

Summary of Conference Committee Report on Hurricane Preparedness and Insurance

Amendment Barcode 574486 to CS/HB 1-A by the Conference Committee on CS/HB 1-A, CS/CS/HB 3-A, CS/CS/HB 5-A, HB 7-A, and CS/HB 9-A

Florida Hurricane Catastrophe Fund (FHCF)

Creates the Temporary Increase in Coverage Limit options (TICL) for the 2007, 2008, and 2009 hurricane seasons. The TICL options allow an insurer to purchase additional reinsurance of up to \$12 billion above the FHCF industry limit of \$16 billion estimated for 2007. Coverage shall be priced at FHCF pricing, which is generally the average annual loss expected for the layer of coverage purchased. The State Board of Administration may increase the \$12 billion coverage limits up to an additional \$4 billion.

Creates the Temporary Emergency Additional Coverage Options (TEACO) within the FHCF, which offers insurers additional FHCF coverage by selecting their share of an industry retention level of \$3 billion, \$4 billion or \$5 billion (compared to the \$6 billion retention estimated for 2007) for 2007, 2008, and 2009. Coverage based on a \$3 billion retention shall be priced at an 85 percent rate-on-line, \$4 billion retention at an 80 percent rate-on-line, and \$5 billion retention at a 75 percent rate-on-line.

Provides an additional amount of FHCF coverage of up to \$10 million dollars that specified insurers may purchase at a premium of 50 percent of the additional reimbursement coverage provided (i.e. \$5 million premium for \$10 million coverage). The coverage includes one reinstatement. The minimum retention layer for the coverage is 30 percent of the insurer's surplus as of December 31, 2006. Insurers eligible to purchase such coverage include limited apportionment companies who purchased such coverage in 2006, limited apportionment companies that began writing property insurance in 2007, and insurers approved to participate in either 2006 or 2007 for the Insurance Capital Build-Up Incentive Program pursuant to s. 215.5595, F.S. The FHCF coverage provided such insurers is not affected by the additional premiums paid by insurers purchasing this additional coverage option. The ability to purchase the coverage option expires May 31, 2008.

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

Repeals the 25 percent rapid cash buildup factor for FHCF premiums.

Mandatory Rate Filings to Reflect Savings Due to Expanded FHCF Coverage

Requires every residential property insurer to make a rate filing with the Office of Insurance Regulation which reflects the savings or reduction in loss exposure to the insurer due to the expanded FHCF coverage provided in this act. Pursuant to the mandatory rate filing:

- An insurer may not obtain a rate increase due to the election of coverage options from the FHCF;
- The OIR shall calculate a presumed factor or factors to be used in the required rate filings to reflect the impact to rates of the changes, using generally accepted actuarial techniques and standards. The OIR may contract with an appropriate vendor to advise the office in determining the presumed factor or factors;
- Each residential property insurer shall reflect a rate change that takes into account the presumed factor for any policy written or renewed on or after June 1, 2007. The presumed factor must be taken into account for all expanded FHCF coverage options created by the act if the insurer is eligible to elect such optional coverage, regardless of whether or not the insurer purchases the coverage. Additional costs undertaken by an insurer for private reinsurance or loss exposure that duplicates such FHCF coverage options shall not be factored in the rate, regardless of whether such FHCF coverage options are purchased.
- The sum of \$250,000 in nonrecurring funds is appropriated from the Insurance Regulatory Trust Fund in the Department of Financial Services to the OIR for the 2006-2007 fiscal year for the purpose of implementing these requirements.

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 under s. 627.062, F.S. (prohibits property insurance rates that are excessive, inadequate, or unfairly discriminatory).

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 (though rates may be decreased). Requires new (actuarially sound) rate filing, effective January 1, 2008.

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.

Delays until 2008, the requirement that Citizens impose a 10 percent renewal surcharge on all Citizens policyholders after a deficit if the first 10 percent surcharge on nonhomestead policyholders is not sufficient.

Requires the Office of Insurance Regulation (OIR) to annually establish Citizens' rates within 45 days after Citizens files recommended rates.

Requires Citizens to exempt policies from the 10 day waiting period for a real estate closing.

As of January 1, 2009, to qualify for Citizens, properties over 500 to 2,500 feet landward of the Coastal Construction Control Line must be built to “Code-Plus” building standards developed by the Florida Building Commission.

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

Provides that if a new applicant to Citizens 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. However, with regard to a policyholder of Citizens, the policyholder remains eligible for coverage from Citizens regardless of any offer of coverage from a private market insurer. Requires the Florida Market Assistance Plan to develop a data base for this purpose.

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.

Authorizes Citizens to write multiperil policies (as well as wind-only policies) in the areas eligible for coverage in the High Risk Account, subject to approval by the Financial Services Commission and the Legislative Budget Commission.

