

**-The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

Prepared By: Banking and Insurance Committee

BILL: PCS/SB 1866

INTRODUCER: Banking and Insurance Committee and Senator Posey

SUBJECT: Hurricane Preparedness and Insurance

DATE: April 4, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>GA</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill makes the following changes, primarily to provisions that were enacted in the property insurance legislation enacted during the 2007-A Special Session (Ch. 2007-1, L.O.F.; HB 1-A):

- Allows all insurers that qualify as a limited apportionment company (\$25 million in surplus or less) to purchase the additional \$10 million coverage from the Florida Hurricane Catastrophe Fund (FHCF).
- Deletes the June 1, 2007 expiration date on the provision that allows Citizens Property Insurance Corporation (Citizens) to mutually agree with the State Board of Administration on how to structure FHCF coverage for policies that it assumes from an insurer that is placed in liquidation.
- Revises the conditions for a Florida domestic mutual insurer or an insurer that exclusively writes mobile homes to obtain a surplus note under the Capital Build-Up Incentive Program.
- Applies the \$50 million surplus requirement to a domestic residential property insurer if it is a subsidiary of an insurer domiciled in another state.
- Clarifies that the annual report card for insurers prepared by the consumer advocate regarding consumer complaints and the time it takes to pay claims only applies to personal residential property insurers.
- Clarifies that the prohibition against making a “use and file” rate filing by a property and casualty insurer (until December 31, 2008) applies to a rate filing submitted after January 25, 2007 (the effective date of HB 1-A).
- Clarifies that a multi-line discount may only be offered by an insurer to a consumer that has purchased another policy from the same insurer or insurer group.

- Revises the legislative findings for establishing Citizens Property Insurance Company.
- Clarifies that the newly expanded Citizens assessment base applies only to deficits incurred after January 25, 2007.
- Permits a policyholder that has been removed from Citizens via an assumption agreement with another insurer to continue to be eligible for Citizens coverage through the end of the assumption period regardless of any offer of coverage.
- Provides criteria for determining when “comparable coverage” has been offered to a policyholder for purposes of determining eligibility for coverage from Citizens.
- Deletes the requirement that by July 1, 2007, an application for new coverage with Citizens is subject to a 10-day waiting period before coverage is effective.
- Clarifies the ethics requirements that apply to members of Citizens board of governors and senior managers. Specifies that a board member appointed due to insurance expertise may be an employee, (etc.) of an insurance entity that has a contract with Citizens. Permits a board member to vote on a matter if disclosure of a conflict of interest is made and if the insurance entity that board member represents would not obtain a special benefit.
- Requires a Citizens employee to notify the Citizens Office of the Internal Auditor, instead of the Division of Insurance Fraud, of suspected fraud by a Citizens employee.
- Requires the next rate change for Citizens that may increase rates to be filed with the OIR by January 1, 2008, rather than be effective on that date.
- Provides that only 100 days notice of non-renewal is required, rather than June 1, if earlier, for a nonrenewal effective during hurricane season, if the policy is being non-renewed for the sole purpose of revising the coverage for sinkhole losses; or if the policy is non-renewed by Citizens for a policy assumed by an insurer that offers replacement or renewal coverage.
- Clarifies that a new deductible for residential property insurance may only be implemented as of the date of the policy’s renewal.
- Specifies that the requirement that an insurer pay or deny a claim within 90 days of receiving notice of a claim applies to a residential property insurance claim.
- Excludes a tenant’s policy from the requirement of offering an exclusion of contents coverage.
- Specifies that the policy exclusions for windstorm or contents coverage may only be implemented as of the date of a policy’s renewal.
- Prohibits the OIR from requiring a property insurer to report specified data on claims and payments until January or later of the following year.
- Specifies that any kind of self-insurance fund, liability pool, or risk management fund is not covered by the Florida Insurance Guaranty Association (FIGA).
- Clarifies that FIGA may levy emergency assessments of 2 percent of premium for payment of covered claims (not just homeowners claims) of insurers rendered insolvent by the effects of a hurricane.
- Permits all municipalities and counties in the state to issue bonds to assist FIGA in expediting the handling and payment of covered claims of insolvent insurers.

This bill substantially amends the following sections of the Florida Statutes: 163.01, 215.555, 215.5595, 624.407, 627.0613, 627.062, 627.0655, 627.351, 627.3511, 627.3515, 627.3517,

627.4035, 627.4133, 627.701, 627.70131, 627.712, 627.713, 627.7277, 631.52, 631.57, and 631.695.

## II. Present Situation:

### Background on Citizens Property Insurance Corporation (“Citizens”)

*Organization* - In 2002, the Florida Legislature created Citizens, which combined the state’s two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). The merger allowed Citizens to become exempt from federal income taxes. Citizens operates under the direction of an 8-member Board of Governors with the Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives appointing two members each. Citizens currently offers three types of property and casualty insurance in three separate accounts.

- Personal Lines Account (PLA): a statewide account offering multiperil policies covering homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies;
- Commercial Lines Account (CLA): a statewide account offering multiperil policies covering condominium associations, apartment buildings, and homeowners associations; and
- High-Risk Account (HRA): a coastal area account offering wind-only policies for both personal lines residential and commercial (residential and non-residential) policyholders. In these “wind-only” zones, private insurers may offer other peril coverage, but are not required to provide windstorm coverage. However, as mandated by HB 1-A, Citizens recently submitted to the Financial Services Commission and the Legislative Budget Commission as a business plan for issuing multiperil policies in the HRA, which plan was approved, which allows Citizens to offer multiperil coverage and wind-only coverage, or both, for risks located in areas eligible for coverage in the HRA.

