

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 2044

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Property insurance

DATE: March 12, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich/Burgess	Burgess	BI	Fav/CS
2.	_____	_____	GA	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Committee Substitute for Senate Bill 2044 makes changes to the laws related to property insurance, primarily affecting residential property insurance, as follows:

Consumer Education – Directs the Office of Insurance Regulation (OIR), contingent on an appropriation, to develop a comprehensive insurance website for consumers which would provide the information necessary to make informed purchases of homeowners’ insurance. It would contain price comparisons, filed complaints, financial strength, underwriting and receivership information, and other data useful to consumers.

Mediation Procedures for Property Insurance Claims – Requires the Department of Financial Services to prepare information for consumers relating to the mediation program and mandates that during a dispute, insurers and insureds provide documents specifying the costs to repair or replace damaged property.

Surplus Requirements for Insurers - Increases the minimum surplus requirements for “new” residential property insurers from \$5 million to \$15 million and increases the minimum surplus

requirements for “current” residential property insurers from \$4 million to \$5 million until July 1, 2015, and thereafter the requirement will be \$15 million.

Insurance Consumer Advocate - Specifies that the Consumer Advocate’s annual report card, which grades personal residential property insurers, must be prepared by June 1, 2012, and must “objectively” grade such insurers. Clarifies that the report card include only “valid” consumer complaints and other “measurable and objective” factors, and defines the term “valid consumer complaint” to be a written communication from a consumer expressing dissatisfaction with the insurer and the conduct described is found to be a violation of the insurance laws.

Insurance Rating Law - Extends the current prohibition on “use and file” rate filings until December 31, 2012. Expands the current expedited rate filing procedure for property insurers to include a rate adjustment for reinsurance costs, financing products used to replace reinsurance, and applicable inflation trend factors published annually by the OIR. All costs contained in the filing are capped at 10 percent per policyholder and an insurer could make only one filing under this provision in any 12-month period. Prohibits the OIR from directly or indirectly prohibiting, impeding or otherwise compromising an insurer’s right to include acquisition costs in a rate filing or including agents’ commissions, advertising or the right to acquire policyholders.

Replacement Cost Coverage – Revises the replacement cost adjustment requirements for homeowners’ insurance policies for damages to dwellings and personal property:

- for dwelling losses, an insurer must pay the actual cash value of the loss, and subsequently pay the reservation or holdback of any depreciation in value, if the insured executes a contract to replace or repair the dwelling or property;
- for personal property losses, an insurer may pay the greater of the actual cash value or 50 percent of the replacement cost value, and must subsequently pay the reservation or holdback upon the insured providing receipts for the replaced property.

Mitigation Credits and Discounts – Provides that if an insurer demonstrates that the aggregate of mitigation discounts results in a reduction of revenue that exceeds the reduction of the aggregate loss that is expected to result from mitigation, the insurer may recover the lost revenue through an increase in its base rates.

Financial Condition of Insurers – Allows an insurer to cancel or nonrenew a property insurance policy upon a minimum of 45 days’ notice subject to OIR approval based on a finding that the insurer lacks adequate reinsurance coverage for hurricane risk and other financial factors.

Insurer Rehabilitation and Liquidation – Clarifies that the Circuit Court of Leon County has exclusive original jurisdiction over any insurer and its affiliates in a delinquency proceeding, has jurisdiction to identify funds and property belonging to an entity in receivership, and expands the definition of an affiliate.

Florida Hurricane Catastrophe Fund - Extends the exemption of medical malpractice insurance premiums from FHCF emergency assessments by three years, from May 31, 2010 to May 31, 2013.

This bill substantially amends the following sections of the Florida Statutes: 215.555, 624.408, 626.9744, 627.0613, 627.062, 627.0629, 627.4133, 627.7011, 627.7015, 631.011, 631.021, and 631.025.

