pursuant to s. 215.555(17)(f); and the actual cost paid due to the application of the cash build-up

factor pursuant to s. 215.555(5)(b) if the insurer:

a. Elects to purchase financing products such as a liquidity instrument or line of credit, in which case the cost included in the filing for the liquidity instrument or line of credit may not result in a premium increase exceeding 3 percent for any individual policyholder. All costs contained in the filing may not result in an overall premium increase of more than 10 percent for any individual policyholder.

b. Includes in the filing a copy of all of its reinsurance, liquidity instrument, or line of credit contracts; proof of the billing or payment for the contracts; and the calculation upon which the proposed rate change is based demonstrates that the costs meet the criteria of this section and are not loaded for expenses or profit for the insurer making the filing.

c. Includes no other changes to its rates in the filing.

d. Has not implemented a rate increase within the 6 months immediately preceding the filing.

e. Does not file for a rate increase under any other paragraph within 6 months after making a filing under this paragraph.

f. That purchases reinsurance or financing products from an affiliated company in compliance with this paragraph does so only if the costs for such reinsurance or financing products are charged at or below charges made for comparable coverage by nonaffiliated reinsurers or financial entities making such coverage or financing products available in this state.

2. An insurer may only make one filing in any 12-month

period under this paragraph.

3. An insurer that elects to implement a rate change under this paragraph must file its rate filing with the office at least 45 days before the effective date of the rate change. After an insurer submits a complete filing that meets all of the requirements of this paragraph, the office has 45 days after the date of the filing to review the rate filing and determine if the rate is excessive, inadequate, or unfairly discriminatory.

The provisions of this subsection do ~~shall~~ not apply to workers' compensation, ~~and~~ employer's liability insurance, and ~~to~~ motor vehicle insurance.

(3)(a) For individual risks that are not rated in accordance with the insurer's rates, rating schedules, rating manuals, and underwriting rules filed with the office and that ~~which~~ have been submitted to the insurer for individual rating, the insurer must maintain documentation on each risk subject to individual risk rating. The documentation must identify the named insured and specify the characteristics and classification of the risk supporting the reason for the risk being individually risk rated, including any modifications to existing approved forms to be used on the risk. The insurer must maintain these records for ~~a period of~~ at least 5 years after the effective date of the policy.

(b) Individual risk rates and modifications to existing approved forms are not subject to this part or part II, except for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404, 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,

627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426, 627.4265, 627.427, and 627.428, but are subject to all other applicable provisions of this code and rules adopted thereunder.

(c) This subsection does not apply to private passenger motor vehicle insurance.

(d)1. The following categories or kinds of insurance and types of commercial lines risks are not subject to paragraph (2)(a) or paragraph (2)(f):

a. Excess or umbrella.

b. Surety and fidelity.

c. Boiler and machinery and leakage and fire extinguishing equipment.

d. Errors and omissions.

e. Directors and officers, employment practices, and management liability.

f. Intellectual property and patent infringement liability.

g. Advertising injury and Internet liability insurance.

h. Property risks rated under a highly protected risks rating plan.

i. Any other commercial lines categories or kinds of insurance or types of commercial lines risks that the office determines should not be subject to paragraph (2)(a) or paragraph (2)(f) because of the existence of a competitive market for such insurance, similarity of such insurance to other categories or kinds of insurance not subject to paragraph (2)(a) or paragraph (2)(f), or to improve the general operational efficiency of the office.

2. Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on insurance and risks described in subparagraph 1. which are written in this state.

3. An insurer must notify the office of any changes to rates for insurance and risks described in subparagraph 1. within ~~no later than~~ 30 days after the effective date of the change. The notice must include the name of the insurer, the type or kind of insurance subject to rate change, total premium written during the immediately preceding year by the insurer for the type or kind of insurance subject to the rate change, and the average statewide percentage change in rates. Underwriting files, premiums, losses, and expense statistics with regard to such insurance and risks ~~described in subparagraph 1.~~ written by an insurer must ~~shall~~ be maintained by the insurer and subject to examination by the office. Upon examination, the office ~~shall~~, in accordance with generally accepted and reasonable actuarial techniques, shall consider the rate factors in paragraphs (2)(b), (c), and (d) and the standards in paragraph (2)(e) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

4. A rating organization must notify the office of any changes to loss cost for insurance and risks described in subparagraph 1. within ~~no later than~~ 30 days after the effective date of the change. The notice must include the name of the rating organization, the type or kind of insurance subject to a loss cost change, loss costs during the immediately preceding year for the type or kind of insurance subject to the loss cost

change, and the average statewide percentage change in loss cost. Loss and exposure statistics with regard to risks applicable to loss costs for a rating organization not subject to paragraph (2)(a) or paragraph (2)(f) must ~~shall~~ be maintained by the rating organization and are subject to examination by the office. Upon examination, the office ~~shall~~, in accordance with generally accepted and reasonable actuarial techniques, shall consider the rate factors in paragraphs (2)(b)-(d) and the standards in paragraph (2)(e) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

5. In reviewing a rate, the office may require the insurer to provide, at the insurer's expense, all information necessary to evaluate the condition of the company and the reasonableness of the rate according to the applicable criteria described in this section.

(4) The establishment of any rate, rating classification, rating plan or schedule, or variation thereof in violation of part IX of chapter 626 is also in violation of this section. ~~In order to enhance the ability of consumers to compare premiums and to increase the accuracy and usefulness of rate-comparison information provided by the office to the public, the office shall develop a proposed standard rating territory plan to be used by all authorized property and casualty insurers for residential property insurance. In adopting the proposed plan, the office may consider geographical characteristics relevant to risk, county lines, major roadways, existing rating territories used by a significant segment of the market, and other relevant factors. Such plan shall be submitted to the President of the~~

~~Senate and the Speaker of the House of Representatives by January 15, 2006. The plan may not be implemented unless authorized by further act of the Legislature.~~

(5) With respect to a rate filing involving coverage of the type for which the insurer is required to pay a reimbursement premium to the Florida Hurricane Catastrophe Fund, the insurer may fully recoup in its property insurance premiums any reimbursement premiums paid to the ~~Florida Hurricane Catastrophe~~ fund, together with reasonable costs of other reinsurance; however, ~~but~~ except as otherwise provided in this section, the insurer may not recoup reinsurance costs that duplicate coverage provided by the ~~Florida Hurricane Catastrophe~~ fund. An insurer may not recoup more than 1 year of reimbursement premium at a time. Any under-recoupment from the prior year may be added to the following year's reimbursement premium, and any over-recoupment must ~~shall~~ be subtracted from the following year's reimbursement premium.

(6)(a) If an insurer requests an administrative hearing pursuant to s. 120.57 related to a rate filing under this section, the director of the Division of Administrative Hearings shall expedite the hearing and assign an administrative law judge who shall commence the hearing within 30 days after the receipt of the formal request and ~~shall~~ enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the administrative law judge, whichever is later. Each party shall have ~~be allowed~~ 10 days in which to submit written exceptions to the recommended order. The office shall enter a final order within 30 days after

the entry of the recommended order. The provisions of this paragraph may be waived upon stipulation of all parties.

(b) Upon entry of a final order, the insurer may request a expedited appellate review pursuant to the Florida Rules of Appellate Procedure. It is the intent of the Legislature that the First District Court of Appeal grant an insurer's request for an expedited appellate review.

(7) ~~(a)~~ The provisions of this subsection apply only ~~with respect~~ to rates for medical malpractice insurance and ~~shall~~ control to the extent of any conflict with other provisions of this section.

(a) ~~(b)~~ Any portion of a judgment entered or settlement paid as a result of a statutory or common-law bad faith action and any portion of a judgment entered which awards punitive damages against an insurer may not be included in the insurer's rate base~~,~~ and ~~shall not be~~ used to justify a rate or rate change. Any common-law bad faith action identified as such, any portion of a settlement entered as a result of a statutory or common-law action, or any portion of a settlement wherein an insurer agrees to pay specific punitive damages may not be used to justify a rate or rate change. The portion of the taxable costs and attorney's fees which is identified as being related to the bad faith and punitive damages ~~in these judgments and settlements~~ may not be included in the insurer's rate base and used ~~may not be utilized~~ to justify a rate or rate change.

(b) ~~(c)~~ Upon reviewing a rate filing and determining whether the rate is excessive, inadequate, or unfairly discriminatory, the office shall consider, in accordance with

generally accepted and reasonable actuarial techniques, past and present prospective loss experience, ~~either~~ using loss experience solely for this state or giving greater credibility to this state's loss data after applying actuarially sound methods of assigning credibility to such data.

(c) ~~(d)~~ Rates shall be deemed excessive if, among other standards established by this section, the rate structure provides for replenishment of reserves or surpluses from premiums when the replenishment is attributable to investment losses.

(d) ~~(e)~~ The insurer must apply a discount or surcharge based on the health care provider's loss experience or ~~shall~~ establish an alternative method giving due consideration to the provider's loss experience. The insurer must include in the filing a copy of the surcharge or discount schedule or a description of the alternative method used, and ~~must~~ provide a copy ~~of such schedule or description~~, as approved by the office, to policyholders at the time of renewal and to prospective policyholders at the time of application for coverage.

(e) ~~(f)~~ Each medical malpractice insurer must make a rate filing under this section, sworn to by at least two executive officers of the insurer, at least once each calendar year.