As of December 31, 2006, Citizens had 1,298,922 policies in force, making it the largest insurer in Florida. Currently, Citizens is receiving an average of 70,000 new applications per month. The number of policies insured by Citizens, the written premium, and the exposure or amount of insured property value in each of its three accounts is summarized below.

<b>Policies Issued by Citizens Property Insurance Corp.</b>			
<b>(as of Dec. 31, 2006)</b>			
Account	Policies in Force	Premium	Exposure*
High Risk Account	403,509	\$1.11 bil.	\$178.3 bil.
Personal Lines Account	743,592	\$1.37 bil.	\$137.1 bil.
Commercial I Lines Account	8,841	\$472.3 mil.	\$58.2 bil.
Transitional Residential Policies**	142,384	\$216.5 mil.	\$30.3 bil.
Transitional Commercial Policies**	596	\$29.8 mil.	\$4.8 bil.
<b>Total</b>	<b>1,298,922</b>	<b>\$3.2 bil.</b>	<b>\$408.8 bil.</b>

Source: Citizens Prop. Ins. Corp.

\* Exposure = insured value of dwelling and contents.

\*\*Transitional policies are policies that Citizens' assumed in July 2006 under the Liquidation Plan for Poe Financial Group approved by the OIR and by court order. Under the Plan, Citizens provided insurance coverage to eligible policyholders of the Poe Financial Group. Legislation in 2006 allowed Citizens to assume the Poe policies and use the same rates and forms as Poe until the end of the insurer's policy term.

Citizens estimates its total losses for the 2004 and 2005 storms at \$2.92 billion and \$2.68 billion respectively.

*Eligibility for Coverage* – Chapter 2007-1, L.O.F (HB 1-A), expanded eligibility for residential coverage in Citizens in two primary ways. First, it deleted the provision added in 2006 (SB 1980) that non-homestead property is ineligible for Citizens coverage unless the property owner submits certification from an agent that coverage has been rejected by at least three surplus lines insurers and one authorized insurer. HB 1-A requires that by July 1, 2007, Citizens place a 10-day waiting period on new coverage before it is effective for the purpose of allowing private market insurers an opportunity to offer coverage to prospective Citizens insureds, though an exemption was created for insurance applications made in conjunction with a real estate closing.

Second, HB 1-A places Citizens in more direct competition with the voluntary market by substantially revising the law that made a property ineligible for coverage from Citizens if an offer of coverage was made by an authorized insurer at its approved rates. As revised by HB 1-A, if a new applicant to Citizens is offered coverage from an insurer at its approved rate, the property is not eligible for a Citizens policy unless the insurer's premium is more than 25 percent greater than the premium for comparable coverage from Citizens. A policyholder that is currently insured by Citizens remains eligible for coverage regardless of any offer of coverage from a private market insurer. This allows a policyholder to choose to stay in Citizens and reject any "take-out" offers from the voluntary market.

House Bill 1-A requires the Florida Market Assistance Plan to develop an electronic database for the purpose of confirming eligibility for coverage in Citizens. The database is designed to help agents and insureds to be aware of whether coverage with Citizens is an option, thus enabling the prospective policyholder to make a more fully informed choice when selecting coverage.

*Assessment Authority/Current Assessments* – Chapter 2007-1, L.O.F., substantially expanded the types of insurance policies and premiums that are subject to assessments to fund deficits of Citizens. Previously, only property insurance premiums were subject to assessment. As expanded, the assessment base is substantially the same as that of the Florida Hurricane Catastrophe Fund, which includes all lines of property and casualty insurance, including auto insurance, but not workers' compensation or accident and health. Medical malpractice premiums are also.

*Rate Standards* – HB 1-A substantially revised the requirements, standards, and procedures for establishing rates for Citizens policies. The long-term standard for establishing Citizens rates is now actuarial soundness, rather than non-competitiveness or collecting sufficient premium to have reserves and reinsurance to cover a specified probable maximum loss. Citizens' rates must be actuarially sound and subject to s. 627.062, F.S., which prohibits rates that are excessive, inadequate, or unfairly discriminatory, and specifies factors for OIR to consider in making this

determination. After the public hurricane loss model has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, that model shall serve as the minimum benchmark for determining Citizens' windstorm rates. Citizens rates are no longer required to be non-competitive and no lower than the top 20 insurers.

House bill 1-A also freezes Citizens rates at the December 31, 2006 level for the remainder of 2007, except for any rate decreases implemented under the January 1, 2007 rate filing and any further rate decreases that may be approved during 2007 (such as a rate decrease for a policy change like the sinkhole exclusion pending before OIR). A new rate filing is required, under the standard to be actuarially sound, effective January 1, 2008. HB 1-A requires the OIR to annually establish Citizens' rates within 45 days after Citizens files recommended rates, and prohibits Citizens from legally challenging the OIR determination.

*Payment of Premium* – Chapter 2007-1, L.O.F. (HB 1-A) required Citizens (along with private market insurers) to allow personal lines residential and commercial policyholders to pay premiums on a quarterly or semi-annual installment payment plan.