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, but not workers’ compensation or accident and health), but exempts medical malpractice insurance.

Citizens’ plan of operation may provide such limits of coverage as the board determines appropriate. The plan of operation may require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

Clarifies that take-out policies removed from Citizens are considered to be the sole obligation and direct insurance of the take-out company (Citizens does not retain liability for such policies).

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

Allows the State Board of Administration to invest and manage the assets of Citizens.

Clarifies that the appointing officers may recall members of the Citizens Board of Directors at will.

Creates the Task Force on Citizens Property Insurance Claims Handling and Resolution. The task force has seven members, and is to conduct research and hearings and make recommendations as to issues regarding Citizens, including improving customer service and claims handling, and make recommendations as it deems appropriate for legislative action during the 2006-2008 legislative biennium. The task force expires after the 2006-2008 legislative biennium.

Coverage Exclusions; Deductibles; Payment of Premium

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

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.

Prohibits property insurers from denying coverage based solely on the age of the structure and requires consideration of wind resistance of structure.

Requires an insurer to provide the policyholder the option of selecting an appropriate reduction in the policy's hurricane deductible or selecting the appropriate discount credit or other rate differential.

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

Requires insurers to allow personal lines residential and commercial policyholders to pay premiums on a quarterly or semiannual installment plan.

Insurance Rating Law; Discounts; Premium Notice; Timely Payment of Claims

Requires the chief executive officer or chief financial officer and the chief actuary of a 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 and reflects premium savings that are reasonably expected to result from legislative enactments and are in accordance with accepted actuarial techniques.

Prohibits excess profits by property insurers and requires refunds to consumers of any excess profits collected by an insurer over a ten-year period, if certain thresholds are met.

Allows a property and casualty insurer to offer a discount on a policy based on the fact that the insured purchased another policy from the insurer.

Requires notice of non-renewals that would otherwise be effective during storm season to be 100 days prior to effective date or June 1, whichever is earlier.

Requires insurers to specify on the renewal premium notice:

- The amount of an assessment by the Florida Hurricane Catastrophe Fund, Citizens Property Insurance Corporation, and the Florida Insurance Guaranty Association, and the full name of the assessing authority.
- The amount of premium change due to a change in rate or coverage

Deletes “rate-flex” 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 the OIR that the rate is excessive or unfairly discriminatory.

Prohibits through Jan 1, 2009, the allowance for property and casualty insurers to implement a rate change prior to filing for approval with OIR (“use and file”), unless the insurer files for a rate that is less than the insurer’s most recent rate approved by the OIR. All filings that do not seek a lower rate must be made under the “file and use” procedures that require filing at least 90 days prior to the proposed effective date.

Requires property insurers to pay or deny a claim within 90 days of the receipt of the claim, unless the failure to pay the claim is caused by factors beyond the control of the insurer that reasonably prevent payment. Failure to comply with this requirement is a violation of the Insurance Code.

Suspends the allowance for property and casualty insurers to submit a rate filing disapproved by the OIR to an arbitration panel for final resolution for all filings made after the act’s effective date until January 1, 2009.

Insurer Affiliates and Subsidiaries (“PUPs”)

Raises the surplus to policyholders requirement to \$50 million for a domestic residential property insurer that is a wholly owned subsidiary of an insurer authorized to do business in another state.

“Cherry Picking” (Auto Insurers)

Requires insurers writing private passenger automobile insurance in Florida and that write homeowners policies in other states, to write homeowner’s coverage in Florida, unless an affiliate writes homeowners insurance in Florida. Effective 1/1/08.

Hurricane Mitigation

Requires the Financial Services Commission to develop by rule a uniform mitigation verification inspection form that must be used by all insurers to factor discounts for wind insurance.

Makes the following changes to grant program within the Florida Comprehensive Hurricane Damage Mitigation Program:

- Low income homeowners are exempt from the requirement to have a dwelling with an “insured value” of \$500,000 or less (i.e., the home does not have to be insured).
- Grants may be used on previously inspected existing structures or a site built single family dwelling that is under construction to replace a homestead damaged or destroyed by a hurricane (rebuild).
- Low-income homeowners may use grant funding for repair to existing structures leading to mitigation improvements.

Authorizes the DFS to contract with a not-for-profit corporation to conduct all or parts of the Florida Comprehensive Hurricane Damage Mitigation Program.

Requires wind inspectors to have a level 2 background check, which includes fingerprinting.

Requires the DFS to develop and maintain as a public record, a statewide list of authorized wind certification and hurricane mitigation inspectors.

Requires the Financial Services Commission to develop a uniform home grading scale to grade a home’s ability to withstand the wind-load from a hurricane.