~~(8)(a)1. No later than 60 days after the effective date of medical malpractice legislation enacted during the 2003 Special Session D of the Florida Legislature, the office shall calculate a presumed factor that reflects the impact that the changes contained in such legislation will have on rates for medical malpractice insurance and shall issue a notice informing all~~

~~insurers writing medical malpractice coverage of such presumed factor. In determining the presumed factor, the office shall use generally accepted actuarial techniques and standards provided in this section in determining the expected impact on losses, expenses, and investment income of the insurer. To the extent that the operation of a provision of medical malpractice legislation enacted during the 2003 Special Session D of the Florida Legislature is stayed pending a constitutional challenge, the impact of that provision shall not be included in the calculation of a presumed factor under this subparagraph.~~

~~2. No later than 60 days after the office issues its notice of the presumed rate change factor under subparagraph 1., each insurer writing medical malpractice coverage in this state shall submit to the office a rate filing for medical malpractice insurance, which will take effect no later than January 1, 2004, and apply retroactively to policies issued or renewed on or after the effective date of medical malpractice legislation enacted during the 2003 Special Session D of the Florida Legislature. Except as authorized under paragraph (b), the filing shall reflect an overall rate reduction at least as great as the presumed factor determined under subparagraph 1. With respect to policies issued on or after the effective date of such legislation and prior to the effective date of the rate filing required by this subsection, the office shall order the insurer to make a refund of the amount that was charged in excess of the rate that is approved.~~

~~(b) Any insurer or rating organization that contends that the rate provided for in paragraph (a) is excessive, inadequate,~~

~~or unfairly discriminatory shall separately state in its filing the rate it contends is appropriate and shall state with specificity the factors or data that it contends should be considered in order to produce such appropriate rate. The insurer or rating organization shall be permitted to use all of the generally accepted actuarial techniques provided in this section in making any filing pursuant to this subsection. The office shall review each such exception and approve or disapprove it prior to use. It shall be the insurer's burden to actuarially justify any deviations from the rates required to be filed under paragraph (a). The insurer making a filing under this paragraph shall include in the filing the expected impact of medical malpractice legislation enacted during the 2003 Special Session D of the Florida Legislature on losses, expenses, and rates.~~

~~(c) If any provision of medical malpractice legislation enacted during the 2003 Special Session D of the Florida Legislature is held invalid by a court of competent jurisdiction, the office shall permit an adjustment of all medical malpractice rates filed under this section to reflect the impact of such holding on such rates so as to ensure that the rates are not excessive, inadequate, or unfairly discriminatory.~~

~~(d) Rates approved on or before July 1, 2003, for medical malpractice insurance shall remain in effect until the effective date of a new rate filing approved under this subsection.~~

~~(e) The calculation and notice by the office of the presumed factor pursuant to paragraph (a) is not an order or~~

~~rule that is subject to chapter 120. If the office enters into a contract with an independent consultant to assist the office in calculating the presumed factor, such contract shall not be subject to the competitive solicitation requirements of s. 287.057.~~

(8) ~~(9)~~ (a) The chief executive officer or chief financial officer of a property insurer and the chief actuary of a property insurer must certify under oath and subject to the penalty of perjury, on a form approved by the commission, the following information, which must accompany a rate filing:

1. The signing officer and actuary have reviewed the rate filing;

2. Based on the signing officer's and actuary's knowledge, the rate filing does not contain any untrue statement of a material fact or omit to state a material fact necessary ~~in order~~ to make the statements made, in light of the circumstances under which such statements were made, not misleading;

3. Based on the signing officer's and actuary's knowledge, the information and other factors described in paragraph (2)(b), including, but not limited to, investment income, fairly present in all material respects the basis of the rate filing for the periods presented in the filing; and

4. Based on the signing officer's and actuary's knowledge, the rate filing reflects all premium savings that are reasonably expected to result from legislative enactments and are in accordance with generally accepted and reasonable actuarial techniques.

(b) A signing officer or actuary who knowingly makes

~~making~~ a false certification under this subsection commits a violation of s. 626.9541(1)(e) and is subject to the penalties under s. 626.9521.

(c) Failure to provide such certification by the officer and actuary shall result in the rate filing being disapproved without prejudice to be refiled.

(d) The certification made pursuant to paragraph (a) is not rendered false if, after making the subject rate filing, the insurer provides the office with additional or supplementary information pursuant to a formal or informal request from the office. However, the actuary primarily responsible for preparing and submitting the additional or supplementary information shall certify the information consistent with the certification required in paragraph (a) and the penalties in paragraph (b), except that the chief executive officer or chief financial officer or chief actuary is not required to certify to the additional or supplementary information.

(e) ~~(d)~~ The commission may adopt rules and forms ~~pursuant to ss. 120.536(1) and 120.54~~ to administer this subsection.

(9) ~~(10)~~ The burden is on the office to establish that rates are excessive for personal lines residential coverage with a dwelling replacement cost of $1 million or more or for a single condominium unit with a combined dwelling and contents replacement cost of $1 million or more. Upon request of the office, the insurer shall provide ~~to the office~~ such loss and expense information as the office reasonably needs to meet this burden.

(10) ~~(11)~~ Any interest paid pursuant to s. 627.70131(5) may

not be included in the insurer's rate base and may not be used to justify a rate or rate change.

Section 10. Subsections (1) and (5) and paragraph (b) of subsection (8) of section 627.0629, Florida Statutes, are amended to read:

627.0629 Residential property insurance; rate filings.—

(1)(a) It is the intent of the Legislature that insurers ~~must~~ provide savings to consumers who install or implement windstorm damage mitigation techniques, alterations, or solutions to their properties to prevent windstorm losses. A rate filing for residential property insurance must include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The fixtures or construction techniques must ~~shall~~ include, but not be limited to, fixtures or construction techniques that ~~which~~ enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength. Credits, discounts, or other rate differentials, or appropriate reductions in deductibles, for fixtures and construction techniques that ~~which~~ meet the minimum requirements of the Florida Building Code must be included in the rate filing. ~~All insurance companies must make a rate filing which includes the credits, discounts, or other rate differentials or reductions in deductibles by February 28, 2003. By July 1, 2007, the office shall reevaluate the discounts,~~

~~credits, other rate differentials, and appropriate reductions in deductibles for fixtures and construction techniques that meet the minimum requirements of the Florida Building Code, based upon actual experience or any other loss relativity studies available to the office.~~ The office shall determine the discounts, credits, other rate differentials, and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation, which may be used by insurers in rate filings.

~~(b) By February 1, 2011, the Office of Insurance Regulation, in consultation with the Department of Financial Services and the Department of Community Affairs, shall develop and make publicly available a proposed method for insurers to establish discounts, credits, or other rate differentials for hurricane mitigation measures which directly correlate to the numerical rating assigned to a structure pursuant to the uniform home grading scale adopted by the Financial Services Commission pursuant to s. 215.55865, including any proposed changes to the uniform home grading scale. By October 1, 2011, the commission shall adopt rules requiring insurers to make rate filings for residential property insurance which revise insurers' discounts, credits, or other rate differentials for hurricane mitigation measures so that such rate differentials correlate directly to the uniform home grading scale. The rules may include such changes to the uniform home grading scale as the commission determines are necessary, and may specify the minimum required discounts, credits, or other rate differentials. Such rate differentials must be consistent with generally accepted~~

~~actuarial principles and wind-loss mitigation studies. The rules shall allow a period of at least 2 years after the effective date of the revised mitigation discounts, credits, or other rate differentials for a property owner to obtain an inspection or otherwise qualify for the revised credit, during which time the insurer shall continue to apply the mitigation credit that was applied immediately prior to the effective date of the revised credit. Discounts, credits, and other rate differentials established for rate filings under this paragraph shall supersede, after adoption, the discounts, credits, and other rate differentials included in rate filings under paragraph (a).~~

(5) In order to provide an appropriate transition period, an insurer may~~, in its sole discretion,~~ implement an approved rate filing for residential property insurance over a period of years. Such ~~An~~ insurer ~~electing to phase in its rate filing~~ must provide an informational notice to the office setting out its schedule for implementation of the phased-in rate filing. The ~~An~~ insurer may include in its rate the actual cost of private market reinsurance that corresponds to available coverage of the Temporary Increase in Coverage Limits, TICL, from the Florida Hurricane Catastrophe Fund. The insurer may also include the cost of reinsurance to replace the TICL reduction implemented pursuant to s. 215.555(17)(d)9. However, this cost for reinsurance may not include any expense or profit load or result in a total annual base rate increase in excess of 10 percent.

(8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL SOUNDNESS.—

(b) To the extent ~~that~~ funds are provided for this purpose

in the General Appropriations Act, ~~the Legislature hereby authorizes~~ the establishment of a program to be administered by the Citizens Property Insurance Corporation for homeowners insured in the high-risk account is authorized.

Section 11. Paragraph (b) of subsection (2) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, apartment building, or other policy covering a residential structure or its contents:

(b) The insurer shall give the named insured written notice of nonrenewal, cancellation, or termination at least 100 days before ~~prior to~~ the effective date of the nonrenewal, cancellation, or termination. However, the insurer shall give at least 100 days' written notice, or written notice by June 1, whichever is earlier, for any nonrenewal, cancellation, or termination that would be effective between June 1 and November 30. The notice must include the reason or reasons for the nonrenewal, cancellation, or termination, except that:

1. The insurer shall give the named insured written notice of nonrenewal, cancellation, or termination at least 180 days prior to the effective date of the nonrenewal, cancellation, or termination for a named insured whose residential structure has been insured by that insurer or an affiliated insurer for at

least a 5-year period immediately prior to the date of the written notice.

