

MAJOR PROPERTY INSURANCE LEGISLATION ENACTED IN FLORIDA SINCE HURRICANE ANDREW (1992 - 2005)

December, 1992, Special Session

Ch. 92-345, L.O.F. (CS/HB 33-A) - Hurricane Andrew Emergency Legislation

Funding the FIGA Shortfall; Authorizes the issuance of up to \$500 million in tax free municipal bonds to fund the shortfall in the Florida Insurance Guaranty Association (FIGA), caused by Hurricane Andrew-related insolvencies of 10 insurers. Bonds are financed by a special assessment on insurers of up to 2% of premiums written on all lines of property and casualty insurance, except automobile and workers' compensation. Insurers are allowed to pass the assessment on to consumers through premium increases. Also, increases the limit on FIGA liability for condominium association policies to \$100,000 times the number of units.

Activation of the FPCJUA for Unrepaired Property Covered by an Insolvent Insurer: Authorizes the Department of Insurance (DOI) to activate the Florida Property and Casualty Joint Underwriting Association (FPCJUA) for the purpose of insuring unrepaired hurricane-damaged property insured by an insolvent insurer.

Creation of the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA): Creates the RPCJUA to be an insurer of last resort for homeowners insurance for persons unable to obtain coverage in the voluntary market. All insurers writing residential property insurance in the state are required to participate and be liable for deficit assessments on a market-share basis. Rates are set at above-market levels to encourage placement of risks in the voluntary market.

May, 1993, Special Session

Ch. 93-410, L.O.F. (HB 89-B)

Moratorium on Cancellations and Nonrenewals: Prohibits insurers from canceling or nonrenewing homeowner's and similar insurance policies on the basis of risk of hurricane claims for the 180-day period from May 19, 1993 until November 14, 1993. This essentially codifies the emergency rule adopted by DOI, except that the law covers a 180 day period, rather than 90 days. Allows DOI to waive the restriction when it imperils the solvency of the insurer.

Study Commission: Creates the Study Commission on Property Insurance and Reinsurance, to study the viability of the property insurance industry in Florida and the adequacy of regulation of reinsurance. The 13 members include 4 legislators and 9 members appointed by the Governor representing insurers, insurance agents, reinsurers, mortgage lenders, and consumers.

Residential Property and Casualty Joint Underwriting Association (RPCJUA): Adds five consumer members to the board of the RPCJUA, bringing the total board membership to 13, 7 representing the insurance industry and 6 representing consumers. The Insurance Commissioner appoints 8 of the members (all 6 consumers members and 2 of the insurance members) and 5 of the insurance members are designated by the insurance industry.

November, 1993, Special Session

Ch. 93-409, L.O.F. (CS/HB 31-C) - Florida Hurricane Catastrophe Fund

Creates the Florida Hurricane Catastrophe Fund under the State Board of Administration (SBA) to reimburse insurers for a portion of their hurricane losses under homeowner's, commercial multi-peril, and other property insurance policies, as follows:

Funding: All insurers are required to annually pay to the fund the actuarially determined premium for the reimbursement provided by the fund.

Reimbursement to insurers: The SBA must enter into contracts with each property insurer promising to reimburse the insurer for 75% of that portion of the insurer's hurricane losses in a calendar year that exceed 2 times the insurer's gross direct written premium for property insurance policies (or 1.5 times premiums for insurers with surplus of \$15 million or less). However, the obligation of the fund is limited to the moneys in the fund and the amount it is able to borrow.

Bonding: When moneys in the fund are insufficient to pay its obligations, the SBA must enter into agreements with local governments for the issuance of revenue bonds pledging future fund premiums. The term of the bonds may not exceed 15 years. If future fund premiums are not a sufficient revenue source to support all needed bonding, an emergency assessment of up to 2% of premium may be levied annually on all property and casualty insurers (except workers' compensation). If still inadequate to meet fund obligations, the percentage reimbursement to insurers will be reduced on a prorated basis.

Mitigation: After a year in which no reimbursable hurricane losses occur, 2% of the previous year's premium payments into the fund will be available for appropriation by the Legislature for projects to reduce potential hurricane losses.