II. Present Situation:

Florida's Rating Law

Section 627.062, F.S., specifies the rate filing process for property and casualty insurers and provides rating standards for these insurers. Currently, property insurers are prohibited from using the "use and file" option for filing rate increases with the Office of Insurance Regulation (OIR or office) until December 31, 2010.¹ Instead, insurers must use the "file and use" rate filing procedure which prohibits insurers from increasing their rates prior to approval by the OIR, unless deemed approved by failure of the OIR to issue a notice of intent to disapprove within 90 days. Prior to 2007,² property and casualty insurers filing rates for approval with the OIR had the option of utilizing either of the two procedures: "file and use" or "use and file." Under the use and file option, insurers could file their rates 30 days *after* the rate filing was implemented. With this option, insurers could implement the filing prior to approval, but may be ordered by the OIR to refund to the policyholder that portion of the rate found to be excessive.

Legislation enacted in 2009 allows insurers to make a separate expedited rate filing with the OIR for residential property insurance which would be exempt from the rate filing requirements otherwise applicable under s. 627.062, F.S.³ The provision (s. 627.062(2)(k), F.S.) is limited to allowing insurers to have an adjustment to their rates for reinsurance or financing costs relating to the purchase of reinsurance or financing products to replace or finance the payment of the amount covered by the Florida Hurricane Catastrophe Fund's (FHCF or fund) TICL layer, including replacement reinsurance for the TICL reductions, as well as the cash build up factor and the increase in the price for the remaining TICL layers.⁴ All costs contained in the filing are capped at 10 percent per policyholder; however, financing products such as a liquidity instrument or line of credit cannot result in an overall premium increase exceeding 3 percent. The law also provides that insurers purchasing this reinsurance do so at a price no higher than would be paid in an arms-length transaction. An insurer may make only one filing under this provision in any 12-month period.

¹ Section 626.062(2), F.S. The use and file option is allowed for rate *decreases*, as well as for rate *increases* for casualty insurance lines subject to this section, such as general and professional liability, medical malpractice, boiler and machinery, credit insurance as well as motor vehicle collision and comprehensive coverages.

² During the 2007 Special Session A (Ch. 2007-1, L.O.F.), the Legislature required property and casualty insurers, through December 31, 2008, to utilize only the file and use procedure to implement a rate change if the rate was greater than the rate most recently approved by the OIR. If the rate change was lower than the rate most recently approved, insurers were allowed to continue to elect the use and file procedure. During the 2007 Regular Session (Ch. 2007-90, L.O.F), legislation was enacted limiting the applicability of the file and use provision to property (as opposed to casualty) insurance. In 2008 (Ch. 2008-66, L.O.F.), the Legislature extended the prohibition on the use and file option to December 31, 2009, and in 2009 (Ch. 2009-87, L.O.F.), the Legislature extended the prohibition to December 31, 2010.

³ Ch. 2009-87, L.O.F. The OIR has 45 days after the date of the filing to review it and determine if the rate is excessive, inadequate, or unfairly discriminatory.

⁴ The TICL or Temporary Increase in Coverage Limit Options allows residential property insurers to purchase additional reinsurance *above* the FHCF's mandatory coverage. The 2009 legislation also authorized the FHCF to implement a "cash build up" factor which would increase the reimbursement premiums that the Fund charges property insurers for the mandatory layer of coverage provided by the fund. The cash build up factor is based on a 5 percent annual increase which will be phased in over a 5-year period, at which time the increase will be 25 percent.

As of February 24, 2010, 17 different insurers made various filings under the separate expedited rate filing provision, some making multiple filings for different types of coverages, i.e., mobile home, multi-peril; homeowners, multi-peril; rental, fire. Of these companies, 15 were approved by the OIR, one filing is pending and one insurer withdrew its filing. Almost all insurers that filed under this provision obtained OIR approval for all, or for more than, the amount sought in their initial rate filings. Most insurers withdrew their filings at least once and refiled before receiving final approval. The fastest approval time by the OIR was 14 days from the initial filing to final approval and the longest approval time was 128 days from the initial filing. Most insurers obtained final approval between 40 and 80 days following their initial filing.

Insurer Surplus Requirements

Florida law specifies certain minimum surplus and capital requirements for property and casualty insurers to transact insurance in the state. Under s. 624.407, F.S., the minimum surplus requirement for new property and casualty insurers in Florida, which includes residential property writer's, is the greater of \$5 million or 10 percent of the insurer's liabilities. The minimum surplus requirement for a residential property insurer, once it is licensed in Florida is the greater of \$4 million or 10 percent of the insurer's liabilities.