Each licensed general lines insurance agent and consumer representative must complete one hour of continuing education every two years regarding premium discounts available on property insurance policies based on hurricane mitigation options and the means of obtaining the discounts.

Requires insurers to provide notice of combinations of discounts, credits, rate differentials, or reductions in deductibles, for windstorm mitigation.

Requires insurers to offer deductible reductions for mitigation measures.

Windstorm Mitigation Study Commission

Requires appointment of a windstorm mitigation study commission to report by March 6, 2007. The committee shall analyze solutions for mitigating the effects of windstorms on structures and make recommendations for mitigating windstorm damage. The committee shall have eight members, with the Governor, President of the Senate, Speaker of the House, and Chief Financial Officer each selecting two members. The committee expires May 15, 2007.

Florida Building Code

Eliminates the “Panhandle exemption” by:

- Requires local jurisdictions to immediately enforce these requirements pending adoption by the Commission, including windborne debris requirements of the International Building Code (2006) and the International Residential Code (2006).

- Requiring the Florida Building Commission to adopt the wind-borne-debris protection requirements of the International Building Code (2006) and the International Residential Code (2006) within the wind-borne-debris region as defined by those codes.

Prohibits amendments or modifications to the foundation codes of the Florida Building Code that diminish provisions related to wind-resistance or water intrusion. However, the commission may amend such provisions to enhance those requirements.

Requires the Florida Building Commission to eliminate all exceptions in the Florida Building Code related to wind-borne-debris protection per the requirements of Section 15 of SB 4-A. Commission shall fulfill obligation before July 1, 2007. Does not apply to the High Velocity Hurricane Zone.

Deletes the internal pressurization option for buildings in the 120 mph+ wind zone.

Requires the Florida Building Commission to develop voluntary “Code-Plus” guidelines for increasing the hurricane resistance of buildings that may be modeled on the Miami-Dade building code.

Insurance Consumer Advocate

Requires the Insurance Consumer Advocate to provide an annual report card on insurance companies using a letter grade scale established by the Financial Services Commission.

Self-Insurance Funds; Bonding Authority

Hospitals risk pooling and self-insurance funds:

- Allows alliances of two or more hospitals licensed and located in Florida for property coverage.
- Provides requirements for hospital alliance self-insurance funds.
- Allows the alliance of hospitals in special districts, county hospitals, or municipal hospitals to borrow and bond to finance property coverage and claims.
- Provides bonding guidelines.

Local government risk pooling and self-insurance funds:

- Allows local governments to self-insure for property coverage.
- Allows governmental entities to bond to finance property coverage and claims.

Community association self-insurance funds:

- Allows one or more community associations created and operating as condominium, co-op, homeowners, timeshare and vacation, and mobile home park lot tenant associations to apply to OIR to form a commercial self-insurance funds for property and casualty insurance.

Not-for-profit self-insurance funds:

- Allows two or more not-for-profit corporations to create a self-insurance fund for property or casualty insurance, under certain conditions.

Insurance for Condominiums and Similar Entities

Modifies insurance provisions in the Condominium Act:

- Limits insurance requirements in the Condominium Act to “residential” condominiums, as currently defined (generally, a condominium consisting of two or more units used as a private temporary or permanent residence).
- Specifies “adequate insurance” under the Act for a group of at least three communities operating as residential condominiums, cooperatives, homeowners’ associations, or timeshare entities.

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.

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 abrupt collapse of the ground cover that is clearly visible to the naked eye;
- Results in structural damage to the building and its foundation; and
- The insured structure being condemned and ordered to be vacated by the appropriate governmental agency.

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

Insurers must continue to make sinkhole coverage as currently defined in statute available for an appropriate additional premium. Insurers offering policies that exclude coverage for sinkhole losses must provide written notice to the policyholder in 14-point type.

Hurricane Claims Data

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

Florida Disaster Recovery Initiative (FDRI)

For fiscal year 2006-07, provides an appropriation of \$100,066,518 from the Florida Small Cities Community Development Block Grant program fund to the Department of Community Affairs. The funding must be used to harden single-

family and multi-family affordable housing, to mitigate against hurricane damage and increasing costs of property insurance.

Florida Insurance Guaranty Association (FIGA)

Clarifies the Legislature's intent of a 2006 law (Ch. 2006-12, L.O.F.) 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.

Legislative Intent for Grant Program to Low-Income Persons

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.

Insurance Capital Build-Up Incentive Program

Allows an insurer writing only manufactured housing residential property insurance to qualify for a surplus note of up to \$7 million, if the insurer's surplus, new capital, and the surplus note total at least \$14 million. Such an insurer is given priority to receive a surplus note under the program.