2. If ~~When~~ cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must ~~shall~~ be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due ~~any of~~ her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term ~~"Nonpayment of premium"~~ also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are ~~shall be~~ void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and if the contract is void, any premium received by the insurer from a third party must ~~shall~~ be refunded to that party in full.

3. If ~~When~~ such cancellation or termination occurs during the first 90 days ~~during which~~ the insurance is in force and the

insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must ~~shall~~ be given unless ~~except where~~ there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

4. The requirement for providing written notice ~~of nonrenewal~~ by June 1 of any nonrenewal that would be effective between June 1 and November 30 does not apply to the following situations, but the insurer remains subject to the requirement to provide such notice at least 100 days before ~~prior to~~ the effective date of nonrenewal:

a. A policy that is nonrenewed due to a revision in the coverage for sinkhole losses and catastrophic ground cover collapse pursuant to s. 627.706~~, as amended by s. 30, chapter 2007-1, Laws of Florida~~.

b. A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement or renewal coverage to the policyholder.

After the policy has been in effect for 90 days, the policy may ~~shall~~ not be canceled by the insurer unless ~~except when~~ there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after ~~of~~ the date of effectuation of coverage, or a substantial change in the risk covered by the policy or if ~~when~~ the cancellation is for all insureds under

such policies for a given class of insureds. This paragraph does not apply to individually rated risks having a policy term of less than 90 days.

4. Notwithstanding any other provision of law, an insurer may cancel or nonrenew a property insurance policy after at least 45 days' notice if the office finds that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal of some or all of its policies. The office may base such finding upon the financial condition of the insurer, lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The office may condition its finding on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81 or to the appointment of a receiver under chapter 631.

Section 12. Section 627.43141, Florida Statutes, is created to read:

627.43141 Notice of change in policy terms.—

(1) As used in this section, the term:

(a) "Change in policy terms" means the modification, addition, or deletion of any term, coverage, duty, or condition from the previous policy. The correction of typographical or scrivener's errors or the application of mandated legislative changes is not a change in policy terms.

(b) "Policy" means a written contract of personal lines property and casualty insurance or a written agreement for insurance, or the certificate of such insurance, by whatever

name called, and includes all clauses, riders, endorsements, and papers that are a part of such policy. The term does not include a binder as defined in s. 627.420 unless the duration of the binder period exceeds 60 days.

(c) "Renewal" means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term. Any policy that has a policy period or term of less than 6 months or that does not have a fixed expiration date shall, for purposes of this section, be considered as written for successive policy periods or terms of 6 months.

(2) A renewal policy may contain a change in policy terms. If a renewal policy does contains such change, the insurer must give the named insured written notice of the change, which must be enclosed along with the written notice of renewal premium required by ss. 627.4133 and 627.728. Such notice shall be entitled "Notice of Change in Policy Terms."

(3) Although not required, proof of mailing or registered mailing through the United States Postal Service of the Notice of Change in Policy Terms to the named insured at the address shown in the policy is sufficient proof of notice.

(4) Receipt of the premium payment for the renewal policy by the insurer is deemed to be acceptance of the new policy terms by the named insured.

(5) If an insurer fails to provide the notice required in subsection (2), the original policy terms remain in effect until

the next renewal and the proper service of the notice, or until the effective date of replacement coverage obtained by the named insured, whichever occurs first.

(6) The intent of this section is to:

(a) Allow an insurer to make a change in policy terms without nonrenewing those policyholders that the insurer wishes to continue insuring.

(b) Alleviate concern and confusion to the policyholder caused by the required policy nonrenewal for the limited issue if an insurer intends to renew the insurance policy, but the new policy contains a change in policy terms.

(c) Encourage policyholders to discuss their coverages with their insurance agents.

Section 13. Section 627.7011, Florida Statutes, is amended to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(1) Before ~~Prior to~~ issuing or renewing a homeowner's insurance policy ~~on or after October 1, 2005, or prior to the first renewal of a homeowner's insurance policy on or after October 1, 2005~~, the insurer must offer each of the following:

(a) A policy or endorsement providing that any loss that ~~which~~ is repaired or replaced will be adjusted on the basis of replacement costs to the dwelling not exceeding policy limits ~~as to the dwelling~~, rather than actual cash value, but not including costs necessary to meet applicable laws and ordinances regulating the construction, use, or repair of any property or requiring the tearing down of any property, including the costs

of removing debris.

(b) A policy or endorsement providing that, subject to other policy provisions, any loss that ~~which~~ is repaired or replaced at any location will be adjusted on the basis of replacement costs to the dwelling not exceeding policy limits ~~as to the dwelling~~, rather than actual cash value, and also including costs necessary to meet applicable laws and ordinances regulating the construction, use, or repair of any property or requiring the tearing down of any property, including the costs of removing debris.~~;~~ However, ~~such~~ additional costs necessary to meet applicable laws and ordinances may be limited to ~~either~~ 25 percent or 50 percent of the dwelling limit, as selected by the policyholder, and such coverage applies ~~shall apply~~ only to repairs of the damaged portion of the structure unless the total damage to the structure exceeds 50 percent of the replacement cost of the structure.

An insurer is not required to make the offers required by this subsection with respect to the issuance or renewal of a homeowner's policy that contains the provisions specified in paragraph (b) for law and ordinance coverage limited to 25 percent of the dwelling limit, except that the insurer must offer the law and ordinance coverage limited to 50 percent of the dwelling limit. This subsection does not prohibit the offer of a guaranteed replacement cost policy.

(2) Unless the insurer obtains the policyholder's written refusal of the policies or endorsements specified in subsection (1), any policy covering the dwelling is deemed to include the

law and ordinance coverage limited to 25 percent of the dwelling limit. The rejection or selection of alternative coverage shall be made on a form approved by the office. The form must ~~shall~~ fully advise the applicant of the nature of the coverage being rejected. If this form is signed by a named insured, it is ~~will be~~ conclusively presumed that there was an informed, knowing rejection of the coverage or election of the alternative coverage on behalf of all insureds. Unless the policyholder requests in writing the coverage specified in this section, it need not be provided in or supplemental to any other policy that renews, insures, extends, changes, supersedes, or replaces an existing policy if ~~when~~ the policyholder has rejected the coverage specified in this section or has selected alternative coverage. The insurer must provide the ~~such~~ policyholder with notice of the availability of such coverage in a form approved by the office at least once every 3 years. The failure to provide such notice constitutes a violation of this code, but does not affect the coverage provided under the policy.

(3)(a) In the event of a loss for which a dwelling is insured on the basis of replacement costs, the insurer initially must pay at least the actual cash value of the insured loss, less any applicable deductible. An insured shall subsequently enter into a contract for the performance of building and structural repairs. The insurer shall pay any remaining amounts incurred to perform such repairs as the work is performed. With the exception of incidental expenses to mitigate further damage, the insurer or any contractor or subcontractor may not require the policyholder to advance payment for such repairs or

expenses. The insurer may waive the requirement for a contract as provided in this paragraph. An insured shall have a period of one 1 year after the date the insurer pays actual cash value to make a claim for replacement cost. If a total loss of a dwelling occurs, the insurer shall pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702.

(b) In the event of a loss for which ~~a dwelling or~~ personal property is insured on the basis of replacement costs, the insurer shall pay the replacement cost without reservation or holdback of any depreciation in value, whether or not the insured replaces or repairs the ~~dwelling or~~ property.

(4) A ~~Any~~ homeowner's insurance policy ~~issued or renewed on or after October 1, 2005,~~ must include in bold type no smaller than 18 points the following statement:

"LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."

The intent of this subsection is to encourage policyholders to purchase sufficient coverage to protect them in case events excluded from the standard homeowners policy, such as law and ordinance enforcement and flood, combine with covered events to produce damage or loss to the insured property. The intent is

also to encourage policyholders to discuss these issues with their insurance agent.

(5) ~~Nothing in~~ This section does not: ~~shall be construed to~~

(a) Apply to policies not considered to be "homeowners' policies," as that term is commonly understood in the insurance industry. ~~This section specifically does not~~

(b) Apply to mobile home policies. ~~Nothing in this section~~

(c) Limit ~~shall be construed as limiting~~ the ability of an ~~any~~ insurer to reject or nonrenew any insured or applicant on the grounds that the structure does not meet underwriting criteria applicable to replacement cost or law and ordinance policies or for other lawful reasons.

(d) ~~(6)~~ ~~This section does not~~ Prohibit an insurer from limiting its liability under a policy or endorsement providing that loss will be adjusted on the basis of replacement costs to the lesser of:

1. ~~(a)~~ The limit of liability shown on the policy declarations page;

2. ~~(b)~~ The reasonable and necessary cost to repair the damaged, destroyed, or stolen covered property; or

3. ~~(c)~~ The reasonable and necessary cost to replace the damaged, destroyed, or stolen covered property.

(e) ~~(7)~~ ~~This section does not~~ Prohibit an insurer from exercising its right to repair damaged property in compliance with its policy and s. 627.702(7).

Section 14. Paragraph (a) of subsection (5) of section 627.70131, Florida Statutes, is amended to read:

627.70131 Insurer's duty to acknowledge communications regarding claims; investigation.—

(5)(a) Within 90 days after an insurer receives notice of an initial, reopened, or supplemental ~~a~~ property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay ~~such claim or a portion of the claim~~ is caused by factors beyond the control of the insurer which reasonably prevent such payment. Any payment of an initial or supplemental ~~a~~ claim or portion of such ~~a~~ claim made ~~paid~~ 90 days after the insurer receives notice of the claim, or made ~~paid~~ more than 15 days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears ~~shall bear~~ interest at the rate set forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured shall select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the claim or portion of the claim is paid. Failure to comply with this subsection constitutes a violation of this code. However, failure to comply with this subsection does ~~shall~~ not form the sole basis for a private cause of action.

