SENATE 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: SB 4-A

INTRODUCER: Senator Posey

SUBJECT: Hurricane Preparedness and Property Insurance

DATE: January 16, 2007 REVISED: 01/16/07 01/17/07

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich/Johnson/ Knudson	Deffenbaugh	BI	**Fav/20 amendments**
2.				
3.				
4.				
5.				
6.				

Please see last section for Summary of Amendments

- [X] Technical amendments were recommended
- [X] Amendments were recommended
- [X] Significant amendments were recommended

I. Summary:

Florida Hurricane Catastrophe Fund (FHCF)
Offers insurers additional FHCF coverage of up to $3 billion below the industry retention of $6 billion (estimated) for 2007 and 2008. Requires a rate filing to reflect savings.

Offers insurers additional FHCF coverage of up to $3 billion above the maximum FHCF coverage of $16 billion (estimated) for 2007 and 2008. Requires a rate filing to reflect savings.

Authorizes the State Board of Administration to purchase capital market instruments to cover FHCF obligations (similar to current authority to purchase reinsurance).

Florida Hurricane Excess Loss Program (FHELP)
Creates the FHELP, in order to create premium savings for residential property insurance policyholders in the state by limiting the liability of property insurers for amounts above those covered by the FHCF via the state assuming liability for 90 percent of such losses up to a maximum limit. The maximum limit is that portion of the estimated 250 year probable maximum loss that exceeds the losses covered by the FHCF and by insurer retentions and copayments. Requires a rate filing to reflect savings.

Insurers are not required to pay premiums for FHELP coverage, which is funded separately and apart from the obligations of the FHCF and the Florida Hurricane Catastrophe Fund Finance Corporation.

Creates the Florida Hurricane Excess Loss Program Finance Corporation to procure loans or issue bonds to pay for FHELP losses. States that it is the intent of the Legislature that the initial funding for the FHELP shall be provided from up to 10 percent of state revenues, which may include covenants to appropriate and budget if necessary.

Citizens Property Insurance Corporation ("Citizens")
Deletes the requirement that Citizens charge rates sufficient to purchase reinsurance to cover specified levels of probable maximum loss for each of its three accounts.

Deletes the requirement that Citizens' rates be non-competitive and no lower than the top 20 insurers. Requires rates to be actuarially sound and subject to the standards that generally apply to property insurers. Requires the Office of Insurance Regulation (OIR) to annually establish Citizens' rates within 45 days after Citizens files recommended rates.

Rescinds the approved rate increase that took effect January 1, 2007. Requires Citizens to provide refunds to persons who have paid this rate. Freezes rates at Dec. 31, 2006, level for remainder of 2007. Requires new (actuarially sound) rate filing, effective January 1, 2008.

Deletes provision making nonhomestead policyholders ineligible for Citizens coverage effective March 1, 2007, unless three surplus lines insurers and one authorized insurer reject coverage.

Delays until 2008, the requirements that Citizens impose up to a 10 percent of premium assessment on all nonhomestead policyholders if a deficit occurs, and if that surcharge is insufficient, that Citizens impose a 10 percent renewal surcharge on all Citizens policyholders.

Provides that if the policyholder is offered coverage from an insurer at the insurer's approved rate, then that policyholder is not eligible for a Citizens' policy, unless the insurer's premium is more than 25 percent greater than the premium for comparable coverage provided by Citizens.

Authorizes Citizens to write multiperil policies (as well as wind-only policies) in the areas eligible for coverage in the High Risk Account.

Authorizes Citizens to provide commercial (business) coverage statewide and requires the OIR to order the transfer of commercial coverage to Citizens from the Property and Casualty Joint Underwriting Association.

Expands the assessment base of Citizens (property insurance) to be the same as the Florida Hurricane Catastrophe Fund (property and casualty insurance, including auto insurance, medical malpractice, etc., but not workers' compensation or accident and health).

Clarifies that take-out policies removed from Citizens are considered to be the sole obligation and direct insurance of the take-out company.

Requires Citizens to be subject to assessments levied by the Florida Insurance Guaranty Association.

Florida Building Code
Eliminates the "Panhandle exemption" by requiring the Florida Building Commission to adopt the International Building Code's wind resistance requirements. Allows amendments or modifications that enhance, but do not diminish, these requirements. Requires local jurisdictions to immediately enforce these requirements pending adoption by the Commission.

Deletes the internal pressurization option for buildings in the 120 mph+ wind zone. Applies internal pressurization requirements for homes in wind zone areas of under 120 mph.

Requires the Florida Building Commission to develop voluntary "Code-Plus" guidelines.

Coverage Exclusions; Deductibles
Requires insurers to make available to policyholders the option to exclude windstorm coverage, if the policyholder personally write a statement that he does not want such coverage and provides documentation of approval by any mortgage or lien holder.

Eliminates 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.

Requires insurers to make available to policyholders the option to exclude coverage for contents, if the policyholder personally write a statement that he does not want such coverage.

Requires insurers to offer policyholders a deductible equal to 50 percent of the policyholder's equity.

Insurance Rating Law; Consumer Advocate
Repeals allowance for insurers to submit a rate filing disapproved by the OIR to an arbitration panel for final resolution.

Requires the chief executive officer or chief financial officer and the chief actuary of a residential property insurer to sign a sworn certification, subject to perjury and administrative penalties, that the information in the rate filing does not contain any untrue statements of a material fact or omit material facts.

Deletes provision that allows residential property insurers to increase or decrease rates by up to 5 percent on a statewide average, or 10 percent for any territory, without being subject to a determination by OIR that the rate is excessive or unfairly discriminatory.

Deletes provision that places burden on the OIR to establish that a rate filing is excessive for a home valued at $1 million or more.

Transfers the Office of the Consumer Advocate from the Department of Financial Services to the (legislative) Office of the Public Counsel. The Insurance Consumer Advocate will be appointed by the Chief Financial Officer subject to confirmation by the (joint legislative) Committee on Public Service Commission and Insurance Oversight.

Self-Insurance Funds; Bonding Authority
Clarifies local government authority to form self-insurance funds for providing property insurance. Authorizes governmental entities, including municipalities, counties, and hospitals owned by municipalities, counties, or special districts (or their self-insurance funds) to use bond proceeds to finance property coverage and claims. Authorizes Florida-licensed hospitals to form self-insurance funds for property insurance. Broadens current authority of condominium associations to form a self-insurance fund for purposes of property insurance coverage.

Reinsurance
Authorizes the OIR to waive or lower the deposit requirement for reinsurers licensed in other countries, based on criteria related to the financial strength of the insurer and the quality of the regulatory jurisdiction.

Windstorm Mitigation Study Commission
Requires appointment of a study commission to report by March 31, 2007 regarding recommendations for windstorm mitigation funding and mitigation premium credits.

Catastrophic Ground Cover Collapse Coverage; Sinkholes
Requires property insurers to provide coverage for catastrophic ground cover collapse, defined as geological activity that results in the collapse of the ground cover and the insured structure being condemned and ordered to be vacated by the appropriate governmental agency. Insurers must continue to make sinkhole coverage as currently defined in statute available for an appropriate additional premium.

Hurricane Claims Data
Authorizes OIR to require property insurers to report additional data on hurricane claims.

Florida Disaster Recovery Initiative (FDRI)
Creates the FDRI within the Department of Community Affairs to aid local governments in protecting affordable housing against hurricane damage and mitigating the increased costs of insurance. Provides an appropriation of $100,066,518 for Fiscal Year 2006-2007 from federal Community Development Block Grant funds, and criteria for eligibility and requirements for the use of grant funds under the FDRI.

Florida Insurance Guaranty Association (FIGA)
Clarifies the Legislature's intent of a 2006 law that FIGA has the authority to use an emergency assessment of up to 2 percent of premium to either directly pay the covered claims of insolvent insurers or to utilize such emergency assessment proceeds to retire the indebtedness of bonds.

This bill substantially amends the following sections of the Florida Statutes: 20.101, 163.01, 215.555, 350.012, 350.0611, 350.0613, 553.73, 553.775, 624.319, 624.462, 624.4622, 624.610, 627.062, 627.0628, 627.0629, 627.311, 627.351, 627.701, 627.706, 627.7065, 631.57, and 631.912. The bill creates the following sections of the Florida Statutes: 350.0615, 395.1060, 627.712, and 627.713. The bill repeals the following sections of the Florida Statutes: 627.0613.

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, resulting in millions of dollars in annual savings, as well as additional administrative and economic efficiencies.

Citizens operates under the direction of an 8-member Board of Governors 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. Each account is a separate statutory account with separate calculations of surplus, plan year deficit, and assessment base. Assets may not be commingled or used to fund losses in another account.

- 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 this account, Citizens provides coverage in specially designated areas which have been determined to be particularly vulnerable to severe hurricane damage. In these "wind-only" zones, private insurers may offer other peril coverage, but are not required to provide windstorm coverage.

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.

Policies Issued by Citizens Property Insurance Corp. (as of Dec. 31, 2006)			
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 l 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.
Total	**1,298,922**	**$3.2 bil.**	**$408.8 bil.**

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 reported 124,674 claims for hurricanes in 2004 and 168,377 claims in 2005. Citizens estimates its total losses for the 2004 and 2005 storms at $2.92 billion and $2.68 billion respectively.

Eligibility for Coverage **-** Property is eligible for coverage with Citizens only if there is no other offer from an authorized insurer. The insurance agency and agent must use reasonable efforts to place personal or commercial insurance applicants with an authorized insurer prior to placing the risk with Citizens, or face termination or suspension of the agent appointment. Beginning March 1, 2007, nonhomestead property is eligible in Citizens only if the property owner annually obtains three declinations of coverage from surplus lines insurers and one from an authorized insurer. The definition of homestead property is expanded for purposes of this provision.

Beginning July 1, 2008, a personal lines residential structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and content replacement cost of $1 million or more, is ineligible for Citizens coverage. However, such homes insured by Citizens on June 30, 2008, may remain in Citizens until the end of the policy term and may reapply for coverage for another three years if the property owner annually obtains a sworn affidavit from an insurance agent that they have made their best efforts to obtain coverage and that the property has been rejected by a least one authorized insurer and three surplus lines insurers. Such properties will be covered in the HRA and considered nonhomestead. By June 30, 2011, Citizens cannot insure any home insured for $1 million or more.

Based on the most recent information from Citizens, the Corporation has an estimated 6,000 residential policies in force that are insured for values greater than $1 million, with a total insured value of $14.9 billion and a total premium of $81.7 million. These policies are only covered in the HRA with approximately 80 percent having an insured value between $1 and $2 million. About 67 percent of the $1 million to $2 million residential properties are located in Dade, Broward and Palm Beach counties.

Deficits/Assessments **-** The 2006 Legislature appropriated $715 million from General Revenue to Citizens to offset its 2005 deficit, which was $1.76 billion. This appropriation reduced an $878 million regular assessment against property insurers to about $163 million, and thereby reduced one-time premium surcharges against all property insurance policyholders from about 11.15 percent of premium to 2.07 percent. Insurers are permitted to make rate filings to recoup the average 2.07 percent assessment from their policyholders, which is expected to begin appearing in policy renewals in February or March of 2007. The remainder of the deficit ($882 million) will be amortized and collected from policyholders over a 10-year period.