Tax Status: Legislative findings that the fund serves a governmental purpose and intent that fund revenues be exempt from federal taxation. Requires the SBA to request an expedited opinion from the IRS as to the fund's tax-exempt status.

Ch. 931-410, L.O.F. (CS/HBs 33-C and 43C), as amended by Ch. 93-411, L.O.F. (HB 131-C) and Ch. 93-412, L.O.F.(SB 54-C)

Property Insurance Consumer Protections:

Moratorium on Cancellations and Nonrenewals: For the 3-year period from Nov. 14, 1993 through Nov. 14, 1996, insurers are prohibited from canceling or non-renewing more than 5% of their homeowner's and similar policies in any 12-month period, or more than 10% in any county, for reasons of reducing hurricane exposure. An insurer may apply to DOI for a waiver of these limits on the basis of its historic cancellation/nonrenewal rate or to avoid an unreasonable risk of insolvency. Also, an insurer is allowed to proceed with cancellations or nonrenewals authorized under the prior 6-month moratorium or litigation relating to that moratorium, and insurers that began discontinuing writing in Florida prior to Hurricane Andrew are allowed to proceed with their plans to leave Florida.

Notice of cancellation or nonrenewal: Requires insurers to give policyholders 90 days (rather than 45 days) advance notice of cancellation or nonrenewal of residential property insurance policies.

Mandatory offers of coverage: Requires insurers to offer homeowners' policyholders replacement cost coverage (insured value without deduction for depreciation) and "law and ordinance" coverage (which pays costs required to meet current codes when a house must be rebuilt).

Retrofit discounts: Residential property insurance rate filings must include discounts or reduced deductibles for properties on which fixtures that reduce windstorm losses have been installed (e.g., hurricane shutters).

Code enforcement discounts/surcharges: Rate filings for residential property insurance may include factors that reflect the quality of building code enforcement in particular jurisdictions.

Standard hurricane exposure model: DOI must adopt a standard hurricane exposure model for use in evaluating property insurance rate filings.

Mediation: DOI is required to create a program for mediation of disputed property insurance claims.

Insurer Solvency Requirements

Surplus Requirements: Increases the minimum surplus for property and casualty insurers to obtain a COA from \$2.5 million to \$5 million, and increases the surplus required for maintenance of a COA from \$1.5 million to \$4 million (phased-in over a 10-year period for current licensed insurers). For surplus lines insurers, the minimum surplus is increased from \$1.5 million to \$15 million, (also phased -in).

Reserves: Requires property and casualty insurers to annually file an actuarial opinion of the adequacy of the insurer's reserves.

Financial examinations: Requires annual financial exams of insurers licensed for 3 years or less, and at least once every 5 years for insurers licensed for 15 years or more; otherwise, one every 3 years. Exams may be performed by independent examiners under contract with DOI.

Criminal penalties: Provides 3rd degree felony penalties for knowing, willful, intentional filing of materially false financial statements with DOI.

Other solvency issues: Provides civil immunity for persons who provide DOI with information about the financial condition of insurers; removes the authority of DOI to waive junk bond investment restrictions; requires reporting of unusual premium growth rates; adds restrictions on approval of reinsurance from insurance exchanges or backed by letters of credit; expands applicability of the Producer-Controlled Insurer Act and holding company rules, including restrictions on contracts between affiliated companies.

Joint Underwriting Associations

Condominium association coverage: Activates the FPCJUA (also known as the "commercial JUA") to provide coverage for condominium associations, apartment buildings, homeowners' association common areas, and other commercial residential coverage.

Deficit Assessments: With respect to deficits in the RPCJUA, FPCJUA, and FWUA, when the deficit exceeds 10% of the prior year's statewide gross written premium for the subject coverage, or 10% of the deficit, whichever is greater, the particular association must contract with a local government for the issuance of revenue bonds pledging future assessments against insurers. Payment of an

assessment may be deferred when DOI finds that payment would endanger the solvency of the insurer. When the bonds remain unsold for 60 days after issuance, DOI must required insurers to purchase the bonds.