Section 15. The Legislature finds and declares:

(1) There is a compelling state interest in maintaining a viable and orderly private-sector market for property insurance in this state. The lack of a viable and orderly property market

reduces the availability of property insurance coverage to state residents, increases the cost of property insurance, and increases the state's reliance on a residual property insurance market and its potential for imposing assessments on policyholders throughout the state.

(2) In 2005, the Legislature revised ss. 627.706-627.7074, Florida Statutes, to adopt certain geological or technical terms; to increase reliance on objective, scientific testing requirements; and generally to reduce the number of sinkhole claims and related disputes arising under prior law. The Legislature determined that since the enactment of these statutory revisions, both private-sector insurers and Citizens Property Insurance Corporation have, nevertheless, continued to experience high claims frequency and severity for sinkhole insurance claims. In addition, many properties remain unrepaired even after loss payments, which reduces the local property tax base and adversely affects the real estate market. Therefore, the Legislature finds that losses associated with sinkhole claims adversely affect the public health, safety, and welfare of this state and its citizens.

(3) Pursuant to sections 16 through 20 of this act, technical or scientific definitions adopted in the 2005 legislation are clarified to implement and advance the Legislature's intended reduction of sinkhole claims and disputes. Certain other revisions to ss. 627.706-627.7074, Florida Statutes, are enacted to advance legislative intent to rely on scientific or technical determinations relating to sinkholes and sinkhole claims, reduce the number and cost of

disputes relating to sinkhole claims, and ensure that repairs are made commensurate with the scientific and technical determinations and insurance claims payments.

Section 16. Section 627.706, Florida Statutes, is reordered and amended to read:

627.706 Sinkhole insurance; catastrophic ground cover collapse; definitions.—

(1)(a) Every insurer authorized to transact property insurance in this state must ~~shall~~ provide coverage for a catastrophic ground cover collapse.

(b) The insurer ~~and~~ shall make available, for an appropriate additional premium, coverage for sinkhole losses on any structure, including the contents of personal property contained therein, to the extent provided in the form to which the coverage attaches. The insurer may require an inspection of the property before issuance of sinkhole loss coverage. A policy for residential property insurance may include a deductible amount applicable to sinkhole losses equal to 1 percent, 2 percent, 5 percent, or 10 percent of the policy dwelling limits, with appropriate premium discounts offered with each deductible amount.

(c) The insurer may restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building, as defined in the applicable policy.

(2) As used in ss. 627.706-627.7074, and as used in connection with any policy providing coverage for a catastrophic ground cover collapse or for sinkhole losses, the term:

(a) "Catastrophic ground cover collapse" means geological

activity that results in all the following:

1. The abrupt collapse of the ground cover;

2. A depression in the ground cover clearly visible to the naked eye;

3. Structural damage to the covered building, including the foundation; and

4. The insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue such an order for that structure.

Contents coverage applies if there is a loss resulting from a catastrophic ground cover collapse. ~~Structural~~ Damage consisting merely of the settling or cracking of a foundation, structure, or building does not constitute a loss resulting from a catastrophic ground cover collapse.

(b) "Neutral evaluation" means the alternative dispute resolution provided in s. 627.7074.

(c) "Neutral evaluator" means a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution designed or approved by the department for use in the neutral evaluation process and who is determined to be fair and impartial.

(d) ~~(b)~~ "Sinkhole" means a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater. A sinkhole forms ~~may form~~ by collapse into subterranean voids created by dissolution of limestone or dolostone or by subsidence as these strata are dissolved.

(e) ~~(c)~~ "Sinkhole loss" means structural damage to the

covered building, including the foundation, caused by sinkhole activity. Contents coverage and additional living expenses ~~shall~~ apply only if there is structural damage to the covered building caused by sinkhole activity.

(f) ~~(d)~~ "Sinkhole activity" means settlement or systematic weakening of the earth supporting ~~such~~ property only if the ~~when such~~ settlement or systematic weakening results from contemporaneous movement or raveling of soils, sediments, or rock materials into subterranean voids created by the effect of water on a limestone or similar rock formation.

(g) ~~(e)~~ "Professional engineer" means a person, as defined in s. 471.005, who has a bachelor's degree or higher in engineering and has successfully completed at least five courses in any combination of the following: geotechnical engineering, structural engineering, soil mechanics, foundations, or geology ~~with a specialty in the geotechnical engineering field~~. A professional engineer must also have ~~geotechnical~~ experience and expertise in the identification of sinkhole activity as well as other potential causes of structural damage ~~to the structure~~.

(h) ~~(f)~~ "Professional geologist" means a person, as defined in ~~by~~ s. 492.102, who has a bachelor's degree or higher in geology or related earth science and ~~with expertise in the geology of Florida. A professional geologist must have~~ ~~geological~~ experience and expertise in the identification of sinkhole activity as well as other potential geologic causes of structural damage ~~to the structure~~.

(i) "Structural damage" means a covered building has experienced:

1. Foundation displacement in excess of acceptable variances or deflections as defined in ACI 117-90 or the Florida Building Code and damage in the primary structural members or primary structural systems that prevents them from supporting the loads and forces they were designed to support as defined in the Florida Building Code;

2. Damage that results in stresses in a primary structural member greater than one and one-third the nominal strength allowed under the Florida Building Code for new buildings of similar structure, purpose, or location;

3. Listing, leaning, or buckling of the exterior load bearing walls or other vertical primary structural members to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base as defined within the Florida Building Code;

4. Damage that results in the building, or any portion thereof, being likely to imminently collapse partially or completely because of the movement or instability of the ground within the influence zone of the supporting ground within the sheer plane necessary for the purpose of supporting such building as defined within the Florida Building Code; or

5. Damage that qualifies as "substantial structural damage" as defined in the Florida Building Code.

~~(3) On or before June 1, 2007, Every insurer authorized to transact property insurance in this state shall make a proper filing with the office for the purpose of extending the appropriate forms of property insurance to include coverage for catastrophic ground cover collapse or for sinkhole losses.~~

~~coverage for catastrophic ground cover collapse may not go into effect until the effective date provided for in the filing approved by the office.~~

(3) ~~(4)~~ Insurers offering policies that exclude coverage for sinkhole losses must ~~shall~~ inform policyholders in bold type of not less than 14 points as follows: "YOUR POLICY PROVIDES COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE, YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. YOU MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN ADDITIONAL PREMIUM."

(4) ~~(5)~~ An insurer offering sinkhole coverage to policyholders before or after the adoption of s. 30, chapter 2007-1, Laws of Florida, may nonrenew the policies of policyholders maintaining sinkhole coverage ~~in Pasco County or Hernando County,~~ at the option of the insurer, and provide an offer of coverage that ~~to such policyholders which~~ includes catastrophic ground cover collapse and excludes sinkhole coverage. Insurers acting in accordance with this subsection are subject to the following requirements:

(a) Policyholders must be notified that a nonrenewal is for purposes of removing sinkhole coverage, and that the policyholder is ~~still~~ being offered a policy that provides coverage for catastrophic ground cover collapse.

(b) Policyholders must be provided an actuarially reasonable premium credit or discount for the removal of sinkhole coverage and provision of only catastrophic ground cover collapse.

(c) Subject to the provisions of this subsection and the insurer's approved underwriting or insurability guidelines, the insurer shall provide each policyholder with the opportunity to purchase an endorsement to his or her policy providing sinkhole coverage and may require an inspection of the property before issuance of a sinkhole coverage endorsement.

(d) Section 624.4305 does not apply to nonrenewal notices issued pursuant to this subsection.

(5) Any claim, including, but not limited to, initial, supplemental, and reopened claims under an insurance policy that provides sinkhole coverage is barred unless notice of the claim was given to the insurer in accordance with the terms of the policy within 3 years after the policyholder knew or reasonably should have known about the sinkhole loss.

Section 17. Section 627.7065, Florida Statutes, is repealed.

Section 18. Section 627.707, Florida Statutes, is amended to read:

627.707 ~~Standards for~~ Investigation of sinkhole claims ~~by insurers~~; insurer payment; nonrenewals.—Upon receipt of a claim for a sinkhole loss to a covered building, an insurer must meet the following standards in investigating a claim:

(1) The insurer must inspect ~~make an inspection of~~ the policyholder's ~~insured's~~ premises to determine if there is structural ~~has been physical~~ damage that ~~to the structure which~~ may be the result of sinkhole activity.

(2) If the insurer confirms that structural damage exists but is unable to identify a valid cause of such damage or

discovers that such damage is consistent with sinkhole loss ~~Following the insurer's initial inspection~~, the insurer shall engage a professional engineer or a professional geologist to conduct testing as provided in s. 627.7072 to determine the cause of the loss within a reasonable professional probability and issue a report as provided in s. 627.7073, only if sinkhole loss is covered under the policy. Except as provided in subsections (4) and (6), the fees and costs of the professional engineer or professional geologist shall be paid by the insurer.~~:~~

~~(a) The insurer is unable to identify a valid cause of the damage or discovers damage to the structure which is consistent with sinkhole loss; or~~

~~(b) The policyholder demands testing in accordance with this section or s. 627.7072.~~

(3) Following the initial inspection of the policyholder's ~~insured~~ premises, the insurer shall provide written notice to the policyholder disclosing the following information:

(a) What the insurer has determined to be the cause of damage, if the insurer has made such a determination.