The 10-year emergency assessments, estimated to be about 1.0 to 1.4 percent annually, provide debt service for an anticipated 2007 bond issue of approximately $1.07 billion of tax-exempt fixed rate bonds, to be issued by Citizens in February. The emergency assessments will begin on property insurance policies issued or renewed on or after July 1, 2007. This bond issue will replace $1 billion of higher interest rate taxable debt from 1999 notes that are being redeemed.

Effective January 1, 2007, Citizens implemented its latest rate filing which results in a statewide average increase of 12 percent in the PLA and 21.4 percent for the HRA. On December 7, 2006, the Citizens' Board voted unanimously to table a recommended statewide rate increase of 55 percent in its HRA. The Board deferred consideration of the rate increase until after the Special Legislative Session in mid-January.

The 2006 legislation provided that, if a deficit is incurred in any Citizens' account, the board must levy an assessment on each nonhomestead property of up to 10 percent of the premium. If this is not sufficient to eliminate the deficit, the Board must levy an additional assessment against all Citizens' policyholders (including nonhomestead policyholders), collected upon renewal, of up to 10 percent of premium. Any remaining deficit is funded by regular and emergency assessments, either recouped from, or directly paid by non-Citizens policyholders of property insurance. The regular assessment against insurers could still be imposed as soon as a deficit is determined, but must be reduced by the amounts estimated to be collected from the two new 10 percent surcharges.

The 2006 legislation further required that deficit assessments against insurers (and recouped from their policyholders) also be reduced by amounts estimated to be collected from "Citizens policyholder" surcharges, previously called the "market equalization" surcharge. The current surcharge is imposed on Citizens' policyholders at the same statewide average percentage that is recouped by insurers from non-Citizens policyholders, but collected by Citizens in addition to the assessment on the insurers that fully funds the deficit. Under last year's legislation, Citizens is required to estimate the amount to be collected from this surcharge and reduce the regular assessment by that amount. To enable Citizens to cover the entire deficit, the Citizens policyholder surcharge is calculated based on the full amount of the regular assessment, before deducting the estimated Citizens policyholder surcharge.

Finally, the 2006 legislation required that limited apportionment companies (i.e., insurers with $25 million in surplus or less) pay the full amount of a regular assessment by Citizens. Previously, limited apportionment companies were not required to pay a regular assessment for any amount of a deficit in the HRA over $50 million.

Lines of business that are subject to Citizens' deficit assessments include insurance for: fire, industrial fire, allied lines, farm owners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and includes liability converge on all such insurance except for inland marine and certain vehicle insurance other that the insurance on mobile homes used as permanent dwellings. Currently, Citizens' assessment base has about $8.3 billion in premium.

Rate Standards **-** Current law requires that PLA rates be actuarially sound and that the average rate for each county be no lower than the average rate charged by the insurer with the highest average rate in that county among the 20 insurers (five insurers for mobile home coverage) with the greatest direct written premium in the state for that line of business. The law requires that HRA rates be actuarially sound and not competitive with approved rates charged by authorized insurers. Citizens and the OIR were required to jointly develop a wind-only ratemaking methodology to meet this purpose for rates effective on or after July 1, 2004. The developed wind-only rate methodology uses a variation of the "top 20" approach mandated for personal residential multiperil policies.

Legislative changes enacted in 2006 require that for policies in the PLA and the CLA issued or renewed on or after March 1, 2007, a rate is deemed inadequate if the rate, including investment income, is not sufficient to provide for the purchase of reinsurance coverage from the Florida Hurricane Catastrophe Fund (FHCF) and private reinsurance (whether or not purchased) and to pay all claims and expenses reasonably expected to result from a 100-year probable maximum loss (PML) event (i.e., a 1-in-100 year hurricane), without resort to assessments or other outside funding sources. Additionally, the legislation provided that for policies in the HRA issued or renewed on or after March 1, 2007, a rate is deemed inadequate if the rate, including investment income, is not sufficient to provide for the purchase of reinsurance coverage from the FHCF and private reinsurance (whether or not purchased) and to pay all claims and expenses reasonably expected to result from a 70-year probable maximum loss event without resorting to assessments or other outside funding. For policies in the HRA issued or renewed in 2008 and 2009, the rate must be based upon an 85-year and 100-year probable maximum loss event, respectively. As of September 30, 2006, Citizen's 100-year PML for its PLA and CLA was $5.4 billion and $1.9 billion, respectively. It's 70-year PML for its HRA was $9.3 billion.

The 2006 legislation further provided that Citizens' rate filings for personal lines, wind-only policies in the HRA must be approved or disapproved by the OIR within 90 days after receipt of the filing, or shall be considered deemed approved. Also, the public hurricane loss model was mandated to be the minimum benchmark for determining windstorm rates for Citizens, after the public model has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology. Finally, the legislation made the current "top 20" requirement that Citizens' rates not be competitive with authorized insurers, inapplicable in a county or area for which OIR determines that no authorized insurer is offering coverage.

The Florida Hurricane Catastrophe Fund (FHCF)

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. The FHCF runs on a contract year that runs from June 1 to May 31. Each insurer's "reimbursement premium" is based on the insured value of the residential property it insures, their location, construction type, deductible amounts, and other factors. The "actuarially indicated" premium is basically the average annual amount expected to be reimbursed to the insurer based on the hurricane loss models plus administrative costs of the fund, amounts expected to be appropriated for mitigation funding, reduced by investment income. The FHCF is priced at a 6.7 percent rate on line, coverage that is estimated at costs of 1/4 to 1/5 of rates in the private market and serves to reduce residential property insurance premiums by approximately 30 percent if all such reinsurance were purchased from the private market. The Legislature now requires the fund to collect a 25 percent rapid cash build-up factor in the premium formula that produced an additional $213 million in funds for the FHCF for the 2006-07 contract year, (used to pay debt stemming from the 2005 hurricanes). This is in addition to the $852 million in reinsurance premium collected by the fund.

Current law establishes $15 billion as the maximum amount the FHCF must pay in any one year; however 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. Due to the lack of storms in the 2006 hurricane season, the cap of the fund is expected to increase to approximately $16 billion for 2007-08, after remaining at $15 billion for 2005-06 and 2006-07. The maximum coverage amount for each insurer is based on that insurer's share of the total premiums paid to the fund. For example, an insurer that pays 10 percent of total fund premiums had its maximum coverage limited to $1.5 billion (10 percent of $15 billion) for all hurricanes occurring during the 2006-07 contract year.

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, but unlike the limitation on adjusting the $15 billion cap on fund payments, the retention is adjusted regardless of any change in the FHCF's cash balance. For the 2006-07 contract year, the retention was adjusted from $4.5 billion to $5.3 billion, and is expected to rise to approximately $6 billion for 2007-08. Like the maximum recovery amount, a retention is calculated for each insurer based on its share of fund premiums. For example, an insurer paying 10 percent of total fund premiums had a retention of $530 million, (10 percent of $5.3 billion) for the 2006-07 contract year.

For 2006 only, the FHCF was authorized to sell an additional layer of coverage to limited apportionment insurance companies—companies with a surplus of $25 million or less—that would reimburse the insurer up to $10 million for losses above 30 percent of the insurer's surplus for each of two hurricanes. The retention amount for the coverage was much lower than for FHCF coverage in general, increasing the likelihood that the fund would have to reimburse insurers in the event of a storm. Thus, the price of the coverage was set at a much higher rate than the average 6.7 percent charged for FHCF coverage. The limited apportionment company coverage was priced at 50 percent of the coverage selected, meaning that an insurer paid $5 million for $10 million in coverage. The option to purchase this additional coverage was created due to the extremely high price or even unavailability of reinsurance coverage leading up to the 2006 hurricane season, particularly for limited apportionment companies with small surpluses. The possibility existed that some limited apportionment companies would have to non-renew policyholders if they could not find reinsurance at a price that enabled them to financially maintain their current number of policies. Many limited apportionment companies rely heavily on reinsurance, and such companies write approximately 30 percent of the homeowners policies in Florida. 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.

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 surplus lines policyholders. Notably, this assessment base includes auto insurance, which is not included in the assessment base for Citizens. The assessment base for the FHCF is 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.

The FHCF's estimated initial season capacity for the 2007 hurricane season consists of approximately $2.25 billion in cash and $13.75 billion in bonding capacity. From the inception of the FHCF in 1993 until the 2004 hurricane season, the fund paid insurers for claims for only two hurricanes, Hurricanes Erin and Opal in 1995, totaling approximately $13 million. Going into the 2004 hurricane season the FHCF had accumulated over $6 billion in cash. As a result of the 2004 hurricanes, the fund has spent or expects to spend almost $3.95 billion of its cash reimbursing insurers for hurricane losses. Going into the 2005 hurricane season, the fund's cash had decreased to $3 billion. With reimbursement to insurers for 2005 hurricane losses $4.5 billion, the fund was forced to bond $1.35 billion to pay claims and $2.8 billion to provide for liquidity for the 2006 hurricane season. Thus, the $6 billion accumulated over ten years by the FHCF was depleted in just two years. This has resulted in about a 1 percent assessment on all property and casualty insurance policies (with exceptions) for six years, beginning January 1, 2007.

Reinsurance

Reinsurance is the transfer of risk initially underwritten by one insurer to another insurer. Direct writers of insurance purchase reinsurance to spread their possible exposure from losses to the reinsurance market. Reinsurance serves multiple functions, safeguarding the solvency of direct writers by ensuring they can withstand wind losses, enabling them to provide coverage for relatively high risk policies and to write more policies than they would otherwise be able. The OIR requires insurers to maintain sufficient reserves and reinsurance to withstand wind losses and ensure solvency. The cost of reinsurance is factored into the rates for homeowners insurance, thus increases in reinsurance costs translate into increased premium costs for policyholders.

After the 2004 and 2005 hurricane seasons, a number of factors combined to greatly increase the cost of reinsurance while reducing its availability. After $36 billion in catastrophe losses stemming from the two storm seasons, reinsurers increased their prices, seeking additional profits in return for taking on hurricane risk that recent history and recalibrated computer models indicated was more hazardous than previously believed. While the cost of coverage increased, the hurricane exposure of the state and thus demand for reinsurance coverage also increased due to increased development along the Florida coastline and rising property values meaning that insurers now had to purchase higher amounts of reinsurance coverage. In addition, ratings agencies placed stricter capital requirements on reinsurers to maintain their favorable ratings, reducing the amount of reinsurance capacity available on the market. As direct writers of insurance made their financial preparations for the 2006 hurricane season, they encountered a reinsurance market where demand exceeded supply and what was available could cost twice or more than the price the previous year. The final report from the 2006 Governor's Property and Casualty Insurance Reform Committee concluded that, "at the present time, it appears reinsurance capacity for Florida property risk is nearly tapped out."