The current surplus and capital requirements for property and casualty insurers have not been changed since 1993.⁵ Surplus is the reserves an insurer has available to pay claims and is a critical component in measuring the financial strength of a company.⁶ It is the financial cushion that protects policyholders in case of unexpectedly high claims. According to OIR officials, in the past 17 years, circumstances have changed and costs have increased, particularly for residential property insurers, such that increased minimum surplus requirements are necessary. For example, in 2009, the rating agency A.M. Best downgraded nine insurers that sell homeowners insurance in Florida, and Demotech, a company that rates some of the smaller domestic Florida insurers, withdrew its rating from six insurers.⁷ Two such insurers were ordered into receivership.⁸

The office has found that the current level of surplus is not sufficient to support the business plan of a residential property insurer in Florida and has cited several reasons for this position:

- Reinsurance costs continue to rise. The rates charged by reinsurers have increased and the amount of reinsurance being purchased by most insurance companies has also increased. Reinsurance costs vary from insurer to insurer, but currently average at least 30 percent of an insurer's written premium, and in many cases reach 50 percent. The prices reinsurers charge Florida companies change yearly, based on general worldwide losses and capital costs, as well as Florida losses. The reinsurance rates cannot be regulated by the OIR and are discretionary.
- Changes in the Florida Hurricane Catastrophe Fund (FHCF or Fund). Changes to the FHCF have resulted in increases in reinsurance costs to residential property insurers in Florida,

⁵ Ch. 1993-410, L.O.F.

⁶ An insurer's surplus is the remainder after a company's liabilities are subtracted from its assets.

⁷ Windstorm Mitigation Discounts Report, February 1, 2010, Florida Commission on Hurricane Loss Projection Methodology.

⁸ Coral Insurance Company and American Keystone Insurance Company are in receivership.

because insurers will need to purchase more reinsurance from the private market. Since 2007, such insurers have had the option of purchasing coverage from the Fund above its mandatory layer. This coverage is referred to as TICL coverage and the amount of such coverage available for insurers to purchase decreases each year and is currently scheduled to be phased out over the next 5 years.⁹ Reinsurance purchased by insurers from the FHCF is considerably less expensive than private market reinsurance, so as coverage once purchased from the FHCF is replaced with coverage from the private market, reinsurance costs to insurers will increase. Also, the cost of coverage in the Fund's mandatory layer is increasing by 5 percent per year under the "cash build-up" factor. This provision is to ensure that the Fund will have the funds necessary to pay losses when they arise.

- Non-catastrophe losses are increasing. Even in years with no hurricanes in Florida, property writers are experiencing increased losses. This may be attributable to some extent to the current economy. Also, fraudulent or inflated claims are being filed and are expected to increase in times of stressed economic conditions.

Replacement Cost Insurance Coverage

There are two basic ways that property insurance losses can be adjusted: replacement cost or actual cash value (ACV), which is the depreciated value of the property being replaced or repaired. Current law requires that companies issuing homeowners' insurance policies must offer policyholders an option for replacement cost coverage.¹⁰ The law provides that if a loss is insured for replacement cost, the insurer must pay the replacement costs without holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling or property.

Until 2005, under a replacement cost policy, an insurer could make an initial payment based on an ACV basis and require the insured to complete the repair before the insurer paid the balance of the full replacement cost. Following the multiple hurricanes of 2004 and 2005, regulators received complaints from policyholders who were given the ACV, but could not afford to fund the balance necessary to make the repairs or replacements. As a result, these policyholders had paid premiums for replacement cost coverage, but were only being paid ACV. In 2005, the Legislature addressed this problem by requiring that for any loss sustained by a policyholder who has purchased replacement cost coverage, the insurer must pay the full replacement cost, whether or not the insured replaces or repairs the damaged property.¹¹ Insurers assert that the current requirement has led to excessive, and sometimes fraudulent claims for repairs which the policyholder never intends to make.

Insurance companies assert that the current replacement cost and holdback provisions allow some homeowners to file inflated, or even fraudulent, claims because they are not required to make needed repairs to their dwellings or replace their personal property if they sustain a loss. Many states require the insurer to pay initially only the actual cash value, and then provide the balance of the replacement cost once the insured has replaced or repaired the property.