(b) A statement of the circumstances under which the insurer is required to engage a professional engineer or a professional geologist to verify or eliminate sinkhole loss and to engage a professional engineer to make recommendations regarding land and building stabilization and foundation repair.

(c) A statement regarding the right of the policyholder to request testing by a professional engineer or a professional geologist, ~~and~~ the circumstances under which the policyholder

may demand certain testing, and the circumstances under which the policyholder may incur costs associated with testing.

(4) (a) If the insurer determines that there is no sinkhole loss, the insurer may deny the claim.

(b) If coverage for sinkhole loss is available and ~~If~~ the insurer denies the claim~~,~~ without performing testing under s. 627.7072, the policyholder may demand testing by the insurer under s. 627.7072.

1. The policyholder's demand for testing must be communicated to the insurer in writing within 60 days after the policyholder's receipt of the insurer's denial of the claim.

2. The policyholder shall pay 50 percent of the actual costs of the analyses and services provided under ss. 627.7072 and 627.7073 or $2,500, whichever is less.

3. The insurer shall reimburse the policyholder for the costs if the insurer obtains pursuant to s. 627.7073, written certification that there is sinkhole loss.

(5)~~(a)~~ ~~Subject to paragraph (b),~~ If a sinkhole loss is verified, the insurer shall pay to stabilize the land and building and repair the foundation in accordance with the recommendations of the professional engineer retained pursuant to subsection (2), ~~as provided under s. 627.7073, and in consultation~~ with notice to the policyholder, subject to the coverage and terms of the policy. The insurer shall pay for other repairs to the structure and contents in accordance with the terms of the policy.

(a)~~(b)~~ The insurer may limit its total claims payment to the actual cash value of the sinkhole loss, which does not

include ~~including~~ underpinning or grouting or any other repair technique performed below the existing foundation of the building, until the policyholder enters into a contract for the performance of building stabilization or foundation repairs in accordance with the recommendations set forth in the insurer's report issued pursuant to s. 627.7073.

(b) In order to prevent additional damage to the building or structure, the policyholder must enter into a contract for the performance of building stabilization or foundation repairs within 90 days after the insurance company confirms coverage for the sinkhole loss and notifies the policyholder of such confirmation. This time period is tolled if either party invokes the neutral evaluation process and begins again 10 days after the conclusion of the neutral evaluation process.

(c) After the policyholder enters into the contract for the performance of building stabilization or foundation repairs, the insurer shall pay the amounts necessary to begin and perform such repairs as the work is performed and the expenses are incurred. The insurer may not require the policyholder to advance payment for such repairs. If repair covered by a personal lines residential property insurance policy has begun and the professional engineer selected or approved by the insurer determines that the repair cannot be completed within the policy limits, the insurer must ~~either~~ complete the professional engineer's recommended repair or tender the policy limits to the policyholder without a reduction for the repair expenses incurred.

(d) The stabilization and all other repairs to the

structure and contents must be completed within 12 months after entering into the contract for repairs described in paragraph (b) unless:

1. There is a mutual agreement between the insurer and the policyholder;

2. The claim is involved with the neutral evaluation process;

3. The claim is in litigation; or

4. The claim is under appraisal or mediation.

(e) ~~(c)~~ Upon the insurer's obtaining the written approval of ~~the policyholder and~~ any lienholder, the insurer may make payment directly to the persons selected by the policyholder to perform the land and building stabilization and foundation repairs. The decision by the insurer to make payment to such persons does not hold the insurer liable for the work performed. The policyholder may not accept a rebate from any person performing the repairs specified in this section. If a policyholder does receive a rebate, coverage is void and the policyholder must refund the amount of the rebate to the insurer. Any person making the repairs specified in this section who offers a rebate, or any policyholder who accepts a rebate for such repairs, commits insurance fraud, a felony of the third degree punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

~~(6) Except as provided in subsection (7), the fees and costs of the professional engineer or the professional geologist shall be paid by the insurer.~~

(6) ~~(7)~~ If the insurer obtains, pursuant to s. 627.7073,

written certification that there is no sinkhole loss or that the cause of the damage was not sinkhole activity, and if the policyholder has submitted the sinkhole claim without good faith grounds for submitting such claim, the policyholder shall reimburse the insurer for 50 percent of the actual costs of the analyses and services provided under ss. 627.7072 and 627.7073; however, a policyholder is not required to reimburse an insurer more than $2,500 with respect to any claim. A policyholder is required to pay reimbursement under this subsection only if the policyholder requested the analysis and services provided under ss. 627.7072 and 627.7073 and the insurer, before ~~prior to~~ ordering the analysis under s. 627.7072, informs the policyholder in writing of the policyholder's potential liability for reimbursement and gives the policyholder the opportunity to withdraw the claim.

(7) ~~(8)~~ An ~~No~~ insurer may not ~~shall~~ nonrenew any policy of property insurance on the basis of filing of claims for partial loss caused by sinkhole damage or clay shrinkage if ~~as long as~~ the total of such payments does not exceed the ~~current~~ policy limits of coverage for the policy in effect on the date of loss, for property damage to the covered building, as set forth on the declarations page, and provided the insured has repaired the structure in accordance with the engineering recommendations made pursuant to subsection (2) upon which any payment or policy proceeds were based.

(8) ~~(9)~~ The insurer may engage a professional structural engineer to make recommendations as to the repair of the structure.

Section 19. Section 627.7073, Florida Statutes, is amended to read:

627.7073 Sinkhole reports.—

(1) Upon completion of testing as provided in s. 627.7072, the professional engineer or professional geologist shall issue a report and certification to the insurer and the policyholder as provided in this section.

(a) Sinkhole loss is verified if, based upon tests performed in accordance with s. 627.7072, a professional engineer or a professional geologist issues a written report and certification stating:

1. That structural damage to the covered building has been identified within a reasonable professional probability.

2.~~1.~~ That the cause of the ~~actual physical and~~ structural damage is sinkhole activity within a reasonable professional probability.

3.~~2.~~ That the analyses conducted were of sufficient scope to identify sinkhole activity as the cause of damage within a reasonable professional probability.

4.~~3.~~ A description of the tests performed.

5.~~4.~~ A recommendation by the professional engineer of methods for stabilizing the land and building and for making repairs to the foundation.

(b) If there is no structural damage or if sinkhole activity is eliminated as the cause of such damage to the covered building ~~structure~~, the professional engineer or professional geologist shall issue a written report and certification to the policyholder and the insurer stating:

1. That there is no structural damage or the cause of such ~~the~~ damage is not sinkhole activity within a reasonable professional probability.

2. That the analyses and tests conducted were of sufficient scope to eliminate sinkhole activity as the cause of the structural damage within a reasonable professional probability.

3. A statement of the cause of the structural damage within a reasonable professional probability.

4. A description of the tests performed.

(c) The respective findings, opinions, and recommendations of the professional engineer or professional geologist as to the cause of distress to the property and the findings, opinions, and recommendations of the professional engineer as to land and building stabilization and foundation repair shall be presumed correct.

(2) ~~(a)~~ Any insurer that has paid a claim for a sinkhole loss shall file a copy of the report and certification, prepared pursuant to subsection (1), including the legal description of the real property and the name of the property owner, the neutral evaluator's report, if any, that indicates that sinkhole activity caused the damage claimed, a copy of the certification indicating that stabilization has been completed, if applicable, and the amount of the payment, with the county clerk of court, who shall record the report and certification. The insurer shall bear the cost of filing and recording one or more reports and certifications ~~the report and certification~~. There shall be no cause of action or liability against an insurer for compliance

with this section.

(a) The recording of the report and certification does not:

1. Constitute a lien, encumbrance, or restriction on the title to the real property or constitute a defect in the title to the real property;

2. Create any cause of action or liability against any grantor of the real property for breach of any warranty of good title or warranty against encumbrances; or

3. Create any cause of action or liability against any title insurer that insures the title to the real property.

(b) As a precondition to accepting payment for a sinkhole loss, the policyholder must file a copy of any report prepared on behalf or at the request of the policyholder regarding the insured property. The policyholder shall bear the cost of filing and recording such sinkhole report. The recording of the report does not:

1. Constitute a lien, encumbrance, or restriction on the title to the real property or constitute a defect in the title to the real property;

2. Create any cause of action or liability against any grantor of the real property for breach of any warranty of good title or warranty against encumbrances; or

3. Create any cause of action or liability against any title insurer that insures the title to the real property.

(c) ~~(b)~~ The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer must ~~shall~~ disclose to the buyer of such property that a claim has

been paid and whether or not the full amount of the proceeds were used to repair the sinkhole damage.

Section 20. Section 627.7074, Florida Statutes, is amended to read:

627.7074 Alternative procedure for resolution of disputed sinkhole insurance claims.—

~~(1) As used in this section, the term:~~

~~(a) "Neutral evaluation" means the alternative dispute resolution provided for in this section.~~

~~(b) "Neutral evaluator" means a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution designed or approved by the department for use in the neutral evaluation process, who is determined to be fair and impartial.~~

(1)~~(2)(a)~~ The department shall:

(a) Certify and maintain a list of persons who are neutral evaluators.

(b) ~~The department shall~~ Prepare a consumer information pamphlet for distribution by insurers to policyholders which clearly describes the neutral evaluation process and includes information ~~and forms~~ necessary for the policyholder to request a neutral evaluation.

(2) Neutral evaluation is available to either party if a sinkhole report has been issued pursuant to s. 627.7073. At a minimum, neutral evaluation must determine:

(a) Causation;

(b) All methods of stabilization and repair both above and below ground;

(c) The costs for stabilization and all repairs; and

(d) Information necessary to carry out subsection (12).