Summary of Property Insurance Rating Law/Arbitration

Rate Filing Standards and Procedures -- Property and casualty insurers are required to file rates for approval with the Office of Insurance Regulation (OIR) either 90 days before the proposed effective date ("file and use") or 30 days after the rate filing is implemented ("use and file").[1] Under the file and use option, OIR must finalize its review by issuing a notice of intent to approve or disapprove within 90 days after receipt of the filing; otherwise the filing is deemed approved. Under the "use and file" option, an insurance company may implement the filing prior to approval, but may be ordered by OIR to refund to the policyholder that portion of the rate found by OIR to be excessive.

The OIR may disapprove a rate filing if it determines such rates to be "excessive, inadequate, or unfairly discriminatory" as these terms are defined. The law specifies numerous factors which the OIR must consider in making this determination.

If OIR disapproves a rate filing, the insurer may request an administrative hearing under the Administrative Procedures Act (ch. 120, F.S., A.P.A.). Under the APA, a formal adversarial hearing is held before a State Administrative Law Judge (ALJ) of the Division of Administrative Hearings. Once the hearing is completed, the ALJ has 30 days to issue a recommended order to OIR. The recommended order contains findings of fact and conclusions of law as found by the ALJ. The OIR then has 90 days to issue a final order which may reject or modify the conclusions of law contained in the recommended order. However, OIR's final order may not substitute findings of facts contained in the recommended order which were supported by competent substantial evidence. An insurer may then appeal OIR's final order to the First District Court of Appeal.

Arbitration - Since 1996, insurance companies are allowed to elect binding arbitration of a rate filing in lieu of review under the Administrative Procedure Act (APA) pursuant to chapter 120, F.S.[1] Under arbitration, after the OIR issues a notice of intent to disapprove a rate filing, the insurer may, instead of demanding an administrative hearing, request arbitration before a panel of three arbitrators. The insurer and the OIR each select one arbitrator, and the third is chosen by the other two arbitrators. An arbitrator must be American Arbitration Association certified and may not be an employee of an insurance company or insurance regulator. Rate arbitration follows the procedures outlined in the Arbitration Code (chapter 682, F.S.) and the costs of arbitration are paid by the insurer. Upon initiation of

[1] Ch. 96-194, L.O.F., amending s. 627.062, F.S.

arbitration, the insurer waives all rights to challenge the action of the OIR under the APA. The decision of the panel constitutes final approval of a rate filing.

Either party to the arbitration proceeding may apply to the circuit court to vacate or modify the panel's decision. Grounds for vacation include corruption or fraud, evident partiality by an arbitrator, and action beyond the arbitrators' powers or jurisdiction. Grounds for modification include miscalculations, errors as to form, and actions on matters not submitted for arbitration. The OIR reviews and takes action on nearly 3,000 property and casualty filings annually. Since the inception of the arbitration provision through March 2005 (the most recent data provided by the OIR), eleven insurers have requested arbitration that completed the arbitration process; and the OIR prevailed in only one case.[2] In addition, as of January 10, 2007, there are six pending insurance rate filings for which the insurers have requested arbitration. The OIR argues that arbitration panels have usurped its statutory obligation to ensure rates are not excessive, inadequate or unfairly discriminatory.

The following changes were made to the property insurance rating law in SB 1980 (2006):

- Requires OIR to approve a rating factor that provides an insurer a reasonable rate of return that is commensurate with the risk of covering hurricane losses, for that portion of the rate for which the insurer has exposed its capital and surplus and has not purchased reinsurance.
- Places the burden on OIR to establish that a proposed rate by an insurer is excessive for personal lines residential coverage with insured value of $1 million or more. The insurer must provide OIR, upon request, with loss and expense information, as reasonably needed for OIR to meet this burden.
- Requires OIR to reevaluate the insurance discounts and credits for homes built to meet the Florida Building Code and to determine the full actuarial value of such discounts, by July 1, 2007, for use by insurers in rate filings.
- Effective July 1, 2007, for residential property insurance in those areas for which OIR determines that a reasonable degree of competition exists, an insurer may increase or decrease rates by up to 5 percent on a statewide average, or 10 percent for any territory, without being subject to a determination by OIR that the rate is excessive or unfairly discriminatory (except for unfairly discriminatory rating factors prohibited by law). This provision may be used by an insurer once in a 12-month period.
- Authorizes the Insurance Consumer Advocate appointed by the Chief Financial Officer to represent the public in insurance rate proceedings before an arbitration panel (in addition to a rate proceeding before the Division of Administrative Hearings). The bill also appropriated $250,000 from the Insurance Regulatory Trust Fund to the Office of the Insurance Consumer Advocate.

Issuance of Debt by Local Governments

Local governments often issue bonds to secure financing for services when the provision of such services from currently available resources is impractical or not financially feasible. These pooled bond financing arrangements facilitate the issuance of bonds, improve their marketability, and minimize the costs of issuance and borrowing.

[2] These eleven insurers represented the largest insurers in terms of market share in the state.

Section 163.01, F.S., authorizes two or more municipalities or counties to jointly issue such debt for funding capital projects and liability insurance coverage. Other public agencies or governmental entities specified in s. 163.01(3), F.S., may participate in such bond pools as borrowers only.

Regulation of Commercial and Local Government Self-Insurance Funds

Certain groups and associations are authorized to form a commercial self-insurance fund (ss. 624.462, F.S.), subject to the approval of the OIR. Such funds may pool and spread liabilities of its group members for any commercial property or casualty risk or surety insurance and may be formed by certain entities, including 10 or more health care providers, a not-for profit trade association, and a not-for-profit group comprised of no less than 10 condominium associations meeting certain requirements. These funds must meet certain financial, insurance coverage, and reporting requirements specified in law.

Section 624.4622, F.S., authorizes two or more local governments to enter into an interlocal agreement to create a self-insurance fund for the purpose of securing the payment of benefits under the workers' compensation law. Certain financial requirements and reporting, annual premium levels, and excess insurance coverage are required to be met and maintained.

Florida Building Code and Panhandle Exemption

The Florida Building Code establishes minimum safety standards for the design and construction of buildings. The first edition of the code replaced all local codes in Florida on March 1, 2002. The Florida Building Code undergoes major updates every three years, while also being subject to amendment each year. The Florida Building Commission is charged with updating and amending the Florida Building Code, often by incorporating updates made to the various source building codes that constitute the Florida code. The code contains design and construction enhancements targeted at preventing hurricane damage. Enforcement of the Florida Building Code is carried out by local governments.

For protection against hurricane winds, the code adopts the national model building code engineering standard (American Society of Civil Engineers Standard 7 or "ASCE 7"). Pursuant to this standard, all new construction in wind-borne debris regions of 120 mph or greater is required to include specified wind-borne debris protection. However, subsection (3) of s. 109 of ch. 2000-141, L.O.F., stipulates that from the eastern border of Franklin County to the Florida-Alabama line, only land within 1 mile of the coast is subject to the 120 mph windborne-debris requirements of the Florida Building Code. This subsection is often referred to as the "panhandle exemption." The 2006 Legislature authorized the commission to identify within the code those areas of the state from the eastern border of Franklin County to the Florida-Alabama line (the Panhandle region) that are subject to the windborne debris requirements of the code, thus authorizing the commission to eliminate the "panhandle exemption." The Florida Building Commission did not eliminate the "panhandle exemption," but instead designated the "Panhandle Wind-Borne Debris Region as 130 mph design wind speed areas, and areas within 1,500 feet of inland waterways.

Sinkhole Insurance Coverage

Nationally, property insurance policies typically exclude coverage for "earth movement." But, in Florida, every authorized insurer must make available coverage for insurable sinkhole losses on any structure and the personal property contained within it (s. 627.706, F.S.). Even though the coverage must be "made available," insurers include sinkhole coverage within their policies, apparently because it would lead to adverse selection if offered as an option, i.e., only those in sinkhole prone areas would elect the coverage.

In some areas of the state, sinkhole costs have grown at an exponential rate in recent years. This has caused policy cancellations due to the payment of policy limits on sinkhole claims, and insurers refusing to issue new policies in sinkhole prone areas. Citizens Property Insurance Corporation has had a significant increase in policies from the Tampa Bay area (Hernando, Hillsborough, Pasco, and Pinellas counties), due to private insurance companies refusing or limiting coverage in this area due to the sinkhole exposure. Not only do more homeowners have to seek coverage from Citizens, but such policyholders are being hit with sharply increasing premium costs. The average Citizens premium in Pasco County more than doubled from March 2003 to April 2006. In response, the 2006 Legislature made a number of changes to the sinkhole law, including allowing deductibles of up to 10 percent for sinkhole coverage, and making it unlawful for a contractor or business providing sinkhole remediation services to communicate with any attorney for the purpose of soliciting legal business. A neutral evaluation process for the expert evaluation of sinkhole claims disputes was also created. A neutral evaluation conducted by a DFS certified engineer or geologist is mandatory but non-binding when requested by either party, with costs of the evaluation to be paid by the insurer. If the insurer timely complies with the recommendation of the neutral evaluator, but the policyholder declines to resolve the matter pursuant to the evaluator's recommendation, the insurer is not liable for extra-contractual (bad faith) damages related to issues determined at the neutral evaluation. Also, the insurer is not liable for attorney's fees, unless the policyholder obtains a judgment at trial that is more favorable than the recommendations of the neutral evaluator.

Affordable Housing

Affordable housing is crucial to our communities' ability to recover from the hurricane events of 2004 and 2005, which dramatically exposed the vulnerability of Florida's older, affordable housing stock and significantly increased the costs of insuring homes. In counties affected by Hurricane Wilma, 243 subsidized multi-family properties built before 2002 have some units with project-based rental assistance. Out of 20,362 units at these properties, over 93 percent have rental assistance and thus are affordable to low income households (those with incomes at or below 30 percent of area median income). Even without rental assistance, the other units in these properties are likely to be affordable to households with incomes up to 80 percent of AMI.

In its July 2006 report on preserving affordable multi-family housing, Florida's Affordable Housing Study Commission highlighted the need to preserve the state's older subsidized rental stock. Rental units funded through the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture Rural Development programs are more likely to house Florida's lowest income residents. Many of these properties have rental assistance attached to the property that provides the difference between what a tenant can afford to pay and the unit's operating cost. The assistance is "attached" to the unit rather than the tenant, making these units critical to preserve.

Due to the significant impact of the past two hurricane seasons, additional supplemental funding for disaster recovery efforts has been authorized by Congress for recovery efforts. The

Department of Community Affairs will receive $100,066,518 in Small Cities Community Development Block Grant (CDBG) supplemental funds to be used for housing retrofits in the Wilma impacted areas. Using the additional CDBG funds to strengthen low-income homes, both rented and owned, will dramatically help Wilma impacted Floridians to rebuild and prepare for the future.

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.

The Office of the Public Counsel

The Office of the Public Counsel, under the legislative branch of government, provides legal representation for the general public in utility-related matters before the Florida Public Service Commission and in proceedings before counties pursuant to s. 350.0611, F.S. The Committee on Public Service Commission Oversight, a joint legislative committee, is responsible for appointing the Public Counsel. The Public Counsel must be an attorney and serves at the pleasure of the committee, subject to biennial reconfirmation by the committee.