⁹ The TICL or Temporary Increase in Coverage Limit Options.

¹⁰ S. 627.7011, F.S.

¹¹ Ch. 2005-111, L.O.F.

Mediation of Property Insurance Claims

The Department of Financial Services (DFS) administers the nonadversarial alternative dispute resolution procedure for property insurance claims in Florida. Under s. 627.7015, F.S., the Department must prepare a consumer information pamphlet to be used by participants; the insurer is to bear the cost of the mediation, except in certain circumstances; if the insurer fails to attend, it must pay the insured's expenses to attend and reschedule; if the insurer's representative does not have authority to settle the full value of the claim, the insurer will be deemed to have failed to appear. This provision does not apply to commercial coverages, motor vehicle insurance coverages, or to disputes relating to liability coverages in property insurance policies.

According to representatives with the DFS, they conducted 2,701 mediations in 2008 and 3,911 mediations in 2009.¹² For 2008, there were 1,547 storm related mediations and 1,154 non-storm related mediations; for 2009, there were 1,526 storm related mediations and 2,385 non-storm related mediations. The great majority of the storm related mediations for both years were attributable to Hurricane Wilma issues (1,341 mediations in 2008 and 1,327 mediations in 2009). The majority of non-storm related mediations involved residential property and casualty matters for both 2008 and 2009.

Mitigation Credits, Discounts, or Other Rate Differentials

Section 627.0629, F.S., requires rate filings for residential property insurance to include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties. The windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength; roof covering performance; roof-to-wall strength; wall-to-floor foundation strength; opening protections; and window, door, and skylight strength.

Section 627.711, F.S., requires insurers to clearly notify an applicant or policyholder of a personal lines residential property insurance policy of the availability and range of each premium discount, credit, other rate differential, or reduction in deductibles, for wind mitigation. The notice must be provided when the policy is issued and upon each renewal. The notification must be done on a form developed by the OIR. All insurers are required to use the uniform mitigation verification inspection form developed by rule by the Financial Services Commission when factoring discounts for wind insurance. The form as adopted by the commission informs the consumer of the estimated premium discount as a percentage of their premium payment, and the annual dollar amount by which the premium will be reduced.

Although the windstorm mitigation program has been beneficial for many consumers, there have been problems since the program's inception relating to fraud, the determination as to how the credits and discounts are calculated and applied and the negative impact such a program has had on insurer performance and financial viability.¹³ In order to improve the process of assessing, determining, and applying windstorm mitigation discounts, the Legislature required the Florida Hurricane Loss Projection Methodology Commission (Commission) to review this issue and

¹² There were 10,291 mediations in 2005; 9,033 in 2006, and 4,349 in 2007.

¹³ "Windstorm Mitigation Discounts Report" by the Florida Commission on Hurricane Loss Projection Methodology.

make recommendations to the Legislature on February 1, 2010.¹⁴ The Commission issued its report and made recommendations based on four areas of concern which are summarized below:

Rating and the Determination of Windstorm Mitigation Discounts – The Commission determined that the process of assessing, determining, and applying windstorm mitigation discounts had resulted in disagreements between insurers and regulators. It found that the authority of the OIR should *not* include determining windstorm mitigation relativities and discounts and such factors should be incorporated into the hurricane computer modeling review process. Thus, the Commission should determine appropriate windstorm mitigation standards and review models according to those standards. Also, mitigation features should be considered separately for the different coverages and mitigation discounts should only apply to that portion of the premium affected by the mitigation features. Finally, the Commission determined that larger deductibles should be applied to wind losses if windstorm mitigation features, such as shutters, are not used at the time of a loss.

2. The Residential Structure Inspection Process – The Commission found that in the process of re-inspecting residential structures, numerous errors were found, some of which were related to inspection fraud while others were a byproduct of the process or level or expertise of the inspector. The Commission recommended that penalties should be increased to the level of a felony for conviction of fraudulent activities. It also found that the current residential structure inspection process should be replaced with an independent inspection organization that would provide oversight and administer all aspects of the inspection process.