*Oversight, Internal Controls, and Standards of Conduct* – Part III of ch. 112, establishes the code of ethics for public officers and employees, which mandates that employees comply with financial disclosure and reporting requirements. The acceptance of gifts by members and employees of the Legislature and agency officials, to prohibit any gifts or expenditures, regardless of the value. Each year, public officers and specified employees are required to submit a financial disclosure to the Commission on Ethics. Noncompliance with these provisions may result in civil penalties and forfeiture of public retirement benefits. [s. 112.317, F.S.]

In 2006, the Legislature adopted a number of changes regarding Citizens in response to difficulties Citizens experienced during the 2004 and 2005 hurricane seasons. These changes included:

- Subjecting board members and senior managers to the code of ethics and financial disclosure requirements applicable to public officials in Part III of ch. 112, F.S.;
- Requiring all employees to annually submit a statement attesting that no conflict of interest exists;
- Prohibiting senior managers, for two years following termination of employment, from representing any person or entity before Citizens, or from being employed or under contract with an insurer that received a take-out bonus from Citizens;
- Requiring Citizens to have an internal auditor to ensure the corporation complies with applicable statutes, rules, and standards;
- Requiring employees to notify the Division of Insurance Fraud within 24 hours of having information that would lead a reasonable person to suspect that fraud may have been committed by an employee of Citizens.

Citizens general counsel has expressed concerns regarding the question of which provisions of Part III of chapter 112, F.S. apply to Citizens board members and upper management. In particular, there is concern regarding s. 112.313(7), F.S., which prohibits a public officer or agency employee from having a contract or employment with any business entity or agency that is doing business with the agency of which he or she is a public employee, or that will create a frequently recurring conflict of interest. Members of the Citizens board are often appointed

because of a demonstrated expertise in insurance—expertise that has often been gained through employment with an insurance company other than Citizens. Application of this provision may prevent Citizens from utilizing board members with expertise in the property insurance market.

### **Insurance Capital Build-Up Incentive Program**

In 2006, the Legislature created the Insurance Capital Build-Up Incentive Program, which provides for the lending of state funds in the form of surplus notes to new or existing authorized residential property insurers under specified conditions. The maximum dollar amount of a surplus note is set at \$25 million under the program or 20 percent of the total funds available for the program. The surplus note is repayable to the state, with a 20-year term, at the 10-year Treasury Bond interest rate (with interest only payments the first three years).

In order to qualify for a surplus note, an insurer must contribute at least as much new capital to its surplus as it is requesting in the surplus note. The insurer's surplus, new capital, and the surplus note must total at least \$50 million in order to qualify. Additionally, the insurer must commit to meeting a minimum writing ratio of net written premium to surplus of at least 2:1 for the term of the surplus note, and the written premium must be for residential property insurance in Florida that covers the peril of wind.

Chapter 2007-1, L.O.F. (HB 1-A) revised the program to allow an insurer writing only manufactured housing residential property insurance to qualify for a surplus note of up to \$7 million, if the insurer's surplus, new capital, and the surplus note total at least \$14 million. Such insurers do not need to meet the 2:1 writing ratio required of most insurers under the program; instead they must comply with the minimum premium to surplus ratio provisions of s. 624.4095, F.S. Insurers writing only manufactured housing residential property insurance also now have priority to receive a surplus note under the program.

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

The Florida Hurricane Catastrophe Fund is a tax-exempt trust fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers, (s. 215.555, F.S.) All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The FHCF is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention (deductible). The FHCF provides insurers an additional source of reinsurance that is significantly less expensive than what is available in the private market; enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers. The FHCF must charge insurers the "actuarially indicated" premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

Insurers must first pay hurricane losses up to their "retention" for each hurricane, similar to a deductible, before being reimbursed by the FHCF coverage. In 2005, legislation addressed multiple storm seasons by providing that the retention is reduced to one-third of the regular retention for a third hurricane and each additional hurricane. The full retention is applied to the

two hurricanes causing the greatest losses to the insurer. The retention is adjusted annually based on the FHCF's exposure. For the 2007 hurricane season the retention is approximately \$6 billion. A retention is calculated for each insurer based on its share of fund premiums.

For the 2007 hurricane season the Cat Fund will pay a maximum of approximately \$16 billion for standard Cat Fund coverage. That amount may be adjusted annually based on the percentage growth in fund exposure, but not to exceed the dollar growth in the cash balance of the fund. The maximum coverage amount for each insurer is based on that insurer's share of the total premiums paid to the fund.

However, HB 1-A added two additional layers of optional coverage that property insurers may buy for the 2007, 2008, and 2009 hurricane seasons:

- Temporary Increase in Coverage Limit options ("TICL"), that allow an insurer to purchase additional reinsurance for its share of up to \$12 billion, in \$1 billion increments, above the current Cat Fund annual limit of \$16 billion estimated for 2007 (i.e., up to a total of \$28 billion). The SBA may further increase the limits by an additional \$4 billion (i.e., up to \$32 billion). Insurers must pay a premium established by the SBA under the same method for determining "actuarially indicated" premiums for the mandatory Cat Fund coverage, generally equal to the estimated average annual loss for the coverage purchased. This is expected to be a premium of less than 3 percent of the coverage amount (commonly referred to as a 3 percent "rate-on-line.") These premiums are significantly lower than charged by private reinsurers and are the primary source of premium savings under HB 1-A.
- Temporary Emergency Additional Coverage Options ("TEACO"), that allow residential property insurers to purchase additional coverage below each insurer's market share of the Cat Fund retention. For 2007, the Cat Fund retention is \$6 billion. The TEACO options allow an insurer to select its share of a retention level of \$3 billion, \$4 billion, or \$5 billion, to cover 90 percent, 75 percent, or 45 percent of its losses up to the normal retention for the mandatory Cat Fund coverage. The act establishes the premiums that insurers must pay for the TEACO options. For the \$3 billion retention, the premium is an 85 percent rate-on-line; for the \$4 billion retention, the premium is an 80 percent rate-on-line; and for the \$5 billion retention, the premium is a 75 percent rate-on-line. The TEACO coverage applies to two hurricanes for each contract year. The TEACO premiums are priced at near-market levels. Therefore, these coverage options primarily benefit insurers which are unable to obtain reinsurance at these low levels, but are not expected to generate premium savings for most insurers. The relatively high premiums also serve to significantly reduce the risk to the state for the TEACO coverage.

If the cash balance of the FHCF is not sufficient to cover losses, the law allows the issuance of revenue bonds, which are funded by emergency assessments on property and casualty policyholders. The FHCF is authorized to levy emergency assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation, flood, accident and health insurance), including auto insurance and surplus lines policyholders. The assessment base for the FHCF was approximately \$35 billion for premiums written at year end 2006. Annual assessments are capped at 6 percent of premium with respect to losses from any 1 year and a maximum of 10 percent of premium to fund hurricane losses from multiple years.

**Supplemental FHCF Coverage for Limited Apportionment Insurance Companies**

In 2006, the Legislature authorized limited apportionment companies (a company with \$25 million in surplus or less) to purchase coverage from the FHCF that would reimburse the insurer for up to \$10 million in losses from each of two hurricanes for the 2006 hurricane season only. The coverage was priced at a 50 percent rate-on-line with a free reinstatement of coverage for a second storm that triggers a recovery, meaning that the insurer must pay 50 percent of the coverage selected (e.g. \$5 million premium for \$10 million in coverage). The limited apportionment insurer's retention for such coverage was set at 30 percent of the company's surplus, thus an insurer with a surplus of \$10 million would have \$3 million in losses before being able to receive funds from the FHCF for its supplemental coverage. The coverage is in addition to the Cat Fund coverage that a limited apportionment company already purchases from the FHCF, but with a much lower retention.

The program was developed to address the problem of private reinsurance being either unavailable, or only available at exorbitant costs for insurance companies with low surplus amounts. Limited apportionment companies around 30 percent of the residential properties in Florida. Because of the low retention utilized for the supplemental coverage, the Cat Fund is much more likely to have to pay insurers purchasing the coverage than it is for its regular coverage. However, the coverage is priced at a higher premium than regular Cat Fund coverage. Of 48 eligible limited apportionment companies, 32 purchased this additional coverage from the FHCF in 2006. The fund collected \$134.7 million in premiums for the limited apportionment coverage covering up to \$269.4 million in possible liabilities for each of two storms. The fund did not make claims payments on this coverage in 2006.

Chapter 2007-1, L.O.F. (HB 1-A) reinstated the FHCF supplemental coverage for limited apportionment companies for the 2007 hurricane season. However, the availability for the coverage is limited to insurers that purchased the supplemental coverage in 2006, limited apportionment companies that began writing property insurance in 2007, and insurers approved to participate in either 2006 or 2007 for the Insurance Capital Build-Up Incentive Program pursuant to s. 215.5595, F.S.

**Florida Insurance Guaranty Association (FIGA)**

The Florida Insurance Guaranty Association (FIGA) pays unpaid property or casualty insurance claims, other than workers' compensation, of insolvent insurance companies licensed in Florida. FIGA does not cover the first \$100 of a claim or amounts in excess of \$300,000 per claim, except with respect to policies covering homeowner's insurance, FIGA provides an additional \$200,000 for a covered claim. FIGA is divided into three accounts and funding is provided by assessments against authorized insurers, as needed for the payment of covered claims and costs of administration. The maximum annual assessment against each insurer is 2 percent of the insurer's net direct written premiums in the state in the prior year, for the types of insurance in each account. FIGA may also impose annual emergency assessments on insurers of up to 2 percent of written premium if necessary to fund revenue bonds issued by a municipality or county to pay claims of an insurer rendered insolvent due to a hurricane.

The three accounts are: 1) auto liability, 2) auto physical damage, and 3) all other property and casualty insurance other than workers' compensation.<sup>[1]</sup> This "all other" account includes property insurance (such as claims resulting from hurricane-related insolvencies), personal liability, commercial liability, commercial multi-peril, professional liability, and all other types of property and casualty insurance other than automobile and workers' compensation.

#### **Prohibition against Insurers Utilizing a "File and Use" Filing**

HB 1-A prohibits the allowance for property and casualty insurers to implement a rate change prior to filing for approval with OIR until December 31, 2008 (the current "use and file" option), unless the insurer files for a rate that is less than the insurer's most recent rate approved by the OIR. All filings that do not seek a lower rate must be made under the "file and use" procedures that require filing at least 90 days prior to the proposed effective date.

#### **Insurer Affiliates and Subsidiaries**

HB 1-A increased the minimum surplus requirement from \$5 million to \$50 million for a domestic residential property insurer that is a wholly owned subsidiary of an insurer authorized to do business in another state.