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.[1] 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.

FIGA is in litigation currently with an insurance company that is challenging FIGA's 2 percent emergency assessment which was levied by the OIR in December 2006, to pay claims for the three insolvent insurers of the Poe Financial Group. The 2 percent assessment will raise approximately $225 million. FIGA decided to directly pay the Poe claims rather than issue bonds

[1] Section 631.55, F.S.

to pay the claims and incur additional costs to issue and pay off the bonds. The 2006 Legislature in ch. 2006-12, L.O.F., provided authority for FIGA to have the option to either pay claims directly or issue bonds and the lawsuit questions whether FIGA has the option of directly paying claims.

III. Effect of Proposed Changes:

Legislative Findings. Makes legislative findings regarding the financial burdens due to increased insurance costs and the need for a comprehensive approach to the current crisis. Finds that property insurance is interwoven with other forms of insurance and specifies that certain reforms, as made in the bill, can help address this crisis.

Sections 1-2. Amends s. 20.121, F.S., to delete the Insurance Office of Consumer Advocate from the Department of Financial Services (DFS) and transfer all of the powers and duties, personnel, property, and funding of the Insurance Consumer Advocate from the DFS to the (legislative) Public Counsel.

Section 3. Amends s. 163.01, F.S., relating to interlocal agreements, to authorize local government self-insurance funds to use proceeds of bonds to purchase or secure property insurance coverage. The section also revises the definition of the term, “public agency,” to include a separate legal or administrative entity created by an interlocal agreement, thereby allowing these entities to participate as borrowers of such bond proceeds.

The section also authorizes special districts with the authority to own or operate one or more Florida-licensed hospitals and Florida-licensed hospitals funded, owned, or operated by a county or municipality to form an alliance and issue debt, including bonds, for the purpose of purchasing or securing property insurance coverage. Currently, this section only authorizes two or more municipalities or counties to jointly issue such debt for funding capital projects and liability insurance coverage. Moreover, special districts and other specified public agencies, as defined in s. 163.01(3), F.S., are authorized to participate in such bond pools as borrowers only, not issuers.

Section 4. Amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund:

Temporary Emergency Additional Coverage Options (TEACO) - Subsection (17) requires the FHCF to offer insurers up to an additional $3 billion in optional FHCF coverage below the fund’s retention for the 2007 and 2008 hurricane seasons. The program is designed to address disruptions in the property insurance market stemming from the unavailability of private market reinsurance at affordable prices (or any price) leading up to the 2006 hurricane season, which was partially responsible for the substantial premium increases or cancellations of coverage many consumers experienced last year. The TEACO option allows an insurer to purchase an additional layer of coverage below the FHCF retention based on industry retention levels of $3 billion, $4 billion or $5 billion, which are below the estimated $6 billion retention for 2007. The insurer may select a reimbursement level of 90, 75, or 45 percent, plus 5 percent to cover loss adjustment expenses. An insurer purchasing a TEACO layer of coverage will be reimbursed for losses within that layer for each of the two largest hurricane events within a contract year.

Pricing for TEACO coverage is designed to be at near private market levels, prior to the market disruption in 2006. Coverage based on a $3 billion industry wide retention will cost 40 percent of the insurer's share of the difference between the "normal" FHCF retention and $3 billion (commonly referred to as a 40 percent "rate-on-line," meaning that an insurer pays a premium equal to 40% of the coverage amount). For coverage based on a $4 billion retention, the premium will be 35 percent of the insurer's share of the difference between the FHCF retention and $4 billion (35 percent rate-on-line). For coverage based on a $5 billion retention, the premium will be 30 percent of the company's share of the difference between the FHCF retention and $5 billion (30 percent rate-on-line). The TEACO program will increase the claims paying capacity of the FHCF (and potential bonding need) by twice the difference (due to coverage for two hurricanes) between the FHCF retention and the TEACO $3 billion retention (approximately $6 billion for the 2007 hurricane season). If the claims payment capacity of the fund and the additional capacity created by the TEACO option is not sufficient to reimburse all insurers according to the reimbursement contract, each insurer shall be reimbursed a pro-rata share of the fund's capacity.

Temporary Increase in Coverage Limit Options (TICL) - Subsection (18) requires the FHCF to offer insurers up to an additional $3 billion in optional coverage above the FHCF coverage limit—estimated at $16 billion for the 2007 hurricane season—for the 2007 and 2008 hurricane seasons. The TICL option allows an insurer to purchase an additional layer of coverage above the FHCF coverage limit based on industry-wide limits of $1 billion, $2 billion or $3 billion. The insurer may select a reimbursement level of 90, 75, or 45 percent, plus 5 percent to cover loss adjustment expenses.

Pricing for TICL coverage differs with the amount of coverage purchased. Coverage based on $1 billion in additional industry wide coverage will be priced at a 20 percent rate-on-line. Coverage based on $2 billion in additional industry-wide coverage will be priced at a 17.5 percent rate-on-line. Coverage based on $3 billion in additional industry-wide coverage will be priced at a 15 percent rate-on-line. The TICL program will increase the claim's paying capacity of the FHCF by a maximum $3 billion with the actual additional capacity depending on the number of insurers that select TICL coverage and the coverage levels selected.

Florida Hurricane Excess Loss Program (FHELP) – Subsection (19) creates the FHELP, to be administered by the State Board of Administration. The purpose of the FHELP is to create premium savings for residential property insurance policyholders in the state by limiting the liability of property insurers for amounts above those covered by the FHCF via the state assuming liability for such losses.

The FHELP program will, beginning with the FHCF contract year on June 1, 2007, require each FHCF participating insurer to execute a contract addendum that obligates the state to provide FHELP coverage in exchange for the insurer's obligation to pay and service all claims covered by FHELP. Under the FHELP addendum, the state assumes liability for 90 percent of losses under a covered policy from each covered event in excess of the insurer's FHELP retention up to the insurer's FHELP limit.

The insurer's FHELP retention is its share of the sum of the industry-wide FHCF retention (est. $6 billion in 2007-08), FHCF hurricane coverage (est. $16 billion in 2007-08), the insurer's

FHCF copayment (est. $1.6 billion in 2007-08) and TICL coverage ($3 billion). In other words, FHELP provides coverage for 90 percent of losses above the TICL coverage option The estimated industry-wide FHELP retention for the FHELP program in 2007, according to projections provided by representatives from the SBA, is approximately $26.1 billion. The SBA estimates that this anticipated FHELP retention corresponds to approximately a 50-year probable maximum loss (PML) event.

The maximum annual FHELP coverage limit, for all insurers, is that portion of the loss level determined annually by the SBA to have a probability of occurring once every 250 years for all covered policies—a 250 year probable maximum loss -- that exceeds the FHELP retention. Representatives from the SBA estimate that for 2007, a 250-year PML event will result in losses of approximately $73.7 billion dollars. Thus, the state will be assuming a maximum liability of approximately $47.6 billion for the 2007-2008 contract year (the difference between the estimated FHELP aggregate coverage limit and the estimated $26.1 billion FHELP retention) pursuant to the FHELP.

Funding Obligations of the Florida Hurricane Excess Loss Program – Insurers are not required to pay premiums for FHELP coverage, for which the state assumes liability and the bill does not appropriate any amount to pre-fund this obligation. Any future funding would be pursuant to subsection (7), which establishes the Florida Hurricane Excess Loss Program Finance Corporation, as a public benefits corporation that is an instrumentality of the state and administered by the SBA. The purpose of the corporation is to provide a mechanism for the issuance of bonds under the FHELP program. The corporation will operate under a five-member board consisting of the Governor, the CFO, the Attorney General (or their designees), the director of the Division of Bond Finance of the SBA, and the senior FHCF officer. The Florida Hurricane Excess Loss Program Finance Corporation is modeled on and has the same powers and limitations as the Florida Hurricane Catastrophe Fund Finance Corporation.

The newly established finance corporation and any funding it receives is separate from the obligations of the FHCF and any revenue bonds issued by the existing Florida Hurricane Catastrophe Fund Finance Corporation. Subsection (7) grants the SBA authority to authorizes the FHELP Finance Corporation to procure loans or issue bonds to pay for FHELP losses upon both a determination that moneys dedicated or otherwise available to FHELP are or will be insufficient to pay the state's liabilities under FHELP, and a designation by law of a source of revenue from which appropriations will be made to satisfy loan obligations or issue bonds. The purposes for which the proceeds from such bonds may be used, the maximum term of bonds (30 years), and means available to secure such bonds (appropriations from a source of revenue designated by law) are specified and are modeled on the requirements placed on the FHCF in subsection (6). The credit, property, or taxing power of the state or political subdivisions of the state shall not be pledged for the payment of FHELP bonds. The bill provides that it is the intent of the Legislature that the initial funding for the FHELP shall be provided from up to 10 percent of state revenues, which may include covenants to appropriate and budget if necessary.

Funding Obligations of the Florida Hurricane Catastrophe Fund – Amends subsection (6) to specify that the existing Florida Hurricane Fund Finance Corporation may not be used to fund obligations under the FHELP. The limitation's purpose is to ensure that ratings organizations do not affect the rating of the corporation due to potential liabilities from the FHELP program

Purchase of Capital Market Instruments - Subsection (8) authorizes the SBA, consistent with prudent management of the FHCF, to enter into capital market transactions such as industry loss warranties, catastrophe bonds, side cars, or futures, options and national principal contracts, in order to cover FHCF obligations and maximize capacity. The SBA currently may purchase reinsurance for these purposes.

Calculation of the FHCF Exposure Limit and FHELP Exposure Limit – Amends subsection (4) to specify that premiums or interest collected by the FHCF that are attributable to the optional TEACO or TICL coverage programs shall not be used in calculating the annual increase in the FHCF's cash balance, for purposes of determining the annual growth in its maximum annual exposure. The bill also requires the SBA to publish in May and October of each year the estimated 250 year probable maximum loss used to determine the FHELP aggregate coverage limit.

Section 5. The bill requires an insurer that elects to purchase the optional TEACO or TICL coverage from the FHCF to make a rate filing with the OIR pursuant to the "file-and-use" procedures of s. 627.062(2)(a)1., F.S., that reflects any savings or reduction in loss exposure to the insurer due to the election of the TEACO or TICL options. An insurer may not obtain a rate increase due to the election of either of these optional coverages.

All residential property insurers must make a "file-and-use" rate filing with the OIR that decreases rates due to the reduction in loss exposure pursuant to the state assumption of liability for hurricane losses pursuant to the Florida Hurricane Excess Loss Program.

The OIR must specify by order the date or dates on which such filings must be made and be effective in order to provide rate relief to policyholders as soon as practicable.

The bill prohibits an insurer from implementing a rate change under the "use-and-file" procedures of s. 627.062(2)(a)2, F.S., (which allows an insurer to implement a rate change prior to OIR approval, subject to an order to refund amounts found to be excessive) for one year after the effective date of a rate filing required by this section for a policy that is subject to such a rate filing.