3. Data Quality - The Commission found that all residential structures in the state should ultimately be inspected and the results entered into a centralized database. On-line data collection systems need to be utilized that have built-in data and edit checks and re-inspections of residential structures should be conducted on a random sample basis. The uniform home grading system should be repealed since it is not feasible and presumes a level of accuracy that does not currently exist.

4. Hurricane Computer Modeling – The Commission found that hurricane loss models should be reviewed for their ability to model windstorm mitigation relativities as applied to policies on individual residential structures. This would require an expanded role for the Commission which should be tasked with developing appropriate mitigation standards. Also, the Commission's process of developing standards should revert back to an annual basis which would expedite the development of the appropriate mitigation standards and the implementation of the windstorm mitigation discounts. Finally, insurers should use the same hurricane loss models to justify windstorm mitigation discounts as they do for justifying loss costs.

The Commission found that their recommendations would help achieve less fraud and abuse in the system; a higher quality of data; more efficient and refined hurricane loss models; an improved and equitable rating system; a more financially sound private insurance market and a hardening of residential structures to better withstand windstorm losses.

¹⁴ Ch. 2009-87, L.O.F. The Legislation required the Commission to hold public meetings for the purpose of receiving testimony and data regarding the implementation of windstorm mitigation discounts, credits, other rate differentials, and appropriate reductions in deductibles and to make recommendations on improving the process of assessing, determining and applying these factors.

Rehabilitation and Liquidation

Part I of Chapter 631, F.S., is the Insurers Rehabilitation and Liquidation Act (Act). The Act specifies that the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer is through a delinquency proceeding under the Act. The law provides that the venue for a delinquency proceeding against an insurer is in the Circuit Court of Leon County (Court) and specifies that the Court may exercise authority over any officer, director, manager, trustee, agent, adjuster, employee, or independent contractor of any insurer or affiliate and any other person who possesses any executive authority over, or who exercises control over, any segment of the affairs of the insurer or affiliate. This provision also states that the Court acquiring jurisdiction over persons subject to the Act may exercise exclusive jurisdiction to the exclusion of all other courts. Further, the law provides that the Court shall have exclusive jurisdiction with respect to assets or property of any insurer subject to such proceedings and claims against the insurer's assets or property.

Notwithstanding the language of the Act, some third parties and affiliates of insurers have attempted to evade the jurisdiction of the Court in matters of insurance insolvency by filing with federal bankruptcy courts and obtaining rulings that the issues before those courts do *not* involve the "business of insurance." In so doing, the affiliates are able to keep funds that might otherwise be available to pay claims to Florida policyholders of an insolvent insurer.

Florida Hurricane Catastrophe Fund Emergency Assessments

The Florida Hurricane Catastrophe Fund (FHCF or fund) is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers.¹⁵ 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 fund 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).¹⁶

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 fund is authorized to levy emergency assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation, accident and health, federal flood and, until May 31, 2010, medical malpractice insurance), including surplus lines policyholders, when reimbursement premiums and other fund resources are insufficient to cover the fund's obligations. Annual assessments are capped at 6 percent of premium with respect to losses from any one year and a maximum of 10 percent of premium to fund hurricane losses from multiple years. Revenue bonds issued by the FHCF may be amortized over a term up to 30 years. Thus, the FHCF may levy assessments for as long as 30 years. The fund had a deficit due to the 2005 hurricanes that resulted in a one percent assessment, which will remain in effect until approximately 2014 on all assessable lines of business. The FHCF assessment base was \$34.9 billion as of December 31, 2008, and has declined by -2.42 percent in

¹⁵ Section 215.555, F.S.

¹⁶ Retention is defined to mean the amount of losses below which an insurer is not entitled to reimbursement from the fund. A retention is calculated for each insurer based on its proportionate share of fund premiums.

2006 and -4.69 percent in 2007. The 2009 year-end assessments are not yet finalized, but it is anticipated that the base will decline further according to officials with the fund.

III. Effect of Proposed Changes:

Section 1. Amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund. The bill extends the exemption of medical malpractice insurance premiums from FHCF emergency assessments by three years, from May 31, 2010 to May 31, 2013.