#### **Notice of Non-Renewal of a Residential Property Insurance Policy**

HB 1-A required 100 days written notice of nonrenewal of a residential property policy, rather than 90 days. However, notice is required by June 1, or at least 100 days notice, whichever is earlier, for a nonrenewal effective between June 1 and November 30 (hurricane season).

#### **Prompt Payment of Property Insurance Claims**

HB 1-A required property insurers to pay or deny a claim within 90 days of the receipt of the claim, unless the failure to pay the claim is caused by factors beyond the control of the insurer that reasonably prevent payment.

#### **Coverage Exclusions; Deductibles for Residential Property Insurance**

HB 1-A included three provisions that allow policyholders to significantly reduce their windstorm coverage and to assume the risk of loss, in exchange for a lower premium, as follows:

- Required insurers to make available to policyholders the option to exclude windstorm or hurricane coverage, if the policyholder personally writes a statement that he/she does not want such coverage and provides documentation of approval by any mortgage or lien holder.
- Eliminated maximum allowable deductibles, but requires a written statement by the policyholder and approval by a mortgage or lien holder if the deductible is in excess of 10 percent for a home valued at less than \$500,000. Insurers are still required to offer annual hurricane deductibles of 2 percent, 5 percent, and 10 percent of policy limits, with certain exceptions. The act allows, but does not require, the offer of a higher deductible.
- Required insurers to make available to policyholders the option to exclude coverage for contents, if the policyholder personally writes a statement that he/she does not want such coverage.

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<sup>[1]</sup> Section 631.55, F.S.

**The Office of the Consumer Advocate**

The Office of the Consumer Advocate is located in the Department of Financial Services and is responsible for representing the interests of the general public before the DFS and the OIR and before any forum in matters that relate to the jurisdiction of the DFS and the OIR.

Section 627.0613, F.S., provides that the Consumer Advocate is appointed by the Chief Financial Officer and reports directly to the Chief Financial Officer, but is not otherwise under the authority of the department. HB 1-A requires the consumer advocate to provide an annual report card on insurance companies, using a letter grade scale established by the Financial Services Commission. The report card will grade each insurer's performance regarding consumer complaints and the time it takes for the insurer to pay claims.

**III. Effect of Proposed Changes:**

**Section 1.** Amends, s. 163.01, F.S., as amended by chapter 2007-1, L.O.F., to correct a statutory reference.

**Section 2.** Amends subsections (4), (5) and (16) of s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund. Subsection (4) is amended to permit all insurers that qualify as a limited apportionment company (\$25 million in surplus or less) to be eligible for the FHCF addendum coverage of up to \$10 million, rather than just those companies that began writing property insurance in 2007. Additionally, the bill clarifies that insurers that purchased the addendum coverage in 2006 are eligible to once again purchase such coverage.

Subsection (5)(e), is amended to delete the June 1, 2007 expiration date on the provision that authorizes Citizens to reach an agreement with the SBA to determine how to structure FHCF coverage for policies that it assumes or otherwise acquires from an insurer that is placed in liquidation under chapter 631, F.S.

Subsection (16) is amended to clarify and simplify how the TEACO coverage amount and retention level for each insurer is calculated. There is no substantive change.

**Section 3.** Amends paragraphs (b), (c), and (g) of s. 215.5595(2), F.S., regarding the Insurance Capital Build-Up Incentive Program. Paragraph (b) is amended to allow an insurer that writes only manufactured housing policies, or a Florida domestic mutual insurer to obtain a surplus note under the program that is equal to the amount of new capital that such an insurer contributes to its surplus. Under current law, an insurer that applies for a surplus note after July 1, 2006 but before June 1, 2007, is limited to receiving a surplus note that is equal to half the amount of new capital that the insurer contributes to its surplus.

Paragraph (c) is amended to exempt domestic mutual insurers from the requirement that in order to receive a surplus note, an insurer's surplus, new capital, and the surplus note must total at least \$50 million. Instead, the surplus, new capital, and surplus note for a domestic mutual insurer must total at least \$25 million. This exemption joins the exemption added by HB 1-A for insurers writing only residential property insurance coverage for manufactured homes, which must only have a total of \$14 million in surplus, new capital and surplus note.

Paragraph (g) is amended to allow the SBA to give priority to domestic mutual insurers for receiving funds pursuant to the Insurance Capital Build-Up Incentive Program in the event that the amount of surplus notes requested by insurers exceeds the amount of funds available. Domestic mutual insurers would have the same priority currently given to insurers that sell only manufactured home residential property insurance for funds available from the program.

**Section 4.** Amends s. 624.408(1)(a), F.S., to specify that a domestic insurer that transacts residential property insurance and is a wholly owned subsidiary of an insurer *domiciled* in another state rather than *authorized to do business* must maintain a surplus as to policyholders of at least \$50 million. Therefore, if the parent company is a Florida domestic, the \$50 million surplus requirement would not apply to the Florida domestic subsidiary.

**Section 5.** Section 627.0613(4), as amended by chapter 2007-1, L.O.F., is amended to clarify that the annual report card prepared by the consumer advocate to grade insurers regarding consumer complaints and the time it takes for the insurer to pay claims only applies to authorized personal residential property insurers. Currently, the provision applies to property insurers, which would include commercial property insurers.

**Section 6.** Amends s. 627.062, F.S., as amended by chapter 2007-1, L.O.F., to clarify that the prohibition enacted in HB 1-A against making a “use and file” rate filing (which allows a rate filing to be implemented prior to approval by OIR) applies to a rate filing submitted on or after January 25, 2007 (the effective date of HB 1-A). This prohibition expires on December 31, 2008 and applies to all property and casualty insurance rate filings subject to this section (as provided in HB 1-A).