Section 6. Amends s. 350.012, F.S., to provide changes related to the transfer of the Office of the Insurance Consumer Advocate from the DFS to the Office of the Public Counsel. The Legislative Committee on Public Service Commission Oversight (a joint legislative committee) is renamed the Committee on Public Service Commission and Insurance Oversight. The powers and duties of this legislative committee, which currently include appointing the Public Counsel, are expanded to include confirming or rejecting the Chief Financial Officer's appointee for the Insurance Consumer Advocate.(See Section 9)

Section 7. Amends s. 350.0611, F.S., to broaden the powers and duties of the Public Counsel to include representing, through the Insurance Consumer Advocate, the general public of the state on matters related to the regulation of insurance before the OIR, the DFS, and the Financial Services Commission (FSC), as provided in s. 350.0615, F.S.

Section 8. Amends s. 350.0613, F.S., to provide conforming changes related to the transfer of the Office of Insurance Consumer Advocate from DFS to the Public Counsel. The Public Counsel may be authorized to retain actuaries, economists, and expert witnesses for participation in contested proceedings before the OIR, the DFS, or the FSC. Upon request, these agencies are required to furnish the Public Counsel with copies of all filings that relate to the jurisdiction of the Insurance Consumer Advocate.

Section 9. Creates s. 350.0615, F.S., to require that the Chief Financial Officer appoint the Insurance Consumer Advocate, who would be subject to confirmation by the Committee on Public Service Commission and Insurance Oversight. The Insurance Consumer Advocate would report directly to and be engaged as an employee of the Public Counsel. The Public Counsel would provide administrative and support staff to the Insurance Consumer Advocate. The Insurance Consumer Advocate would represent the general public of the state on matters related to the regulation of insurance before the Office of Insurance Regulation (OIR), Department of Financial Services (DFS), and the Financial Services Commission (FSC).

The powers and duties of the Insurance Consumer Advocate in the bill are the same powers that are currently provided in s. 627. 0613 (repealed by Section 19), except that they are expanded to apply to insurance matters before the FSC, as well as OIR and DFS. These powers include, but are not limited to: recommending to the OIR, the DFS, or the FSC, by petition, the commencement of any proceeding or action; appear in proceeding or action before such agencies, or appear in any proceeding before the Division of Administrative Hearings relating to insurance matters under the jurisdiction of such agencies; examining rate and form filings submitted to the OIR; and having access to and use of all files, records, and data of the OIR, the DFS, or FSC relating to insurance regulation.

Section 10. Creates s. 395.1060, F.S., to authorize two or more Florida-licensed hospitals to form an alliance for the purpose of pooling risks or self-insuring among the members relative to property exposure or securing property insurance coverage. If certain conditions are met, the alliance would be exempt from the provisions of the Insurance Code. The alliance would be exempt from assessment or coverage by the Florida Insurance Guaranty Association and the self-insured coverage would not be subject to the insurance premium tax.

Sections 11. Amends s. 553.73, F.S., to effectively repeal the “Panhandle exemption” to the Florida Building Code (Code), in conjunction with Sections 13 and 14 of the bill. The Florida Building Commission (Commission) may not modify or amend provisions of the foundation codes (International Building Code, etc.) to the Code during the triennial update of the Code or via subsequent amendment or technical amendment, if the modification would diminish construction requirements relating to wind resistance or water intrusion. However, the Commission may modify such provisions to enhance construction requirements.

Section 12. Makes a technical, conforming change to s. 553.775, F.S., related to interpretations of the Florida Building Code.

Section 13. Requires each jurisdiction in Florida with authority to enforce the Florida Building Code to require wind-borne-debris protection within the “wind-borne-debris region” in accordance with the 2006 edition of the International Building Code (IBC). This requires local jurisdictions affected by the "Panhandle exemption" to enforce the elimination of that exemption, pending adoption of the required amendments to the Florida Building Code. Also, by referring to the 2006 version of the IBC, this effectively deletes the internal pressurization option, which allows for stronger roof to wall strength (etc.), in lieu of requiring shutters or opening protections for buildings in wind zones of 120 mph or greater. The internal pressurization option has been criticized as not adequately protecting the contents of the home or human safety if an opening is breached during a storm. The option is expected to be eliminated in the next version of the Florida Building Code, but such change is not expected to occur until about October 2008.

Section 14. Requires the Florida Building Commission to amend the Florida Building Code to reflect the application of s. 553.73, F.S., as amended by this bill, to eliminate all exceptions (i.e., the "Panhandle exemption") that provide less stringent requirements than the foundation codes relating to wind resistance or water prevention. The amendments by the commission shall apply statewide, with the exception of the High Velocity Hurricane Zone which shall be governed by the Miami-Dade building code as currently provided within the Florida Building Code.

The commission is also required to amend the code to require that, at a minimum, internal pressurization requirements are applied to homes in areas where the applicable design wind speed is less than 120 mph. The commission must fulfill these obligations before July 1, 2007, pursuant only to the provisions of ch. 120, F.S.

The Florida Building Commission is required to develop voluntary "Code-Plus" guidelines for increasing the hurricane resistance of buildings, to be modeled on the requirements for the High Velocity Hurricane Zone (the Miami-Dade building code). The commission is to identify products, systems and methods of construction that could result in stronger construction. The commission must include its "Code-Plus" guidelines in its report to the 2008 Legislature.

Section 15. Amends s. 624.319, F.S., to authorize the Public Counsel to have access to confidential and exempt examination and investigation reports held by the DFS or the OIR pertaining to insurance. This conforms to the transfer of the powers and duties of the Consumer Advocate from the DFS to the Office of the Public Counsel.

Section 16. Amends s. 624.462, F.S., to expand the authority of condominium associations to form a commercial self-insurance fund by including additional homeowner associations and to eliminate the requirement that a self-insurance fund be formed for purposes other than insurance, thereby allowing for the formation of such funds for the purpose of pooling and spreading the liabilities of its members relating to property or casualty risk.

Section 17. Amends s. 624.4622, F.S., to authorize local governments to form self-insurance funds for the purpose of providing property insurance coverage, if certain conditions are met. Currently, this section only authorizes local government self-insurance funds to form for the purpose of securing workers' compensation coverage. However, municipalities have currently formed self-insurance funds for property insurance based on "home rule" authority under ch. 166, F.S.

Section 18. Amends s. 624.610, F.S., to authorize the OIR to allow credit for reinsurance ceded to (purchased from) an assuming insurer that does not meet the current credit for reinsurance requirements, generally applicable to a reinsurer licensed outside of the United States, if the assuming insurer holds a surplus of $100 million and a secure financial strength rating from two or more nationally recognized rating organizations deemed acceptable by the Insurance Commissioner. In lieu of granting full credit, the OIR may reduce the amount required to be held in trust (currently the trust must contain funds not less than the assuming insurer's reinsurance liabilities from U.S. ceding insurers and a trusteed surplus of at least $20 million, with exceptions). An insurer must be granted credit for ceding reinsurance by the OIR in order to take statutory credit for reducing its liabilities. In making a determination of whether to allow credit for reinsurance ceded to such an insurer, the bill requires the OIR to consider certain factors, including (among others) the domiciliary regulatory jurisdiction's solvency regulation, its willingness to cooperate with United States regulators and the OIR, and the history of performance by reinsurers in the domiciliary jurisdiction.

Section 19. Repeals s. 627.0613, F.S., which creates the Office of the Consumer Advocate in the DFS.

Section 20. Amends s. 627.062, F.S., pertaining to rate standards. The bill repeals the provision which allows insurers to appeal decisions by the OIR on property and casualty rate filings to a three-member arbitration panel for final resolution.

The bill deletes the provision which states that effective July 1, 2007, for residential property insurance in those areas for which OIR determines that a reasonable degree of competition exists, an insurer may increase or decrease rates by up to 5 percent on a statewide average, or 10 percent for any territory, without being subject to a determination by OIR that the rate is excessive or unfairly discriminatory.

The bill repeals a provision that places the burden (of proof) on the OIR to establish that a rate filing is excessive for personal lines residential coverage with a dwelling replacement cost of $1 million or more or for a condominium unit with a combined dwelling and contents replacement cost of $1 million or more

The bill requires that the chief executive officer or chief financial officer and the chief actuary of a residential property insurer making a rate filing for residential property insurance must include a certification under oath subject to the penalty of perjury, on a form approved by the Financial Services Commission, that the information contained in the rate filing does not contain any untrue statements of a material fact or omit such material facts, and that the information described under the rating law (s. 627.062(2)(b), F.S.,) fairly presents, in all material respects, the basis of the rate filing. Submitting a false certification is a first degree misdemeanor under the perjury law (s. 837.012, F.S.) and constitutes a violation of the Unfair Deceptive Practices provision (s. 626.9541(1)(e), F.S.), and is subject to administrative penalties (s. 626.9521, F.S.).

Section 21. Amends s. 627.0628, F.S., to make conforming changes to the transfer of the Consumer Advocate from the DFS to the Public Counsel, and to the repeal of the rate arbitration provisions in Section 20.

Section 22. Amends s. 627.311, F.S., to provide conforming changes to substitute the newly created Insurance Consumer Advocate located within the Office of Public Counsel for membership in the Florida Workers' Compensation Joint Underwriting Association of which the current Consumer Advocate of the DFS sits as a board member or participant.

Section 23. Amends s. 627.351(6), F.S. related to Citizens Property Insurance Corporation:

Rates - The bill requires that the OIR, on an annual basis, establish Citizens' rates within 45 days after Citizens files its recommended rates with the agency. The OIR is required to issue a final order establishing the rates and Citizens may not pursue an administrative challenge or judicial review of such final order. Currently, Citizens files its rates for approval with the OIR, under procedures similar to that for insurers, generally, which allow for Citizens to administratively challenge or seek arbitration of the OIR's determination. The bill deletes the requirement that Citizens' rate filings for personal lines, wind-only policies (i.e., in the High-Risk Account) must be approved or disapproved by the OIR within 90 days after receipt of the filing, or shall be considered deemed approved.

The bill deletes the requirement that Citizens rates be non-competitive with approved rates charged in the admitted voluntary market and no lower than the top-20 insurers (and the provision that the "top 20" requirement is inapplicable in a county or area for which OIR determines that no authorized insurer is offering coverage).

The bill retains the requirement that Citizens' rates be actuarially sound and specifies that the rates are subject to s. 627.062, F.S., except as otherwise provided. That statute provides standards for determining whether a rate is excessive, inadequate, or unfairly discriminatory for rates by property and casualty insurers, generally. However, the procedures of that statute would not apply, due to the provision of the bill that provides for the OIR to establish the rates, following a recommended rate filing by Citizens.

The bill deletes the provision added in 2006 (SB 1980) that for policies in the Personal Lines Account and the Commercial Lines Account issued or renewed on or after March 1, 2007, a rate is deemed inadequate if the rate, including investment income, is not sufficient to provide for the purchase of reinsurance coverage from the FHCF and private reinsurance (whether or not purchased) and to pay all claims and expenses reasonably expected to result from a 100-year probable maximum loss (PML) event (i.e., a 1-in-100 year hurricane), without resort to assessments or other outside funding sources. It also deletes the requirement that for policies in the HRA issued or renewed on or after March 1, 2007, a rate is deemed inadequate if the rate, including investment income, is not sufficient to provide for the purchase of reinsurance coverage from the Fund and private reinsurance (whether or not purchased) and to pay all claims and expenses reasonably expected to result from a 70-year probable maximum loss event (i.e., a 1-in-70 year hurricane), without resort to assessments or other outside funding sources, and that for policies in the HRA issued or renewed in 2008 and 2009, the rate must be based upon an 85-year and 100-year probable maximum loss event, respectively.