(3) Following the receipt of the report provided under s. 627.7073 or the denial of a claim for a sinkhole loss, the insurer shall notify the policyholder of his or her right to participate in the neutral evaluation program under this section. Neutral evaluation supersedes the alternative dispute resolution process under s. 627.7015, but does not invalidate the appraisal clause of the insurance policy. The insurer shall provide to the policyholder the consumer information pamphlet prepared by the department pursuant to subsection (1) electronically or by United States mail ~~paragraph (2)(b)~~.

(4) Neutral evaluation is nonbinding, but mandatory if requested by either party. A request for neutral evaluation may be filed with the department by the policyholder or the insurer on a form approved by the department. The request for neutral evaluation must state the reason for the request and must include an explanation of all the issues in dispute at the time of the request. Filing a request for neutral evaluation tolls the applicable time requirements for filing suit for ~~a period of~~ 60 days following the conclusion of the neutral evaluation process or the time prescribed in s. 95.11, whichever is later.

(5) Neutral evaluation shall be conducted as an informal process in which formal rules of evidence and procedure need not be observed. A party to neutral evaluation is not required to attend neutral evaluation if a representative of the party attends and has the authority to make a binding decision on behalf of the party. All parties shall participate in the

evaluation in good faith. The neutral evaluator must be allowed reasonable access to the interior and exterior of insured structures to be evaluated or for which a claim has been made. Any reports initiated by the policyholder, or an agent of the policyholder, confirming a sinkhole loss or disputing another sinkhole report regarding insured structures must be provided to the neutral evaluator before the evaluator's physical inspection of the insured property.

(6) The insurer shall pay the costs associated with the neutral evaluation. However, if a party chooses to hire a court reporter or stenographer to contemporaneously record and document the neutral evaluation, that party must bear such costs.

(7) Upon receipt of a request for neutral evaluation, the department shall provide the parties a list of certified neutral evaluators. ~~The parties shall mutually select a neutral evaluator from the list and promptly inform the department. If the parties cannot agree to a neutral evaluator within 10 business days,~~ The department shall allow the parties to submit requests to disqualify evaluators on the list for cause.

(a) The department shall disqualify neutral evaluators for cause based only on any of the following grounds:

1. A familial relationship exists between the neutral evaluator and either party or a representative of either party within the third degree.

2. The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party, in the same or a substantially

related matter.

3. The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.

4. The proposed neutral evaluator has, within the preceding 5 years, worked as an employer or employee of any party to the case.

(b) The parties shall appoint a neutral evaluator from the department list and promptly inform the department. If the parties cannot agree to a neutral evaluator within 14 days, the department shall appoint a neutral evaluator from the list of certified neutral evaluators. The department shall allow each party to disqualify two neutral evaluators without cause. Upon selection or appointment, the department shall promptly refer the request to the neutral evaluator.

(c) Within 7 ~~5~~ business days after the referral, the neutral evaluator shall notify the policyholder and the insurer of the date, time, and place of the neutral evaluation conference. The conference may be held by telephone, if feasible and desirable. The neutral evaluator shall hold the ~~neutral evaluation~~ conference ~~shall be held~~ within 90 ~~45~~ days after the receipt of the request by the department. Failure of the neutral evaluator to hold the conference within 90 days does not invalidate either party's right to neutral evaluation or to a

neutral evaluation conference held outside this timeframe.

~~(8) The department shall adopt rules of procedure for the neutral evaluation process.~~

(8) ~~(9)~~ For policyholders not represented by an attorney, a consumer affairs specialist of the department or an employee designated as the primary contact for consumers on issues relating to sinkholes under s. 20.121 shall be available for consultation to the extent that he or she may lawfully do so.

(9) ~~(10)~~ Evidence of an offer to settle a claim during the neutral evaluation process, as well as any relevant conduct or statements made in negotiations concerning the offer to settle a claim, is inadmissible to prove liability or absence of liability for the claim or its value, except as provided in subsection (14) ~~(13)~~.

(10) ~~(11)~~ Regardless of when noticed, any court proceeding related to the subject matter of the neutral evaluation shall be stayed pending completion of the neutral evaluation and for 5 days after the filing of the neutral evaluator's report with the court.

(11) If, based upon his or her professional training and credentials, a neutral evaluator is qualified to determine only disputes relating to causation or method of repair, the department shall allow the neutral evaluator to enlist the assistance of another professional from the neutral evaluators list not previously stricken, who, based upon his or her professional training and credentials, is able to provide an opinion as to other disputed issues. A professional who would be disqualified for any reason listed in subsection (7) must be

disqualified. The neutral evaluator may also use the services of professional engineers and professional geologists who are not certified as neutral evaluators, as well as licensed building contractors, in order to ensure that all items in dispute are addressed and the neutral evaluation can be completed. Any professional engineer, professional geologist, or licensed building contractor retained may be disqualified for any of the reasons listed in subsection (7).

(12) At ~~For matters that are not resolved by the parties at~~ the conclusion of the neutral evaluation, the neutral evaluator shall prepare a report describing all matters that are the subject of the neutral evaluation, including whether, ~~stating that~~ in his or her opinion, the sinkhole loss has been verified or eliminated within a reasonable degree of professional probability and, if verified, whether the sinkhole activity caused structural damage to the covered building, and if so, the need for an estimated costs of stabilizing the land and any covered ~~structures or~~ buildings and other appropriate remediation or necessary building ~~structural~~ repairs due to the sinkhole loss. The evaluator's report shall be sent to all parties ~~in attendance at the neutral evaluation~~ and to the department, within 14 days after completing the neutral evaluation conference.

(13) The recommendation of the neutral evaluator is not binding on any party, and the parties retain access to the court. The neutral evaluator's written recommendation is admissible in any subsequent action or proceeding relating to the claim or to the cause of action giving rise to the claim.

(14) If the neutral evaluator ~~first~~ verifies the existence of a sinkhole that caused structural damage and~~, second,~~ recommends the need for and estimates costs of stabilizing the land and any covered ~~structures or~~ buildings and other appropriate remediation or building ~~structural~~ repairs~~,~~ which ~~costs~~ exceed the amount that the insurer has offered to pay the policyholder, the insurer is liable to the policyholder for up to $2,500 in attorney's fees for the attorney's participation in the neutral evaluation process. For purposes of this subsection, the term "offer to pay" means a written offer signed by the insurer or its legal representative and delivered to the policyholder within 10 days after the insurer receives notice that a request for neutral evaluation has been made under this section.

(15) If the insurer timely agrees in writing to comply and timely complies with the recommendation of the neutral evaluator, but the policyholder declines to resolve the matter in accordance with the recommendation of the neutral evaluator pursuant to this section:

(a) The insurer is not liable for extracontractual damages related to a claim for a sinkhole loss but only as related to the issues determined by the neutral evaluation process. This section does not affect or impair claims for extracontractual damages unrelated to the issues determined by the neutral evaluation process contained in this section; and

(b) The insurer is not liable for attorney's fees under s. 627.428 or other provisions of the insurance code unless the policyholder obtains a judgment that is more favorable than the

recommendation of the neutral evaluator.

(16) Neutral evaluators are deemed to be agents of the department and have immunity from suit as provided in s. 44.107.

(17) The department shall adopt rules of procedure for the neutral evaluation process.

Section 21. Subsection (8) of section 627.711, Florida Statutes, is amended to read:

627.711 Notice of premium discounts for hurricane loss mitigation; uniform mitigation verification inspection form.—

(8) At its expense, the insurer may require that any uniform mitigation verification form provided by a policyholder, policyholder's agent, ~~an~~ authorized mitigation inspector, or inspection company be independently verified by an inspector, an inspection company, or an independent third-party quality assurance provider which does possess a quality assurance program before ~~prior to~~ accepting the uniform mitigation verification form as valid.

Section 22. Subsection (3) of section 631.54, Florida Statutes, is amended to read:

631.54 Definitions.—As used in this part:

(3) "Covered claim" means an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy to which this part applies, issued by an insurer, if such insurer becomes an insolvent insurer and the claimant or insured is a resident of this state at the time of the insured event or the property from which the claim arises is permanently located in this state. For entities other than

individuals, the residence of a claimant, insured, or policyholder is the state in which the entity's principal place of business is located at the time of the insured event. The term does ~~"Covered claim" shall~~ not include:

(a) Any amount due any reinsurer, insurer, insurance pool, or underwriting association, sought directly or indirectly through a third party, as subrogation, contribution, indemnification, or otherwise; ~~or~~

(b) Any claim that would otherwise be a covered claim under this part that has been rejected by any other state guaranty fund on the grounds that an insured's net worth is greater than that allowed under that state's guaranty law. Member insurers ~~shall~~ have no right of subrogation, contribution, indemnification, or otherwise, sought directly or indirectly through a third party, against the insured of any insolvent member; or

(c) Any amount payable for a sinkhole loss other than testing deemed appropriate by the association or payable for the actual repair of the loss, except that the association may not pay for attorney's fees or public adjuster's fees in connection with a sinkhole loss or pay the policyholder. The association may pay for actual repairs to the property, but is not liable for amounts in excess of policy limits.

Section 23. If any provision of this act, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application. It is the express intent of

the Legislature to enact multiple important, but independent, reforms to Florida law relating to sinkhole insurance coverage and related claims. The Legislature further intends that the multiple reforms in the act could and should be enforced if one or more provisions are held invalid. To this end, the provisions of this act are declared to be severable.

Section 24. Except as otherwise expressly provided in this act and except for this section, which shall take effect June 1, 2011, this act shall take effect upon becoming a law.