**Section 7.** Amends s. 627.0655, F.S., as amended by chapter 2007-1, L.O.F., to clarify that a multi-line discount may only be offered by an insurer to a consumer that has purchased another policy from the same insurer or insurer group.

**Section 8.** Amends s. 627.351(6), F.S., as amended by chapter 2007-1, L.O.F., related to Citizens Property Insurance Corporation (Citizens)

Paragraph (a) is amended to revise the legislative findings for the necessity of establishing Citizens. The bill specifies that the public purpose of establishing Citizens is to ensure the existence of an orderly market for property insurance for Florida’s citizens and businesses. The bill also specifies that insurers are unwilling or unable to provide affordable property insurance coverage in this state. It further notes that the absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state, thus creating a compelling public interest in assuring that property in the state is insured. The bill notes that Citizens is a government entity that is an integral part of the state and not a private insurance company. These changes are recommended by Citizens in order to support its tax-exempt status.

Paragraph (b) is amended to clarify that the newly expanded Citizens assessment base (pursuant to HB 1-A) applies only to deficits incurred after January 25, 2007. The Citizens assessment base now includes generally all property and casualty lines of business in the state except for workers’

compensation and medical malpractice. Deficits incurred by Citizens before that date would utilize the previous Citizens assessment base.

Paragraph (c) is amended to permit a policyholder that has been removed from Citizens via an assumption agreement with another insurer to continue to be eligible for Citizens coverage through the end of the assumption period regardless of any offers of coverage that person receives from an authorized insurer or surplus lines insurer. An assumption is when the insurer assumes liability, but the coverage and the premium of the Citizens policy remains unchanged until the end of the policy period, at which time the insurer will offer replacement or renewal coverage, using its own policies and rates. Under the bill, a policyholder whose coverage has been assumed by another insurer via an assumption agreement would have the same eligibility status as a current Citizens policyholder to stay with Citizens regardless of the premium charged by the insurer for the replacement or renewal coverage. Under current law, a person who is not a Citizens policyholder is not eligible for coverage with Citizens if they receive an offer from an authorized insurer that provides comparable coverage that is not 25 percent more expensive than the Citizens coverage.

Paragraph (c) is also amended to provide criteria for determining when “comparable coverage” has been offered to a policyholder for purposes of determining eligibility for personal residential or commercial residential coverage from Citizens. A comparison of policies shall be based on forms and coverage types that are reasonably comparable. Additionally, Citizens may rely on a determination of comparable coverage and premium that is made by the producing agent who submits the application to Citizens. Such determination is presumed correct and deemed to be made in the agent’s capacity as an agent for Citizens. It is acceptable to make a comparison solely of the premium with respect to the main building or structure on the following basis:

- The same coverage A or other building limits;
- The same percentage hurricane deductible that applies on an annual basis, or that applies to each hurricane for commercial residential property;
- The same percentage of ordinance and law coverage, if the same limit is offered by both Citizens and the authorized insurer;
- The same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer;
- The same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by Citizens and the authorized insurer in accordance with underwriting rules; and
- Any other form or coverage that is reasonably comparable as determined by the board.
- Any other differences in coverage may be ignored in making a determination.

In a situation where an application is submitted to Citizens seeking to purchase wind-only coverage, the premium for Citizens wind only coverage plus the premium for the ex-wind policy that is offered by an authorized insurer shall be compared to the premium for multi-peril coverage offered by an authorized insurer. Such comparison would be made using the standards specified above. Additionally, if either Citizens or an applicant requests from an authorized insurer a breakdown of the premium of the offer by types of coverage for purposes of making a comparison, and the authorized insurer is unwilling or unable to provide such information, then

Citizens may treat the offer as not being an offer of coverage at the insurer's approved rate. Thus, the applicant would be eligible for Citizens coverage.

The bill deletes the requirement in paragraph (c) that by July 1, 2007, an application for new coverage with Citizens is generally subject to a 10-day waiting period before coverage is effective. During the waiting period, Citizens must make the application available for review by general lines agents and authorized property and casualty insurers (likely through the Market Assistance Program).

Citizens is authorized to offer a monthly payment plan for the payment of premiums by consumers.

Subparagraph (c)17. is amended to permit Citizens Board of Directors to approve an exemption for good cause from the requirement that each insurer providing the non-wind coverage for risks insured in Citizens high-risk account provide claims adjusting services for the wind coverage provided by Citizens for such risks. Currently, the statute requires the board to hold a hearing and find that the insurer is not capable of providing adjusting services at an acceptable level of quality to Citizens policyholders.