The bill rescinds the rate filings approved by the OIR for Citizens that took effect January 1, 2007, except for those rates that were lowered (i.e., territorial rates in Monroe County which were lowered). On January 1, 2007, a statewide average rate increase of 12 percent in the

PLA and 21.4 percent for the HRA took effect which would be rescinded under this provision. Citizens must begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who have paid the January 1, 2007, rate increase. The rates in effect on December 31, 2006, will remain in effect for the 2007 calendar year, except for any change that results in a lower rate. (For example, Citizens may lower its rates as a result of restrictions in coverage, such as eliminating coverage for sinkholes or pool cages.) The bill provides that the next rate change that may increase rates shall take effect January 1, 2008, pursuant to a new rate filing recommended by Citizens and established by the OIR.

The bill provides that, subject to the consumer choice provisions of s. 627.3517, F.S., for personal lines residential policyholders, if the policyholder is offered coverage from an insurer at the insurer's approved rate, then that policyholder is not eligible for a Citizens' policy, unless the insurer's premium is more than 25 percent greater than the premium for comparable coverage provided by Citizens. That is, a policyholder will not be ineligible for coverage in Citizens if the take out offer is from an insurer whose premiums are 25 percent or more than Citizens' premiums for comparable coverages.

Eligibility of Coverage for Nonhomestead Property - The bill deletes the provision added in 2006 (SB 1980) which mandates that, beginning March 1, 2007, "nonhomestead" property is eligible for coverage or renewal of coverage in Citizens only if the property owner provides Citizens with a sworn affidavit from an agent which states that the property has been rejected for coverage by one authorized insurer and three surplus lines insurers.

Commercial Coverage - The bill authorizes Citizens to provide multiperil commercial nonresidential (business) coverage on a statewide basis under its Commercial Lines Account (CLA). Presently, Citizens provides only commercial *residential* policies in its CLA which covers condominium associations, apartment buildings and homeowners associations. Citizens also currently provides wind-only coverage to commercial property in the HRA.

The Property and Casualty Joint Underwriting Association (PCJUA), authorized in s. 627.351(5), F.S., was activated by emergency rule by the Financial Services Commission in August 2006 to make commercial property insurance available to Florida businesses that were unable to find coverage in either the admitted or surplus lines insurance markets. The PCJUA currently provides wind-only coverage for structures of $1 million maximum total insured value per named insured ($750,000 maximum limit for contents) and has more than 300 policies. (See Section 24, below, which provides for a plan to transition commercial coverage from the PCJUA to Citizens.).

The bill authorizes the plan of operation to require commercial property to meet specified mitigation construction features as a condition of eligibility for coverage.

Multiperil Coverage in High-Risk Account – The bill authorizes Citizens to provide multi-peril coverage or wind-only coverage, or both types of coverages, in the High-Risk Account (HRA). In issuing multi-peril coverage, Citizens may use its approved policy forms and rates for the personal lines account (PLA) through December 31, 2007. The bill provides legislative intent that the offer of multi-peril coverage in the HRA will not adversely affect the creditworthiness of or security for currently outstanding financing obligations or credit facilities of the HRA, the

PLA, and the CLA. Currently, Citizens offers wind-only policies in the HRA for both personal lines residential and commercial (residential and nonresidential) policyholders. This provision takes effect April 1, 2007. This will potentially impact the allowance for insurance companies to write non-wind policies. Insurers may only write non-wind policies for those homes and properties that are eligible for wind-only coverage in the HRA. (See Section 33 which revises this restriction.)

Expanded Assessment Base - The bill expands the assessment base of Citizens to be the same as the FHCF, for the types of policies and premiums that are subject to assessment to fund a deficit. This has the effect of expanding the Citizens base from approximately $8.3 billion to $35 billion. The assessment base would include all property and casualty lines of insurance (including automobile insurance), other than workers' compensation insurance and accident and health. These would be the lines of insurance subject to assessment for deficits in Citizens, as described in more detail below.

Policyholder Assessments - The bill delays, until 2008 and thereafter, provisions enacted in 2006 (SB 1980) that provide for Citizens to levy assessments against its own policyholders before levying assessments against insurers and non-Citizens policyholders. These current law provisions mandate that Citizens immediately levy up to a 10 percent of premium assessment on all "nonhomestead" policyholders if a deficit occurs in any account and, if that assessment is insufficient, assess all Citizens' policyholders (including "nonhomestead") up to a 10 percent of premium assessment, collected at the time of issuance or renewal of a policy, to offset the deficit. If these amounts are insufficient, then Citizens levies regular assessments against property insurers and, if necessary, emergency assessments against non-Citizens policyholders, as described below.

If Citizens incurs a deficit in any account (Personal Lines, Commercial Lines, or High-Risk), it must levy regular assessments for that account against property insurers, including surplus lines insurers, up to 10 percent of each insurer's net written premium from the prior year for its subject lines of business. The entire regular assessment is levied against property insurers, who may recoup such amounts from their policyholders in subsequent rate filings. If the regular assessment is not sufficient to cover the deficit, Citizens may issue revenue bonds funded by multi-year emergency assessments collected by insurers as premium surcharges on all property insurance policyholders, generally limited to 10 percent of premium or 10 percent of the deficit, whichever is greater.

Take-out Policies - The bill clarifies that policies removed from Citizens in a take-out, assumption, or similar transaction are considered to be the sole obligation and direct insurance of the take-out company since the take-out company has received from Citizens a premium calculated to cover the losses occurring once the transaction (i.e., the take-out) takes effect.

Limits of Coverage - The bill provides that the plan of operation (which is subject to approval by the Financial Services Commission) may provide such limits of coverage as the board determines, consistent with the requirements of the Citizens statute. This is intended to clarify that the board may establish the maximum limits of coverage, for example, for its polices, subject to any specific requirement or prohibition in the statute.

Liability for FIGA Assessments - The bill requires that Citizens be subject to any assessments that are levied by the Florida Insurance Guaranty Association (FIGA). Currently, Citizens is not subject to the regular 2 percent of premium assessment that may be levied by OIR on behalf of FIGA, but Citizens is currently subject to the additional emergency 2% assessment that may be levied.

Section 24. Provides legislative intent that commercial nonresidential property insurance be made available from Citizens, rather than the Property and Casualty Joint Underwriting Association (PCJUA). Requires that Citizens adopt, subject to OIR approval, a plan providing for the transition of such coverage from the PCJUA to Citizens under its own forms, rates, terms and conditions. It further provides legislative intent that such transition plan not adversely affect the creditworthiness of or security for outstanding financing obligations or credit facilities of Citizens' three accounts. The PCJUA may continue to issue such coverage until Citizens begins issuing its own coverage.

Section 25. Amends s. 627.701, F.S., related to hurricane deductibles. The bill deletes the provisions that impose limits on maximum allowable deductibles. In general, hurricane deductibles may currently not exceed 10 percent of policy limits for a policy value of $100,000 or more, and no more than 2 percent of policy limits for a policy value of less than $100,000. However, there is no maximum deductible for a policy value of more than $500,000. The maximum allowable deductibles are deleted, to be consistent with the provisions of Section 26, which requires insurers to offer policyholders the option to exclude hurricane or windstorm coverage. The bill retains the requirement that insurers offer policyholders hurricane deductible options of 2 percent, 5 percent, and 10 percent of policy limits, with certain exceptions.

However, as a condition of providing a deductible greater than 10 percent of policy limits for a home valued at less than $500,000, the bill requires that the policyholder personally write the following statement: "I do not want the insurance on my home to pay for the first [specify dollar value] of damage form hurricanes. I will pay those costs. My insurance will not." The policyholder must also provide a written statement from any mortgageholder or lienholder approving the specified deductible. These requirements must be met each year upon renewal of the policy.

The bill adds a requirement that insurers offer a hurricane deductible which covers 50 percent of the policyholder's equity in a structure that is subject to a mortgage or lien, effective July 1, 2007.

The bill makes technical changes by deleting references to effective dates of various deductible provisions that are currently in effect.

Section 26. Amends s. 627.706, F.S., related to sinkhole coverage, effective July 1, 2007. The bill property insurance policies to provide coverage for "catastrophic ground cover collapse," defined as geological activity that results in the collapse of the ground cover and the insured structure being condemned and ordered to be vacated by the appropriate governmental agency. Insurers must continue to make sinkhole coverage available, as currently defined in statute, for an appropriate additional premium. The provisions of this section and other sections relating to sinkhole coverage (deductible amounts, definition of coverage, standards for investigating and testing sinkholes, neutral evaluation of sinkhole claims; etc.) would continue to apply to the sinkhole coverage that must be made available, but would not apply to catastrophic ground cover collapse insurance coverage. Effective July 1, 2007.

Section 27. Amends s. 627.7065, F.S., to provide conforming changes to substitute the newly created Insurance Consumer Advocate located within the Office of Public Counsel for membership in the Statewide Automated Database of Sinkholes and Related Activity Identified in the State, of which the current Consumer Advocate of the DFS sits as a board member or participant.

Section 28. Creates s. 627.712, F.S., relating to required hurricane coverage and required offers of exclusions from coverage, effective July 1, 2007.

The bill transfers a provision of current law that requires residential property insurers to include hurricane or windstorm coverage in all residential insurance policies, except for risks that are eligible for wind-only coverage from Citizens. This is currently required in s. 627.0629(6), F.S., which is repealed in Section 33 of the bill. Under the bill, Citizens may continue to provide wind-only policies, in which case an insurer could provide non-wind coverage for such policies.

However, the bill would also require insurers to make available for all residential property insurance policies, at the option of the policyholder, an exclusion of hurricane coverage or windstorm coverage. The coverage may only be excluded if the policyholder personally writes the following statement signed by all named insureds: “I do not what the insurance on my home to pay for damage from windstorms or hurricanes. I will pay those costs. My insurance will not.” The policyholder must also provide a written statement from any mortgageholder or lienholder approving the specified deductible. These requirements must be met each year upon renewal of the policy.

The bill also requires residential property insurers to make available, at the policyholder’s option, an exclusion of coverage for contents. This would also require that the policyholder personally write a statement, signed by all insureds and required each year upon renewal, that he or she does not want the insurance to pay for the costs to repair or replace any contents that are damaged.

Section 29. Creates s. 627.713, F.S., relating to reports by insurers of hurricane loss data. The bill authorizes the OIR to require property insurers to report data regarding hurricane claims, including, but not limited to, a list of specified data items. Among others, this includes amounts of losses covered by reinsurance, amount of claims and losses covered by specified deductibles, insured values, dollar values, specified mitigation features, etc.