RPCJUA rate standards: Requires RPCJUA rates to be actuarially sound based on the its actual loss experience and expenses and a factor that reflects its actual catastrophic exposure. Requires the RPCJUA to make rate filings every six months.

New insurer incentive: Requires the RPCJUA to provide credits against assessments for an insurer that begins writing personal lines residential coverage in Florida, which expire 3 years after the insurer begins writing in Florida, or when the insurer attains a market share of 0.5%, whichever occurs first.

1995 Regular Session

Ch. 95-1, L.O.F. (HB 719) - Florida Hurricane Catastrophe Fund

Makes the following changes determined by the IRS to be necessary in order for the Cat Fund to be an integral part of state government and not be subject to federal taxation:

Initial State Capital Contribution: Appropriates \$25 million to the Fund in FY 1995-96 plus \$25 million in FY 1996-97 (\$12.5 mil from Gen. Rev. and \$12.5 mil. from the Ins. Com'r. Reg. Trust Fund each year).

Emergency Assessments (broad-based funding source): Authorizes the SBA to increase the maximum emergency assessment on all property and casualty insurance policies (except workers' compensation) from 2% to 4% of gross direct written premium, if the Governor has declared a state of emergency due to a hurricane.

Mitigation Funding: Requires the Legislature to annually appropriate from the Fund no less than \$10 million but no more than 35% of investment income from the prior year (rather than up to 2% of premium income from the prior year). Expands the authorized uses for mitigation funding to include funding of local governments, state agencies, public and private educational institutions, and nonprofit organizations to support programs intended to improve hurricane preparedness, reduce potential losses in the event of a hurricane, provide research into hurricane loss reduction, educate or inform the public as to means to reduce hurricane losses, assist the public in determining the appropriateness of structural upgrades or in the financing of structural upgrades, or protect local infrastructure from potential damage from a hurricane.

Ch. 95-276, L.O.F. (CS/HB 2619)

Florida Hurricane Catastrophe Fund

- Provides three levels of coverage (45%, 75%, and 90% of losses in excess of retention), rather than only the 75% level provide by prior law.
- Provides for reimbursement on a per-hurricane, rather than per-season basis.
- Excludes commercial non-residential policies from coverage under the fund.
- Revises method of calculating each insurer's retention (deductible), which is each insurer's share (based on its Cat Fund premium) of an industry-wide retention of \$3 billion.
- Requires the Cat Fund to first reimburse "limited apportionment" insurers (less than \$15 million in surplus, etc.) an amount equal to the lesser of \$10 million or 10 times its Cat Fund premium. Next, the Fund must reimburse insurers an amount equal to each insurer's "expected payout," which is the insurer's percentage of total Cat Fund premium multiplied by the Fund's current balance and bonding capacity as reported by the Fund. Thereafter, remaining amounts are paid on a prorated basis.
- Provides that the Fund will not cover additional living expenses.

Joint Underwriting Associations

- Moves commercial residential polices (condo. associations, apartment buildings, etc.) from the FPCJUA to the RPCJUA.
- Creates eligibility requirements for RPCJUA policies.
- Revises bonding and assessment procedures to provide that insurers can be assessed up to 10 percent of statewide direct written premium for the subject lines, or 10 percent of the deficit, whichever is greater. If the deficit exceeds this amount, emergency assessments are collected by insurers, including the JUA, upon policies issued or renewed in the years following the regular assessments, as a uniform percentage of that year's direct written premium for subject lines of insurance.
- Authorizes the RPCJUA to issue bonds and incur other indebtedness.
- Sets interim rate standards for the RPCJUA, requiring rates to be the highest rate in the county as compared to the top 10 insurers' rates.
- Authorizes take-out and keep-out credits for insurers that remove risks from the RPCJUA.