Insurance & Banking Subcommittee

Tuesday, April 5, 2011
4:00 PM - 6:00 PM
404 HOB

AMENDMENT PACKET

Dean Cannon
Speaker

Bryan Nelson
Chair

INSURANCE & BANKING SUBCOMMITTEE

PCS for HB 803 by Rep. Wood
Property and Casualty Insurance

AMENDMENT SUMMARY
April 5, 2011

Amendment 1 by Rep. _____ (Line 159):

- Technical amendment to correct a scrivener's error in the PCS.

Amendment 2 by Rep. Jenne (lines 286-294):

- Removes exemption from adjuster licensure for persons adjusting property claims on foreclosed properties for financial institutions from the PCS.

Amendment 3 by Rep. Jenne (lines 312-330):

- Restores public adjuster fees to current law.

Amendment 4 by Rep. Jenne (lines 401-428):

- Removes restrictions on advertisement and solicitation for public adjusters.

Amendment 5 by Rep. Jenne (lines 487-563):

- Removes restrictions on conduct of public adjusters.
- Removes restriction of licensed contractor adjusting property insurance claims as a public adjuster.
- Removes the 3-year time period for filing a notice of claim, supplemental claim, or re-opened claims due to hurricanes or windstorms.

Amendment 6 by Rep. Abruzzo (Lines 545-546):

- Adds two alternative adjuster designations to the designation required under current law in order to be licensed as a public adjuster apprentice.

Amendment 7 by Rep. Jenne (lines 546-563):

- Removes the 3-year time period for filing a notice of claim, supplemental claim, or re-opened claims due to hurricanes or windstorms.

Amendment 8 by Rep. Jenne (lines 570-610):

- Requires the OIR to issue an approval of a rate filing, rather than a notice of intent to approve.
- Prohibits insurers from using a "use and file" rate filing for property insurance.

Amendment 9 by Rep. Jenne (lines 761-771):

- Removes the prohibition for OIR interference with an insurer's payment of acquisition costs by insurance companies

Amendment 10 by Rep. Jenne (lines 1003-1069):

- Removes the repeal of provisions relating to rate filings required for medical malpractice due to the medical malpractice reforms enacted in 2003 Special Session D.

Amendment 11 by Rep. Jenne (lines 1099-1110):

- Removes the requirement for rate certification by the actuary submitting additional or supplemental information for property insurance rate filing, rather than the CEO, CFO, or chief actuary of the insurer.

Amendment 12 by Rep. Jenne (lines 1145-1187):

- Restores obsolete provisions. Removes the deleting of requirements regarding the correlation of discounts, credits, and other rate differentials for hurricane mitigation to the uniform home grading scale, thereby restoring current law.

Amendment 13 by Rep. Jenne (lines 1292-1304):

- Removes the provision allowing property insurers to give reduced policyholder notice of nonrenewal for nonrenewals due to an insurance company's problematic financial condition.

Amendment 14 by Rep. Jenne (lines 1305-1357):

- Removes provisions allowing insurers to change policy terms of property or casualty insurance by insurers at policy renewal under specified conditions.

Amendment 15 by Rep. Jenne (lines 1419-1440):

- Restores current law regarding replacement costs.

Amendment 16 by Rep. Bernard (Lines 1509-1543):

- Provides different legislative findings and intent for the sinkhole changes provided in the PCS.
- Restricts application of the changes to the sinkhole law provided in the PCS to claims under policies issued on or after July 1, 2011.

Amendment 17 by Rep. Jenne (lines 1623-1647):

- Removes the definition of "structural damage" and does not provide for an alternative definition. Thus, "structural damage" will not be defined in law.

Amendment 18 by Rep. Jenne (lines 1689-1694):

- Removes a 3-year statute of repose on claims for sinkhole coverage.

Amendment 19 by Rep. Jenne (lines 1695-1696):

- Removes the repeal of the sinkhole database.

Amendment 20 by Rep. Jenne (lines 1808-1816):

- Removes the prohibition of rebates to policyholders from persons performing sinkhole repairs and voiding coverage if rebates are received.
- Removes a requirement that policyholders refund rebates and the imposition of criminal penalties for accepting rebates.

Amendment 21 by Rep. Jenne (lines 1916-1929):

- Removes the provisions requiring the policyholder to file certain reports as a pre-condition to accepting payment for sinkhole losses.

Amendment 22 by Rep. Jenne (lines 2018-2024):

- Removes one of the grounds for disqualification of a neutral evaluator by DFS.

Amendment 23 by Rep. Jenne (lines 2130-2131):

- Removes the designation of neutral evaluators as agents of DFS and the granting of immunity.

1

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCS for HB 803 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative(s) _____ offered the following:

Amendment

Remove line 159 and insert:

a residential structure or its contents ~~and shall exclude~~

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

(2)

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 286-294

T I T L E A M E N D M E N T

Remove line(s) 12-13 and insert:

amending s. 626.854, F.S.; providing

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

3

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 312-330 and insert:

contract with the insured or claimant. The contracts described in this paragraph are not subject to the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of 318 value in excess of:

1. Ten percent of the amount of insurance claim payments made by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the period of 1 year after the declaration of emergency.

2. Twenty percent of the amount of all other insurance claim payments.

T I T L E A M E N D M E N T

Remove line(s) 13-16 and insert:

Licensure; amending s. 626.854, F.S.; providing application; providing statements that may be

(4)

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 401-428.

T I T L E A M E N D M E N T

Remove line(s) 16-22 and insert:

supplemental claim; requiring certain persons who act on behalf of

5

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with directory and title amendments)

Remove lines 487-563 and insert:

(14) The provisions of subsections (5)-(13) apply only to residential property insurance policies and condominium unit owner policies as defined in s. 718.111(11).

T I T L E A M E N D M E N T

Remove line(s) 22-51 and insert:

disclaimer; amending s. 627.062, F.S.; deleting an

6

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No.PCS for HB 803 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative(s) Abruzzo offered the following:

Amendment (with title amendment)

Between lines 545 and 546, insert:

Section 8. Subsection (4) of section 626.8651, is amended to read:

(4) An applicant must have received designation as an Accredited Claims Adjuster (ACA)), as a Certified Adjuster (CA), or as a Certified Claims Adjuster (CCA) after completion of training that qualifies the applicant to engage in the business of a public adjuster apprentice fairly and without injury to the public. Such training and instruction must address adjusting damages and losses under insurance contracts, the terms and effects of insurance contracts, and knowledge of the laws of this state relating to insurance contracts.

Amendment No.

T I T L E A M E N D M E N T

Remove line 45 and insert:

licensed public adjuster; providing an exception; amending s. 626.8651, F.S.; revising requirements for a public adjuster apprentice license to add additional designations; creating

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

7

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 546 - 563

T I T L E A M E N D M E N T

Remove line(s) 45-51 and insert:

licensed public adjuster; providing an exception; amending s. 627.062, F.S.; deleting an

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

8

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 570 - 610 and insert:

(2) As to all such classes of insurance:

(a) Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals that ~~to~~ allow the insurer a reasonable rate of return on the ~~such~~ classes of insurance written in this state. A copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes thereto, must ~~shall~~ be filed with the office under one of the following procedures except as provided in subparagraph 3.:

1. If the filing is made at least 90 days before the proposed effective date and ~~the filing~~ is not implemented during the office's review of the filing and any proceeding and judicial review, ~~then~~ such filing is ~~shall be~~ considered a "file and use" filing. In such case, the office shall finalize its review by issuance of an approval ~~a notice of intent to approve~~

or a notice of intent to disapprove within 90 days after receipt of the filing. The approval ~~notice of intent to approve~~ and the notice of intent to disapprove constitute agency action for purposes of the Administrative Procedure Act. Requests for supporting information, requests for mathematical or mechanical corrections, or notification to the insurer by the office of its preliminary findings does ~~shall~~ not toll the 90-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue an approval ~~a notice of intent to approve~~ or a notice of intent to disapprove within 90 days after receipt of the filing.

2. If the filing is not made in accordance with ~~the provisions~~ of subparagraph 1., such filing must ~~shall~~ be made as soon as practicable, but within ~~no later than~~ 30 days after the effective date, and is ~~shall be~~ considered a "use and file" filing. An insurer making a "use and file" filing is potentially subject to an order by the office to return to policyholders those portions of rates found to be excessive, as provided in paragraph (h).

3. For all property insurance filings ~~made or submitted after January 25, 2007, but before December 31, 2010~~, an insurer seeking a rate that is greater than the rate most recently approved by the office shall make a "file and use" filing. For purposes of this subparagraph, motor vehicle collision and comprehensive coverages are not considered to be property coverages.

52

53 **T I T L E A M E N D M E N T**

54 Remove line(s) 51 and insert:

55 applicability; amending s. 627.062, F.S.; requiring an approval

56 of a rate filing by the office; requiring insurers to use a

57 "file and use" rate filing for property insurance; deleting an

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

(9)

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 761-771 and insert:

chapter, the office may ~~shall~~ not, directly or indirectly prohibit any insurer, including any residual market plan or joint underwriting association, from paying acquisition costs based on the full amount of premium, as defined in s. 627.403, applicable to any policy, or prohibit any such insurer from including the full amount of acquisition costs in a rate filing.

T I T L E A M E N D M E N T

Remove line(s) 53-56 and insert:

Regulation from, directly or indirectly, prohibiting any insurer from paying acquisition costs or including acquisition costs in a rate filing; deleting obsolete provisions

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

10

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 1003-1069.