Section 2. Amends s. 624.408, F.S., relating to the minimum surplus requirements for various lines of insurance. The bill requires “new” residential property insurers, meaning those insurers who do not have a certificate of authority before July 1, 2010, to have a minimum surplus as to policyholders of \$15 million. This is an increase of \$10 million above the current surplus requirements for new residential property insurers. The bill provides that for residential property insurers having a certificate of authority prior to July 1, 2010, the minimum surplus requirement will be \$5 million until July 1, 2015, and thereafter the requirement will be \$15 million. The bill provides that OIR may reduce the surplus requirements if the insurer: is not writing new business; has residential property insurance premiums in force of less than \$1 million per year; or is a mutual company.

Section 3. Amends s. 626.9744, F.S., relating to claim settlement practice requirements for property insurance. The bill requires that in determining repair or replacement cost estimates, an insurer must use either: the retail cost quotations from local licensed contractors or retail establishments; or computer software products or other data bases that are based on prices for the local geographic region. If an insurer chooses to use a computer software product or other data base, the valuation documents generated by the software or data base must be supplied to the insured upon request.

Section 4. Amends s. 627.0613, F.S., pertaining to the Insurance Consumer Advocate. The bill specifies that the Consumer Advocate’s annual report card, which grades personal residential property insurers, must be prepared by June 1, 2012, and must “objectively” grade such insurers. The legislation clarifies that the report card include only “valid” consumer complaints and other “measurable and objective” factors, and defines the term “valid consumer complaint” to be a written communication from a consumer expressing dissatisfaction with the insurer and the conduct described is found to be a violation of the insurance laws.

Section 5. Amends s. 627.062, F.S., relating to rate standards for insurers. Under current law, property insurers are prohibited from using the “use and file” option for filing rate increases with the Office of Insurance Regulation (OIR or office) until December 31, 2010. The bill extends the prohibition to December 31, 2012.

The OIR cannot currently prohibit, during a rate filing procedure, any insurer from paying acquisition costs based on the full amount of the premium applicable to any policy or prohibit such insurer from including the full amount of acquisition costs in a rate filing.¹⁷ The bill adds the term, “directly or indirectly,” to modify these two provisions such that the office cannot

¹⁷ S. 627.062(2)(i), F.S.

directly or indirectly prohibit such actions by insurers. The bill also provides that the OIR shall not, directly or indirectly, impede, abridge, or otherwise compromise an insurer's right to acquire policyholders, advertise, or appoint agents, including the calculation, manner, or amount of agent commissions.

An insurer's acquisition costs are typically costs associated with acquiring, maintaining and renewing insurance business which includes the agents' commission, the company's sales expense, and other related expenses. An agent's commission is typically based on a percentage of the premium; however, carriers can apply the agent's percentage to only a portion of the premium (for example, the non-catastrophe portion) and agents are prohibited from charging the policyholder any part of their commission. Commissions may vary based on numerous factors including the line of business, the agent's expertise, the functions the agent is required to perform, and competition among other insurers. Citizens Property Insurance Corporation has budgeted \$205 million for agent commissions for FY 2010 and it is the third largest single expense after reinsurance (\$619 million) and losses (and loss adjustment expenses) incurred (\$459 million).

This section also expands s. 627.062(2)(k), F.S., the expedited rate filing procedure, to allow an insurer to include under this provision a rate adjustment for reinsurance costs, financing products used to replace reinsurance, and applicable inflation trend factors published annually by the OIR, provided that the increase from this filing and any other rate filing combined does not exceed 10 percent for any individual policyholder, excluding coverage changes and surcharges, within the same policy year. The bill eliminates current language which limited the purchase of reinsurance or financing costs to replacing or financing the payment of the amount covered by the Florida Hurricane Catastrophe Fund's TICL layer and the cash build up factor.¹⁸

The bill also requires the OIR, beginning January 1, 2011, to publish an annual informational memorandum establishing one or more inflation trend factors estimating cost increases or decreases for personal and residential property. The informational memorandum is exempt from the requirements of Chapter 120, F.S., (Administrative Procedure Act) and insurers are not required to adopt the factors. An insurer making an expedited filing as a result of a change in the inflation factor may support the filing with rates and rating examples and an explanation demonstrating the insurer's eligibility to adopt the trend factor.