Section 30. Amends s. 631.57, F.S., relating to the Florida Insurance Guaranty Association (FIGA), The bill clarifies that FIGA may either certify an emergency assessment to directly pay claims, or to pay off interest, principal, and costs of bond issuance on bonds issued to pay claims, of insolvent homeowners insurers. Also, FIGA must continue making emergency assessments every year in which bonds are outstanding, but only if FIGA chooses to utilize the emergency assessment proceeds to issue bonds, as opposed to directly paying claims. The bill clarifies that if either a regular or emergency assessment is issued by FIGA, and such assessment would render an insurer subject to the assessment insolvent or impaired, the OIR may exempt such insurer from the assessment.

Section 31. This provision pertains to the Florida Insurance Guaranty Association (FIGA), to clarify that the amendments to section 34 of chapter 2006-12, Laws of Florida, authorizes FIGA to certify, and the OIR to levy, an emergency assessment of up to 2 percent to either directly pay the covered claims of insolvent insurers out of the account specified in s. 631.55(2)(c), F.S., ("all other insurance account") or to use the proceeds of such emergency assessment to retire the indebtedness and the costs of bonds issued to pay such claims and reasonable claims-administration costs.

Section 32. Amends s. 631.912, F.S., to provide conforming changes to substitute the newly created Insurance Consumer Advocate located within the Office of Public Counsel for membership in the Florida Workers' Compensation Insurance Guaranty Association of which the current Consumer Advocate of the DFS sits as a board member or participant.

Section 33. Repeals s. 627.0629(6), F.S., effective July 1, 2007. This law requires residential property insurers to include hurricane or windstorm coverage in all residential insurance policies, except for risks that are eligible for wind-only coverage from Citizens. This is transferred and revised in Section 28 of the bill.

Section 34. Creates the Windstorm Mitigation Study Commission, which is comprised of three members appointed by the Governor, one member appointed by the Chief Financial Officer, and one member appointed by the Commissioner of the OIR. The Governor would designate one of his appointees to serve as chair.

The commission is charged with evaluating programs and solutions that could address the state's need to mitigate the effects of windstorms on structures, including proposals that provide for: the availability of home inspections for windstorm resistance; the full actuarial value to be reflected in premiums credits for windstorm mitigation; grants to assist homeowners to harden their property; funding sources for windstorm mitigation; the most effective way to inform policyholders of the availability and means to obtain premiums credits for windstorm mitigation, tax incentives for windstorm mitigation; and research on windstorm mitigation.

The commission is required to provide recommendations including proposed legislation to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Commissioner of the OIR by March 30, 2007.

Members of the commission would serve without compensation, but are entitled to reimbursement for travel expenses, as provided in s. 112.061, F.S. The department, the OIR, Citizens, and other agencies are required to provide any information, assistance, and facilities deemed necessary for the commission to fulfill its duties. The Executive Office of the Governor would provide administrative support for the commission.

Section 35. Creates the Florida Disaster Recovery Initiative within the Department of Community Affairs. The initiative will provide funds to retrofit housing to maintain the affordable housing stock, reduce the financial burden of higher insurance premiums on low-income homeowners, and ultimately ensure sustainable long-term recovery. Using the additional CDBG funds to strengthen low-income homes, both rented and owned, will dramatically help Wilma impacted Floridians to rebuild and prepare for the future. Designates the department as the administering agent and provides requirements for eligibility and use of funds.

Section 36. Appropriates $100,066,518 in federal CDBG funds in the Department of Community Affairs for Fiscal Year 2006-2007.

Section 37. Effective date of upon becoming law, except as otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The effect of the exemption from the insurance premium tax contained in section 10 may reduce the authority of municipalities and counties to raise revenue, specifically the local option premium tax authorized in ch. 175, F.S. Pursuant to Art. VII, Section 18(b), Fla. Const., if this impact is found to be significant, this bill will require a two-thirds vote for passage.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Hurricane Excess Loss Program (FHELP) requires the SBA to contract with each FHCF participating insurer that obligates the state to provide FHELP coverage in exchange for the insurer’s obligation to pay and service all claims covered by FHELP. This would create a contractual liability from the state to the insurers obtaining this coverage, that may allow insurers to sue the state if FHELP coverage is not provided. Generally, the state has sovereign immunity under Article X, Section 13 of the Florida Constitution. However, under *Pan-Am Tobacco v. Department of Corrections*[3], and *Brevard County v. Miorelli Engineering, Inc.*[4], the Florida Supreme Court has held that the Legislature intends for state sovereign immunity to be waived in situations where the state enters into a contract authorized by the powers granted by general law. The Court stated that when the Legislature authorizes a state entity to enter into a contract, it intends that such contracts be valid and binding on both parties, for a contract that is not mutually enforceable is an illusory contract. Thus, it does not appear that the state could use the concept of sovereign immunity to excuse its obligation to provide FHELP coverage.

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[3] 471 So.2d 4 (Fla. 1984).
[4] 703 So.2d 1049 (Fla. 1997).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The fiscal impact of exempting hospital self-insurance funds from the insurance premium tax is indeterminate.

The fiscal impact of exempting the hospital bond pools, authorized under section 3 of the bill, from property taxes and assessments, as well as state taxes related to the issuance of bonds and associated income are indeterminate.

B. Private Sector Impact:

Florida Hurricane Catastrophe Fund (TEACO and TICL) - According to an analysis jointly developed by the SBA, OIR, and legislative staff, if 100 percent of the private insurance market purchases its share of the optional $3 billion layer of TEACO coverage (below the FHCF retention) from the Florida Hurricane Catastrophe Fund at the 90 percent reimbursement level, it will result in an average premium savings of approximately 5.5 percent.[5] Additionally, if 100 percent of the private insurance market purchases its share of the $3 billion layer of TICL coverage (above the FHCF limits) at the 90 percent reimbursement level, it will result in an average premium savings of approximately 6.95 percent[6] Thus, the estimated combined impact of the TEACO and TICL coverage options is about 12.5 percent in average statewide premium savings. However, the additional obligations of TEACO and TICL coverage also increase the potential need for the issuance of bonds to pay for obligations stemming from such coverage, the cost of which would be passed onto most insurance policyholders via assessment. (See Public Sector, below.)

Florida Hurricane Excess Loss Program (FHELP) - Based on an analysis by OIR, as applied to the state's assumption of liability for hurricane losses covered by the FHELP program, it is estimated that an average premium savings of about 13.2 percent would result, for policyholders insured by the ten largest voluntary writers of property insurance in the state. This analysis was based on eliminating the reinsurance costs covering losses above a 50 year probable maximum loss event, which is approximately the level at which the state would assume liability under FHELP. The chart below (provided by the OIR) summarizes the indicated rate decreases for policyholders of these ten companies:

[5] This calculation is made by taking the OIR's estimate of the combined cost of reinsurance and internal capital used by private market insurers to cover losses within the proposed full TEACO layer ($1.65 billion), and subtracting from that the cost of TEACO coverage ($1.2 billion, i.e., 40 percent of the $3 billion layer of coverage) to reach the total savings ($450 million). The $450 million in savings is approximately 5.5 percent of the residential premium in the state as of Sept. 30, 2006.

[6] This calculation is made similarly to the estimate of TEACO coverage above, and takes the combined cost of reinsurance and internal capital used by private market insurers to cover losses within the proposed full TICL layer ($1.014 billion) minus the cost of TICL coverage ($450 million, i.e., 15 percent of the $3 billion layer of coverage) to reach the total savings ($564 million). The $564 million in savings is approximately 6.95 percent of the residential premium in the state as of Sept. 30, 2006.

Company	Market Share (Premium)	Indicated Rate Decrease	% of Premium Loss and LAE Over 50 Year PML
State Farm Florida	20.6%	14.1%	7.5%
Allstate Floridian	6.6%	9.3%	5.6%
Nationwide of Florida	4.8%	10.6%	10.2%
USAA	2.6%	14.9%	6.1%
Allstate Floridian Indemnity	1.8%	10.2%	3.8%
Liberty Mutual	2.5%	10.0%	8.7%
First Floridian	2.1%	11.8%	10.2%
Universal Property & Casualty	1.9%	9.3%	6.2%
USAA Casualty	1.7%	14.9%	6.1%
Universal of North America	1.6%	35.3%	5.9%
Average	**46.2%**	**13.2%**	**7.3%**

The FHELP program will also place a potential liability on Floridians of the amount of losses above the FHELP retention up to a 250 year PML event that is not funded under the provisions of the bill. See Public Sector, below, for further discussion.

Coverage Exclusions - Offering policyholders the option to exclude windstorm coverage, eliminating maximum allowable deductibles, requiring insurers to offer policyholders the option to exclude coverage for contents, and requiring insurers to offer a deductible equal to 50 percent of the policyholder's equity, will provide policyholders various options by which they can lower their premium costs. For homeowners with mortgages, their ability to take advantage of these provisions may be curtailed by the financial institutions that hold an interest in the structure. Decreased premium cost associated with any of these options is due to the fact that the policyholder is purchasing less coverage from an insurer than was previously possible. Additionally, options such as excluding windstorm coverage and only covering the policyholder's equity may limit the ability of many policyholders to rebuild a severely damaged home following a hurricane.

Citizens - Citizens' policyholders should economically benefit by having their insurance premiums reduced due to the rescission of the rate filings which took effect January 1, 2007, which had the effect of imposing a statewide average rate increase of 12 percent in the Citizens' Personal Lines Account and 21.4 percent in the High-Risk Account (wind-only) as to all personal lines policyholders (i.e., homeowners and mobile homeowners). The bill requires Citizens to provide refunds to policyholders who have paid the January higher rates and it may not raise its rates during 2007 (i.e., Citizens must maintain the rates in effect on December 31, 2006), but may lower its rates. Further, Citizens' policyholders realize insurance savings because the bill removes the requirement that Citizens' charge rates sufficient to purchase reinsurance to cover specified levels of probable maximum loss (PML) for each of its three accounts and rescinds the provision that its rates be non-competitive and no lower than the top 20 insurers.

There are other provisions in the bill which should have the effect of holding down premium increases for Citizens policyholders. The bill removes the provision making nonhomestead policyholders ineligible for Citizens coverage or renewal of such coverage (which would have taken effect March 1, 2007) under specified circumstances. It delays until 2008 the requirement that Citizens impose up to a 10 percent of premium assessment on all nonhomestead policyholders if a deficit occurs, and if that surcharge is insufficient, impose a 10 percent renewal surcharge on all its policyholders (including nonhomestead policyholders). Also, a Citizens' policyholder may turn down an offer of coverage from an authorized insurer and remain in Citizens if the insurer's premium is more than 25 percent greater than the premium for comparable coverage from Citizens.

Additional premium savings should be realized under the bill which authorizes that beginning April 1, 2007, Citizens may offer multiperil coverage, wind-only coverage, or both coverages in its High-Risk Account (HRA). According to Citizens' representatives, allowing Citizens to offer multiperil coverage could have the effect of reducing premiums 10 percent to 25 percent for homeowners policyholders in the HRA.