T I T L E A M E N D M E N T

Remove line(s) 56-58 and insert:

and casualty insurance;

11

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment

Remove lines 1099-1110 and insert:

(d) The commission may adopt rules and forms ~~pursuant~~

12

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCS for HB 803 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative(s) Jenne offered the following:

Amendment (with title amendment)

Remove lines 1145-1187 and insert:

the rate filing. All insurance companies must make a rate filing which includes the credits, discounts, or other rate differentials or reductions in deductibles by February 28, 2003. By July 1, 2007, the office shall reevaluate the discounts, credits, other rate differentials, and appropriate reductions in deductibles for fixtures and construction techniques that meet the minimum requirements of the Florida Building Code, based upon actual experience or any other loss relativity studies available to the office. The office shall determine the discounts, credits, other rate differentials, and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation, which may be used by insurers in rate filings.

(b) By February 1, 2011, the Office of Insurance Regulation, in consultation with the Department of Financial Services and the Department of Community Affairs, shall develop and make publicly available a proposed method for insurers to establish discounts, credits, or other rate differentials for hurricane mitigation measures which directly correlate to the numerical rating assigned to a structure pursuant to the uniform home grading scale adopted by the Financial Services Commission pursuant to s. 215.55865, including any proposed changes to the uniform home grading scale. By October 1, 2011, the commission shall adopt rules requiring insurers to make rate filings for residential property insurance which revise insurers' discounts, credits, or other rate differentials for hurricane mitigation measures so that such rate differentials correlate directly to the uniform home grading scale. The rules may include such changes to the uniform home grading scale as the commission determines are necessary, and may specify the minimum required discounts, credits, or other rate differentials. Such rate differentials must be consistent with generally accepted actuarial principles and wind-loss mitigation studies. The rules shall allow a period of at least 2 years after the effective date of the revised mitigation discounts, credits, or other rate differentials for a property owner to obtain an inspection or otherwise qualify for the revised credit, during which time the insurer shall continue to apply the mitigation credit that was applied immediately prior to the effective date of the revised credit. Discounts, credits, and other rate differentials established for rate filings under this paragraph shall

supersede, after adoption, the discounts, credits, and other rate differentials included in rate filings under paragraph (a).

T I T L E A M E N D M E N T

Remove lines 59-67 and insert:

conforming provisions to

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

13

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 1292-1304.

T I T L E A M E N D M E N T

Remove line(s) 69-72 and insert:

creating s.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

14

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with directory and title amendments)

Remove lines 1305-1357.

T I T L E A M E N D M E N T

Remove line(s) 72-82 and insert:

the interests of the public or policyholders; amending s. 627.7011,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

15

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 1419 - 1440 and insert:

(3) In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs, the insurer shall pay the replacement cost without reservation or holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling or property.

T I T L E A M E N D M E N T

Remove line(s) 83-93 and insert:

F.S; deleting obsolete provision; amending s. 627.70131, F.S.;

16

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCS for HB 803 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Bernard offered the following:

Amendment (with title amendment)

Remove lines 1509-1543 and insert:

Section 15. The Legislature finds and declares:

(1) There is a compelling state interest in maintaining a viable and orderly private-sector market for property insurance in this state. The lack of a viable and orderly property market reduces the availability of property insurance coverage to state residents, increases the cost of property insurance, and increases the state's reliance on a residual property insurance market and its potential for imposing assessments on policyholders throughout the state.

(2) Sections 16 through 22 of this act revise and adopt new technical or scientific definitions in order to implement and advance the Legislature's intended reduction of sinkhole claims and disputes. Certain other revisions to ss. 627.706-

627.7074, Florida Statutes, are enacted to advance legislative intent to rely on scientific or technical determinations relating to sinkholes and sinkhole claims, reduce the number and cost of disputes relating to sinkhole claims, and ensure that repairs are made commensurate with the scientific and technical determinations and insurance claims payments.

(3) Sections 16 through 22 of this act affect only claims under policies issued on or after July 1, 2011.

T I T L E A M E N D M E N T

Remove lines 96-98 and insert:

payments; providing legislative intent with respect to statutory changes in the act relating to sinkhole insurance coverage; providing applicability; amending s.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

17

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 1623-1647.

T I T L E A M E N D M E N T

Remove line(s) 103-104 and insert:

revising definitions; placing a 3-year statute of repose on claims for

(18)

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 1689-1694

T I T L E A M E N D M E N T

Remove line(s) 104-105 and insert:

damage"; repealing s. 627.7065, F.S., relating to

19

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 1695-1696

T I T L E A M E N D M E N T

Remove line(s) 105-106 and insert:

sinkhole coverage; amending s.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

20

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 1808-1816

T I T L E A M E N D M E N T

Remove line(s) 115-120 and insert:

exceptions; limiting a policyholder's

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

21

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 1916-1929

T I T L E A M E N D M E N T

Remove line(s) 129-131 and insert:

and other specific information; amending s. 627.7074, F.S.; revising

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

22

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment

Remove lines 2018-2024

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

23

Amendment No.

Bill No. **PCS for HB 803**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Insurance & Banking Subcommittee

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 2130-2131

T I T L E A M E N D M E N T

Remove line(s) 142-143 and insert:

report;

Insurance & Banking Subcommittee

Tuesday, April 5, 2011
4:00 PM - 6:00 PM
404 HOB

AMENDMENT PACKET # 2

Dean Cannon
Speaker

Bryan Nelson
Chair

INSURANCE & BANKING SUBCOMMITTEE

PCS for HB 803 by Rep. Wood
Property and Casualty Insurance

AMENDMENT SUMMARY #2
April 5, 2011

Amendment 24 by Rep. Wood (Lines 1837-1838): Clarifies current law prohibiting an insurer from nonrenewing sinkhole loss coverage if the insurer pays policy limits or less on a sinkhole claim and the property has been repaired.

Amendment 25 by Rep. Wood (Lines 2192-2193): Technical amendment correcting a scrivener's error in the effective date. Amendment ensures bill is effective upon becoming a law except for Sections 6, 7 and 8 which contain effective dates in the directory language.

Amendment 26 by Rep. Davis (Lines 1211 - 1304): Shortens the notice period given to consumers when their property insurance policy is cancelled, nonrenewed, or terminated by the insurer to 90 days. Current law requires the insurer to give notice of 100 days and 180 days for policyholders with an insurer for 5 years, or June 1st, whichever is earlier.

24

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCS HB 803 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative(s) Wood offered the following:

Amendment

Remove lines 1837-1838 and insert:

property insurance on the basis of filing of claims for sinkhole ~~partial~~ loss ~~caused by sinkhole damage or clay shrinkage~~ if ~~as long as~~

25

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCS HB 803 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative(s) Wood offered the following:

Amendment

Remove lines 2192-2193 and insert:

act, this act shall take effect upon becoming a law.

26

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCS HB 803 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative(s) Davis offered the following:

Amendment (with title amendment)

Remove lines 1211-1304 and insert:

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, apartment building, or other policy covering a residential structure or its contents:

(b) The insurer shall give the named insured written notice of nonrenewal, cancellation, or termination at least 90 ~~100~~ days before ~~prior to~~ the effective date of the nonrenewal, cancellation, or termination. ~~However, the insurer shall give at least 100 days' written notice, or written notice by June 1, whichever is earlier, for any nonrenewal, cancellation, or termination that would be effective between June 1 and November~~

~~30.~~ The notice must include the reason or reasons for the nonrenewal, cancellation, or termination~~, except that:~~

~~1. The insurer shall give the named insured written notice of nonrenewal, cancellation, or termination at least 180 days prior to the effective date of the nonrenewal, cancellation, or termination for a named insured whose residential structure has been insured by that insurer or an affiliated insurer for at least a 5-year period immediately prior to the date of the written notice~~.

1.~~2.~~ If ~~When~~ cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must ~~shall~~ be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due any of her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term ~~"Nonpayment of premium"~~ also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are ~~shall be~~ void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by

certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and if the contract is void, any premium received by the insurer from a third party must ~~shall~~ be refunded to that party in full.

2.~~3.~~ If ~~When~~ such cancellation or termination occurs during the first 90 days ~~during which~~ the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must ~~shall~~ be given unless ~~except where~~ there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

~~4. The requirement for providing written notice of nonrenewal by June 1 of any nonrenewal that would be effective between June 1 and November 30 does not apply to the following situations, but the insurer remains subject to the requirement to provide such notice at least 100 days prior to the effective date of nonrenewal:~~

~~a. A policy that is nonrenewed due to a revision in the coverage for sinkhole losses and catastrophic ground cover collapse pursuant to s. 627.706, as amended by s. 30, chapter 2007-1, Laws of Florida.~~

~~b. A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement or renewal coverage to the policyholder.~~

After the policy has been in effect for 90 days, the policy may ~~shall~~ not be canceled by the insurer unless ~~except when~~ there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after ~~of~~ the date of effectuation of coverage, or a substantial change in the risk covered by the policy or if ~~when~~ the cancellation is for all insureds under such policies for a given class of insureds. This paragraph does not apply to individually rated risks having a policy term of less than 90 days.

3. Notwithstanding any other provision of law, an insurer may cancel or nonrenew a property insurance policy after at least 45 days' notice if the office finds that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal of some or all of its policies. The office may base such finding upon the financial condition of the insurer, lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The office may condition its finding on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81 or to the appointment of a receiver under chapter 631.

Amendment No.

T I T L E A M E N D M E N T

Between lines 68 and 69, insert:

reducing the notice time for nonrenewal, cancellation, or termination; removing exceptions to the notice of nonrenewal, cancellation, or termination;