This section requires the OIR, contingent on a specific appropriation, to develop or contract with an entity to develop a comprehensive program to provide consumers with all available information necessary to make informed purchases of homeowners' insurance. The OIR is to consider a separate website that consolidates consumer information for price comparisons, filed complaints, financial strength, underwriting and receivership information, and other data useful to consumers. The OIR is to rely as much as is practical on currently available information, but should consider whether additional information must be submitted by insurers and whether insurers should be required to provide a link into each individual insurer's website to access product information and apply for quotations. Before establishing the program, the OIR must conduct a cost benefit analysis and submit a proposed implementation plan for review and approval by the Financial Services Commission. The implementation plan must include an

¹⁸ This limitation was enacted in 2009 (Ch. 2009-87, L.O.F.).

estimated time line, a description of the data that would be provided, a strategy for publicizing the website, the recommended approach for developing and operating the website, and an estimate of recurring and nonrecurring costs.

The bill deletes an obsolete section that required the OIR to establish a presumed factor to reflect the changes resulting from medical malpractice legislation passed during the 2003 Special Session.

Section 6. Amends s. 627.0629, F.S., relating to residential property insurance rate filings. The bill adds to the legislative intent that the implementation of mitigation discounts not result in a loss of income to insurers. The bill provides that if an insurer demonstrates that the aggregate of its mitigation discounts results in a reduction of revenue that exceeds the reduction of the aggregate loss that is expected to result from the mitigation, the insurer may recover the lost revenue through an increase in its base rates. The provision adds the term “debits” to the list of mitigation terms which include discounts, credits, reductions, or other rate differentials.

Section 7. Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium. The bill provides, notwithstanding any other provisions of law, that if the OIR determines that early cancellation of some or all of an insurer’s property insurance policies is necessary to protect the best interest of the public or the policyholders, the insurer may cancel or nonrenew policies upon a 45 day notice to policyholders, providing the OIR approves the insurer’s plan for early cancellation or nonrenewal. The OIR may base its finding on the insurer’s financial condition, reinsurance inadequacy, or other relevant factor. The OIR’s finding may be conditioned on the insurer’s consent to be placed in administrative supervision or its consent to the appointment of a receiver.

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

Section 8. Amends s. 627.7011, F.S., relating to replacement cost coverage. The bill addresses the requirements for initial payment by insurers when a loss occurs that has been insured with replacement cost coverage. The bill provides that when a policyholder sustains a loss to a dwelling that is insured for replacement cost, the insurer initially must pay at least the actual cash value, and must pay the reservation or holdback of any depreciation in value when the policyholder obtains an executed contract for the repair or replacement. When a policyholder sustains a loss to personal property that is insured for replacement cost, the insurer must initially pay the higher of the actual cash value or 50 percent of the replacement cost, and must pay the reservation or holdback when the policyholder produces a receipt for the replaced property.

Section 9. Amends s. 627.7015, F.S., relating to mediation procedures for property insurance claims under the Department of Financial Services. The bill provides that in a dispute over the cost to replace insured property, the insurer and the insured must bring to the mediation

conference documentation that supports the respective estimated costs to replace or repair the property. The insurer's documentation must include reports or other evidence to show that its estimates were created in compliance with s. 626.9744(3), F.S., (Section 3 of the bill). The insured's documentation must also include quotes obtained from licensed local contractors, retail price quotes, or other documentation clearly demonstrating the actual cost to repair or replace the property. The bill requires the DFS to adopt by rule the types of documentation required to be submitted by parties during the mediation process. The bill excludes from the mediation process losses that occurred more than 5 years prior to the request for mediation, unless both parties agree to mediate such a claim.

Section 10. Amends s. 631.011, F.S., relating to definitions applicable to the Insurers Rehabilitation and Liquidation Act. The bill expands the definition of an "affiliate" which under current law means any entity that exercises control over or is controlled by the insurer, directly or indirectly through an equity ownership of voting securities; common managerial control; or collusive participation by the management of the insurer and affiliate in the management of the insurer or affiliate. The bill includes in this definition the following terms which include retailing, brokering, administering, or underwriting insurance policies on behalf of the insurer, including managing general agents, claims administrators, third-party administrators, retail agents, premium finance managers, billing service agents, or any other entity of similar function and participation in the collection, retention or distribution of insurance premiums.