Paragraph (d), which contains the ethics requirements for members of Citizens board of governors and senior managers, is amended by the bill to provide greater specificity with regard to the applicable provisions of part III of chapter 112, F.S. The bill specifies that members of the board of governors and senior managers are subject to the following provisions of the code of ethics for public officers and employees that apply to political subdivisions of the state:

- Section 112.313, F.S.: The standards of conduct for public officers, agency employees, and local government attorneys. Contains prohibitions against the solicitation of gifts, unauthorized compensation for purposes of undue influence, misuse of public position to obtain a personal benefit, conflicting employment or contractual relationships, and the use of information not available to the general public for personal gain. The section also contains post-employment restrictions that generally prohibit representing another person or entity for compensation before the body a person was a member of for two years following the vacation of the governmental position.
- Section 112.3135, F.S.: Restriction on the employment of relatives.
- Section 112.3143, F.S.: Conflicts of interest in voting. Appointed public officers must disclose the nature of a conflict of interest before participating in matters that inure to that person's gain or loss, or the gain or loss of an entity with which he is retained.
- Section 112.3145, F.S.: Disclosure of financial interests and clients represented before a state agency.
- Section 112.316, F.S.: Statement of Legislative intent that the statutes in this part shall not be construed to prevent a public officer or employee from accepting other employment or following other pursuits that do not interfere with the full and faithful discharge of state duties.
- Section 112.317, F.S.: Penalty provisions for violations of the standards of conduct.

The bill contains an exception to the standards of conduct pursuant to s. 112.313, F.S., that if a member of the Citizens board of governors has been appointed to that post because of his or her insurance expertise, that board member may be an employee, officer, director, or owner of an

insurance agency, insurance company, or other insurance entity that has a contractual relationship with Citizens. The board member may also participate and vote on a matter if disclosure of a conflict of interest is made pursuant to s. 112.3143, F.S., and if the insurance entity that board member represents would not obtain a special or unique benefit that would not apply to other similar insurance entities that have a contractual relationship with Citizens.

The prohibition placed on an employee of Citizens for two years after retirement or terminating employment with Citizens against having an employment or contractual relationship with an insurer that has a take-out bonus agreement with the corporation is narrowed to only apply to senior managers.

The requirement that a Citizens employee must notify the Division of Insurance Fraud within 48 hours after having information that would lead a reasonable person to suspect that fraud may have been committed by a Citizens employee is changed. Instead, the employee must notify the Citizens Office of the Internal Auditor.

Paragraph (m) is amended, regarding the timing of the next rate increase for Citizens. HB 1-A required that the rates in effect on December 31 2006, must remain in effect through the end of 2007, except for any allowable rate decrease. The act required that the next allowable rate increase shall take effect January 1, 2008, under the new rating standard that requires rates to be “actuarially sound” based on a recommended rate filed by Citizens and established by OIR. Instead, the bill requires the next rate change that may increase rates to be filed with the OIR by January 1, 2008, which will have the effect of delaying the effective date of that rate filing into sometime during the first few months of 2008. As under current law, the OIR must establish the rates within 45 days after the recommended rate is filed, but the effective date of the rate change is likely to be later, given the 45-day notice requirement to policyholders that applies to all insurers.

**Section 9.** Amends s. 627.3511(4), F.S., to correct a statutory reference.

**Section 10.** Amends s. 627.3515(3)(a), F.S., as amended by chapter 2007-1, L.O.F., regarding the market assistance plan that assists property and casualty insurance applicants to find coverage with authorized insurers. HB 1-A required the market assistance plan and Citizens to develop a business plan for an electronic database to determine eligibility for Citizens, and present it to the Financial Services Commission by September 1, 2007. The bill states that the business plan may provide that authorized insurers or agents of authorized insurers may submit electronically information that is needed to make a determination of Citizens eligibility. An authorized insurer that submits information that results in a risk being denied Citizens coverage is required by the bill to offer coverage to the risk at its approved rates, for the coverage and premium quoted, for at least 1 year.

**Section 11.** Amends s. 627.3517, F.S., to delete the provision that the “consumer choice” provisions do not apply during the first 10 days after a new application for coverage is submitted to Citizens. The deletion is a conforming change to the repeal of the 10 day waiting period for applications for new Citizens policies. Additionally, the consumer choice law is largely moot in light of the fact that a current policyholder of Citizens may choose to retain coverage with Citizens regardless of receiving an offer of coverage from an authorized, private market insurer.

**Section 12.** Amends s. 627.4035(1), F.S., as amended by chapter 2007-1, L.O.F., to clarify that all insurers issuing personal lines residential and commercial property insurance policies must, by July 1, 2007, offer a premium payment plan option that allows for quarterly and semiannual payment of premiums. Additionally, the bill clarifies that an insurer may also offer monthly payment plans.

**Section 13.** Amends s. 627.4133, F.S., regarding notices of cancellation or nonrenewal of a policy, and notices of renewal premium.

Paragraph (b) of subsection (2) currently requires an insurer to give an insured 100 days written notice of a nonrenewal of a personal lines or commercial residential property insurance policy. If the nonrenewal would be effective between June 1 and November 30 (the hurricane storm season) the insurer must give either 100 days written notice, or written notice by June 1, whichever is earlier.

Under case law, a material change in coverage may be considered a “nonrenewal” that would trigger the notice requirements of this section.<sup>1</sup> HB 1-A revised the required coverage for sinkholes, by requiring property insurers to provide coverage for catastrophic ground cover collapse and to make broader sinkhole coverage available for an additional premium. Citizens is revising its coverage accordingly, by deleting sinkhole coverage from the base policy, while offering the broader sinkhole coverage for an additional premium. This is a coverage reduction, but it also enables policyholders in certain counties to obtain a significant premium decrease. But, the current law may require notice of this change by June 1, for a policy that has a renewal date as late as December 1.