Building Code - The elimination of the "panhandle exemption" to the Florida Building Code should have the long-term effect of lowering rates for property insurance. Greater amounts of new construction in the areas covered by the panhandle exemption will be built to better withstand hurricane force winds and rain, reducing the risk associated with insuring such structures and thus requiring less in premiums to insure than a similarly situated building that has inferior construction.

Sinkhole Coverage - Homeowners whose insurance premium rates have risen rapidly in recent years due to the increased cost of sinkhole coverage should experience reductions in premiums due to the provisions in the bill creating catastrophic ground cover collapse. However, policyholders in sinkhole-prone areas may experience increased costs for optional sinkhole coverage as a result of this provision if large numbers of policyholders elect to forgo such coverage, thus preventing insurers from spreading sinkhole risk to a large number of customers.

Florida Disaster Recovery Initiative - The Florida Disaster Recovery Initiative will benefit Florida's very low, low and moderate income homeowners and renters by providing funds for inspections, repairs, and hurricane damage mitigation assistance.

C. Government Sector Impact:

Florida Hurricane Catastrophe Fund - The TEACO and TICL programs place additional obligations on the FHCF of up to approximately $9 billion (the $3 billion TEACO layer for each of two hurricanes, and the $3 billion TICL layer). If the entirety of TEACO and TICL coverage is purchased by the private market, the FHCF would receive premiums from such coverage of approximately $1.65 billion ($1.2 billion for TEACO and $450 million for TICL). This leaves a maximum additional liability from these coverage options of approximately $7.35 billion to be financed through the issuance of bonds by the Florida Hurricane Catastrophe Fund Catastrophe Corporation.

Florida Hurricane Excess Loss Program - The FHELP program will also place a potential liability on the state for the maximum annual FHELP coverage limit, which is that portion of the 250 year probable maximum loss that exceeds the FHELP retention. Representatives from the SBA estimate that for 2007, a 250-year PML event will result in losses of approximately $73.7 billion dollars. Thus, the state will be assuming a maximum liability of approximately $47.6 billion for the 2007-2008 contract year (the difference between the estimated FHELP aggregate coverage limit and the estimated $26.1 billion FHELP retention) pursuant to the FHELP.. It should be noted that this liability is likely to increase over time as property values increase and additional structures are constructed in the state. Payment for these potential liabilities could necessitate a major bond issue of tens of billions of dollars, which would likely have to be funded via budget cuts or taxes, or both. The funding of many state programs could be affected if a major hurricane event occurs that triggers the state's obligations under FHELP, as the Legislature has indicated an intent to use 10 percent of that year's state budget to fund FHELP obligations.

Citizens - Administrative and economic efficiencies may be achieved under the bill due to Citizens providing commercial (i.e., business) coverage statewide and requiring the Property and Casualty Joint Underwriting Association (PCJUA) to transfer its commercial policies to Citizens.

Florida Disaster Recovery Initiative - The bill appropriates $100,066,518 in federal CDBG funds in the Department of Community Affairs to assist local governments in protecting affordable housing against hurricane damage and mitigating the increased costs of insurance via the Florida Disaster Recovery Initiative.

OIR Analysis of Reinsurers - The bill grants authority to the OIR to waive or lower the deposit requirement for reinsurers licensed in other countries, based on criteria related to the financial strength of the insurer and the quality of the regulatory jurisdiction. In order to analyze the financial strength of particular reinsurers and their history, the OIR anticipates the need to hire a Bureau Chief at a salary of $90,000 plus benefits, three Financial Administrators at a salary of $70,000 each plus benefits, and an administrative assistant to be paid $25,481 plus benefits. Additionally, the OIR will seek research and technology access to the reports of five major ratings agencies (Bloomberg, Fitch, Moody's, Standard & Poor's, and AM Best) which will cost $130,000 annually. The OIR estimates that these and other miscellaneous expenses will cost the OIR $571,175 annually in recurring expenses, plus $23,137 in non-recurring costs.

Report of Hurricane Claims Data - The bill grants the OIR authority to require property insurers to report additional specified data regarding hurricane claims and underwriting costs. The OIR plans to use this authority, and indicates that it will contract with a private vendor to update the Catastrophe Event Data Reporting and Analysis system and update related systems. The OIR estimates these changes will cost $150,000.

Transfer of Insurance Consumer Advocate - The bill authorizes a Type-II transfer of the Office of the Consumer Advocate from the DFS to the Office of the Public Counsel. According to the DFS, for fiscal year 2006-2007, the Office of the Consumer Advocate has an operating budget of $1,018,218, which includes $250,000 for contractual or consulting services. Currently, the staff includes: the Consumer Advocate, an actuary, a senior attorney, three senior management analysts, an executive assistant, and an OPS (other personnel services) position.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 132262 by Banking and Insurance:
Provides technical, conforming change related to the Type-II Transfer of the Office of the Insurance Consumer Advocate from the Department of Financial Services to the Public Counsel to ensure that the transferred office has funding authority for fiscal year 2006-2007.

Barcode 815206 by Banking and Insurance:
Deletes the requirement for the State Board of Administration to publish the estimated 250-year probable maximum loss for the purposes of determining the aggregate coverage limit under the Florida Hurricane Excess Loss Program (FHELP). This conforms to amendment barcode 111250, below.

Barcode 111250 by Banking and Insurance:
Changes the maximum annual limit of state liability under the Florida Hurricane Excess Loss Program (FHELP). The amendment provides a maximum annual limit of $23 billion in excess of the FHELP retention, for the 2007 contract year, rather than the portion of the 250-year probable maximum loss level (determined annually by the SBA) that exceeds the FHELP retention. As amended the $23 billion maximum limit would be adjusted annually to reflect the percentage growth in the reported exposure to the fund.

Barcode 715220 by Banking and Insurance:
Requires jurisdictions having authority to enforce the Florida Building Codes to require wind-borne-debris protection in accordance with the International Residential Code (2006) within the "wind-borne-debris region" as that term is defined in s. R301.2 of that code. This would be in addition to the bill's requirement for such jurisdictions to apply such requirements of the International Building Code (2006).

Barcode 505724 by Banking and Insurance:
Expands the types of entities that are eligible to form commercial self-insurance funds to include a not-for-profit group comprised of one or more community associations having a least 50 residential properties cumulatively valued at over $25 million. A commercial self-insurance fund is subject to licensure by OIR and is subject to specified financial and excess insurance requirements under ss. 624.40-624.488, F.S., the Commercial Self-Insurance Fund Act.

Barcode 482314 by Banking and Insurance:
Authorizes any two or more not-for-profit corporations located and organized under Florida law to form a self-insurance fund for pooling liabilities of its members for any property, casualty, or surety risk, which is exempt from the group self-insurance regulatory requirements provided that the fund meets certain criteria, including, but not limited to, the following:

- has annual normal premiums in excess of $5 million;
- has only members who each receive at least 75 percent of its revenue from local, state, or federal government sources;

- uses a qualified actuary to determine rates and reserves for losses and who annually submits to the OIR a certification that the rates are actuarially sound and are not inadequate;
- maintains excess insurance, with a retention (amount of loss retained or assumed by the fund) that does not exceed $350,000 per occurrence; and
- submits annual audited financial statements to the OIR. (WITH TITLE AMENDMENT)

Barcode 573674 by Banking and Insurance:
Provides that within 24 months after an insurer receives approval of a rate increase of 10 percent or more, the insurer must file and the OIR must review the insurer's rate based on a rate filing that addresses all elements of the current rate.

Barcode 104380 by Banking and Insurance:
Amends the requirement that certain insurance officials sign a sworn certification concerning a rate filing by expanding the applicability of the certification to all property insurer rate filings (including commercial property insurance), rather than only residential property insurance rate filings.

Barcode 931584 by Banking and Insurance:
Adds a requirement to the sworn certification provision to provide that 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.

Barcode 632058 by Banking and Insurance:
Limits the insurance requirements of the Condominium Act to every "residential" condominium, which is defined as a condominium consisting of two or more units, any of which are intended for uses as a private temporary or permanent residence (etc.)

Otherwise, this amendment is the same as amendment 635940 above, which specifies what constitutes "adequate insurance" under the Condominium Act for a group of at least three communities operating as residential condominiums, cooperatives, homeowners' associations, or timeshare entities. These entities may purchase windstorm insurance coverage if the insurance is sufficient to cover an amount equal to the probable maximum loss (PML) for such entities for a 250-year windstorm event. The PML must be determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Project Methodology. Currently, the Department of Business and Professional Regulation deems adequate insurance as full replacement coverage which may not be available or may be cost prohibitive for these entities. The amendment also clarifies that if condominiums form a commercial self-insurance fund under the Insurance Code, the insurance requirements are considered adequate insurance. (WITH TITLE AMENDMENT)

Barcode 390906 by Banking and Insurance:
Exempts medical malpractice insurance premiums from the premium based for assessments by Citizens for deficits, which the bill expands to be the same as the assessment base for the Florida Hurricane Catastrophe Fund, which includes all lines of property and casualty insurance, other that workers' compensation and health and accident premiums.

Barcode 884732 by Banking and Insurance:
Exempts surety insurance from the Citizens assessment base.

Barcode 584856 by Banking and Insurance:
Provides that funds in the Florida Disaster Recovery Initiative "may" be used up to the specified percentage limits rather than "shall" be used up to these limits to complement mitigation grants awarded by the Department of Financial Services, in order to be consistent with the federal requirements. .

Barcode 543466 by Banking and Insurance:
Technical amendment correcting a cross-reference.

Barcode 080242 by Banking and Insurance:
Requires the Financial Services Commission to develop by rule a uniform mitigation verification inspection form that must be used by all insurers

Barcode 952700 by Banking and Insurance:
Provides technical, conforming changes related to the transfer of the Office of the Insurance Consumer Advocate from the Department of Financial Services to the Public Counsel to provide funding authority for fiscal year 2007-2008 and thereafter. (WITH TITLE AMENDMENT)

Barcode 650864 by Banking and Insurance:
Repeals the "use and file" provisions of the property and casualty insurance rating law that allows insurers to file rates with OIR 30 days after the rate filing is implemented, subject to an order by OIR to refund to the policyholder that portion of the rate found by OIR to be excessive. As amended, all filings would be subject to the "file and use" procedures, under which insurers are required to file rates 90 days before the proposed effective date. OIR must finalize its review by issuing a notice of intent to approve or disapprove within 90 days after receipt of the filing; otherwise the filing is deemed approved. (WITH TITLE AMENDMENT)

Barcode 325298 by Banking and Insurance:
Requires the Windstorm Mitigation Study Commission established by the bill, to make recommendations on the development of a from for uniform mitigation verification inspection to be used by insurers when factoring discounts, which clearly specifies the procedures necessary to receive the full value of the discount.

Barcode 883588 by Banking and Insurance:
Specifies that single family housing units or condominiums are eligible for funds from the Florida Disaster Recovery Initiative.

Barcode 451392 by Banking and Insurance:
States the Legislature intends to create during the 2007 Legislative Session a grant program to facilitate the purchase of property insurance by low-income persons as defined in s. 420.602(8), F.S., to protect their homestead property. (WITH TITLE AMENDMENT)