Section 11. Amends s. 631.021, F. S., relating to the jurisdiction and venue for insurer delinquency proceedings. The bill clarifies that Leon County Circuit Court is the venue for any collateral actions against an insurer's affiliate, including voidable or fraudulent transfers made by an insurer or affiliate; breach of fiduciary duty of specified officers; or misreporting or misrepresenting what is property, funds or assets of the insurer, including premium and unearned commissions. The bill specifies that the Leon County Circuit Court has exclusive jurisdiction to identify funds, assets, and property belonging to an entity placed in receivership under ch. 631, F.S. The bill also identifies what is included in funds, assets, and property. The Court's exclusive jurisdiction preempts the jurisdiction of federal courts, including bankruptcy courts, in case the funds, assets, and property of an entity placed in receivership is disputed or is at issue.

Section 12. Amends s. 631.025, F.S., relating to persons that are subject to the provisions of the Insurers Rehabilitation and Liquidation Act. The aggregate effect of sections 10, 11, and 12 of the bill is to specify that the Circuit Court of Leon County has exclusive original jurisdiction over any insurer and its affiliates in any delinquency proceeding brought under ch. 631, F.S. The bill clarifies in section 10 all the entities that are subject to the court's exclusive jurisdiction if they are affiliated with the insurer.

Section 13. The bill provides that the act will take effect July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Consumers should benefit by using the comprehensive website to obtain information necessary to purchase homeowners’ insurance. Consumers who have property insurance claims would also benefit by receiving mediation information provided by their insurer as authorized under the bill.

Insurers will benefit under the expedited rate filing procedure by obtaining rate relief in a more timely fashion when their rate needs are limited to purchasing reinsurance, purchasing financing products used to replace reinsurance, and a nominal inflation factor. Increasing the minimum surplus requirements for “new” or “current” residential property insurers will likely result in fewer insurers going through delinquency proceedings.

Insurance agents should benefit under this legislation because the OIR is precluded from directly or indirectly impeding or compromising an insurer’s right to acquire policyholders, advertise, or appoint agents, including the amount of agent commissions during a rate filing procedure.

Revising the adjustment and holdback procedures for homeowners’ insurance policies which offer replacement cost coverage should help ensure that policyholders make necessary repairs to their dwellings.

C. Government Sector Impact:

Representatives with the OIR have provided the following estimate to implement the provision creating a website for consumers to access insurer information for price comparisons, complaints, financial strength, underwriting and other data. The agency would have to issue a competitive procurement for this program:

- 1. For FY 2010-2011:
 - a. Website technology infrastructure and development: \$500,000
 - b. Vendor staff for maintenance and information technology: \$208,000
 - c. Marketing expense: \$100,000

d. 1 FTE (actuary) salaries/benefits:	\$151,800
e. 1 FTE (research assistant) salaries/benefits:	\$ 40,500
TOTAL:	\$1,000,300

2. For FY 2011-2012 and beyond:
 - a. 2 FTEs (actuary/research assist.) and vendor staff: \$400,300

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 10, 2010:

- Clarifies that insurance policy coverage changes and surcharges are not to be included within the 10 percent cap for expedited rate filings by property insurers.
- Deletes the provision which provided that replacement cost coverage does not have to be offered for any roof over 20 years old.
- Extends the exclusion until May 31, 2013, of medical malpractice premiums from the assessment base for emergency assessments imposed by the Florida Hurricane Catastrophe Fund.
- Removes the provision prohibiting the Office of Insurance Regulation from disapproving or requiring an amendment to any rate filing based on the reasonableness of expenses for acquisition costs paid for advertising or compensation to insurance agents who are not employees of an insurer.
- Restores the requirement under current law that an insurer's expedited rate filing must include a sworn certification, subject to the penalty of perjury, by the chief executive officer or chief financial officer.
- Specifies the date (June 1, 2012) that the Insurance Consumer Advocate must prepare an annual report card objectively grading every personal residential property insurer and defines the term "valid consumer complaint."

- B. **Amendments:**

None.