The bill provides two exceptions, by requiring 100 days notice, rather than the earlier notice on June 1, if:

- The policy is being non-renewed for the sole purpose of revising the policy to reflect changes in coverage for sinkhole losses and catastrophic ground cover collapse pursuant to s. 627.730, F.S.; or
- The policy is non-renewed by Citizens for a policy that has been assumed by an authorized insurer that offers replacement or renewal coverage to the policyholder.

The bill creates subsection (7) to place in the proper statutory section the requirement of HB 1-A that each residential property insurance renewal premium specify the amounts recouped for assessments, and the dollar amount of a premium increase that is due to a rate increase and the total dollar amount due to coverage changes. The bill applies this to residential property policies and specifies that the amount of the increase for coverage changes need only specify the total dollar amount due to all coverage changes.

**Section 14.** Amends s. 627.701, F.S., as amended by chapter 2007-1, L.O.F. Paragraphs (3)(a) and (c) are clarified by deleting reference to a “wind” deductible that now applies to a hurricane deductible.

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<sup>1</sup> *U.S. Fire Insurance Co., v. Southern Security Life Insurance Co.*, 710 So.2d130 (Fla. 5th DCA, 1998)

Paragraph (4)(d), currently limits the maximum amount of a hurricane deductible on a risk valued at under \$500,000 to 10 percent, but allows for an exception if the policyholder personally writes a statement and the mortgage holder approves. The bill provides that this deductible may only be implemented as of the date of a policy's renewal. The bill also allows an insurer to use electronic or other means to maintain the original copy of the signed statement required by the policyholder.

**Section 15.** Amends s. 627.70131, F.S., as amended by chapter 2007-1, L.O.F. The bill specifies that the requirement of HB 1-A that a property insurer pay or deny a claim within 90 days of receiving notice of a property insurance claim applies to residential coverage as defined in s. 627.4025, F.S., which includes both personal lines residential policies (homeowners, mobile homeowners, dwelling, tenant's condominium unit owners, cooperative unit owners) and commercial residential coverage (condominium association, cooperative association, apartment buildings). Therefore, this would not apply to commercial non-residential coverage.

**Section 16.** Amends s. 627.712, F.S., as amended by chapter 2007-1, L.O.F., regarding the requirement for a residential property insurer to make available an exclusion of hurricane or windstorm coverage. Under the bill, this requirement would apply only to a personal lines residential property insurer and would not apply to a commercial residential property insurer. Also, the requirement would be clarified to require that the insurer make available an exclusion of windstorm coverage only.

Subsection (3) is amended to exclude a tenant's policy from the requirement of offering an exclusion of contents coverage. Tenant's policies primarily cover contents, thus requiring an insurer to make an offer to exclude contents would eliminate the primary value of such coverage. Subsection (4) is amended to allow an insurer to electronically or otherwise keep the original copy of the signed statement required for a policyholder to decline windstorm coverage. Subsection (5) is amended to specify that the exclusions for windstorm or contents coverage may only be implemented as of the date of a policy's renewal.

**Section 17.** Amends s. 627.713, F.S., as amended by chapter 2007-1, L.O.F., related to the reporting of hurricane loss data by property insurers. The bill prohibits the OIR from requiring a property insurer to report specified data on claims and payments until January or later of the following year for:

- specified insured values;
- specified dollar values;
- specified types of construction or mitigation features;
- policies under specified underwriting criteria; or
- contents coverage, additional living expense coverage, and other specified coverages.

The OIR may require earlier reporting of the other hurricane loss data that may be required to be reported pursuant to this section. Such information includes the number of claims made, the number of claim payments made, the number and amount of total-loss claims and other information specified by statute. The section is patterned on reporting requirements contained in emergency rules adopted during the 2004 and 2005 hurricane seasons.

**Section 18.** Amends s. 627.7277, F.S., as amended by chapter 2007-1, L.O.F. The bill deletes provisions related to information contained in a premium renewal notice, which are transferred by the bill to s. 627.4133(7), F.S. The provision in current law were mistakenly placed in the statutes for motor vehicle insurance.

**Section 19.** Amends s. 631.52, F.S., to clarify that any kind of self-insurance fund, liability pool, or risk management fund is not covered by the Florida Insurance Guaranty Association (FIGA).

**Section 20.** Amends s. 631.57(3)(e), F.S., to clarify that FIGA may levy emergency assessments of 2 percent of premium for direct payment of covered claims (not just homeowners claims) of insurers rendered insolvent by the effects of a hurricane.

**Section 21.** Amends s. 631.695, F.S., to permit all municipalities and counties in the state to issue bonds to assist FIGA in expediting the handling and payment of covered claims of insolvent insurers. Under current law, only a county or municipality “substantially affected by the landfall of a hurricane” may issue bonds for this purpose.

**Section 22.** The act is effective upon becoming law.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Policyholders of Citizens will have the benefit of a delay in the next rate increase, which will be filed on January 1, 2008, rather than effective on that date. This will also reduce revenues to Citizens for 2008, which could increase a potential deficit for that year that would be assessed to all property and casualty policyholders.

The bill benefits property insurers with less than \$25 million in surplus (limited apportionment companies) by allowing them to purchase an additional \$10 million in coverage from the Florida Hurricane Catastrophe Fund.

A domestic mutual insurer (and its policyholder owners) and an insurer exclusively writing manufactured housing are provided increased access to a surplus note from the Capital Build-Up Incentive Fund, which also benefits the policyholder-owners of a mutual insurer.

A Florida domestic residential property insurer with a parent company domiciled in Florida will not be required to have \$50 million in surplus.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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

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