Deductibles

- Establishes minimum and maximum wind deductibles. Minimum: \$500 (\$250 for properties valued under \$50,000); maximum: 2% of policy limits for personal lines residential, and 3% of policy limits for commercial lines residential Exceptions: cap is 5% for personal lines residential risks valued at \$250,000 or more; no cap for personal lines residential risks valued at more than \$500,000; also grandfathers-in existing deductible programs and similar programs adopted by other insurers.

- Requires insurers to offer \$500 deductible and 2% deductible on personal lines risk, with certain exceptions.
- Co-payments: authorizes insurers to offer co-pay of 10% of the first \$10,000 of losses after deductible is exhausted.
- Specifies notice requirements for wind deductibles.

Hurricane Loss Projections

- Creates the Florida Commission on Hurricane Loss Projection Methodology as a panel of experts to approve actuarial methods and computer models.
- Requires the SBA, in establishing Cat Fund premiums, and DOI, in reviewing an insurer's rate filing, to use models approved by the Commission.
- Allows insurers to use any model used by the Cat Fund as an interim model until the Commission approves other models.

Rate factors

- Requires rate filings to include factors reflecting the quality of enforcement of building codes, as approved by DOI.
- Requires discounts for mobile homes that meet new federal standards.
- Allows insurers to recoup RPCJUA deficit assessments from policyholders.
- Allows insurers to include Cat Fund premium in rates.
- Sunsets (repeals) applicability of excess profits law to commercial property and commercial casualty insurance, effective 1/1/97.

1996 Regular Session

Ch. 96-194, L.O.F. (CS/HB 2314) - Hurricane Insurance Affordability and Availability Act

Moratorium on cancellations and nonrenewals

- Replaces existing moratorium (scheduled for repeal on Nov. 14, 1996) with a new, 3-year "moratorium completion" that applies only to policies in force on June 1, 1996.
- Limits an insurer's cancellation or nonrenewal of personal lines residential policies for reasons of reducing hurricane losses, to 5 percent of such policies statewide, or 10 percent in any county.
- Policies transferred from one insurer to another do not count as a non-renewal.
- Allows an insurer to non-renew the windstorm coverage in FWUA-eligible areas for up to 15 percent of its policies in the state within a 12 month period (accelerating the 3 year limit of 5 percent per year), without any limit on the percentage of nonrenewals in any particular county, subject to approval by the department under specified standards.
- Creates a new 3-year moratorium for condominium association policies with the same terms and conditions as the moratorium for personal lines policies.

Hurricane Deductibles

- Provides for transition from windstorm deductibles to hurricane deductibles.
- For properties valued between \$100,000 and \$250,000, insurers are no longer required to offer a \$500 deductible if it instead provides an additional year of guaranteed renewability (but the 2% deductible must be offered).\
- Provides that the maximum allowable deductible is 5% of policy limits, rather than 2%, for homes valued between \$100,000 and \$250,000. (The maximum remains at 2% for homes valued under \$100,000, and no maximum limit for homes valued over \$500,000).
- Allows for insurers to offer a 10% “secured deductible” if the policyholder obtains a certificate of security backed by a line of credit or other assets to cover the deductible, and subject to other conditions.
- Exempts mobile homes from mandatory hurricane deductible offers; increases maximum hurricane deductible for mobile homes to 5% if subject to a lien, 10% if not.

Florida Hurricane Catastrophe Fund

- Improves financing of the Cat Fund, by creating a public benefits corporation (Fla. Hurricane Catastrophe Fund Finance Corp.) to eliminate costs and delays in the bond issuance process.
- Extending the maximum term of the bonds from 15 to 30 years.
- Specifying purposes for which bond proceeds may be used.

Rate Standards and Procedures

- Requires DOI to complete its review of a rate filing within 90 days after filing.
- Allows an insurer to require that a rate dispute with DOI be submitted to a 3-member arbitration panel, as an option to an administrative hearing. The insurer and DOI each appoint one arbitrator and those two arbitrators choose the third arbitrator, all certified by the American Arbitration Association. The insurer must pay 100% of arbitration costs. Specified provisions of the Florida Arbitration Code (Ch. 682, F.S.) apply and DOI must adopt rules consistent with the procedures of the American Arbitration Association
- Provides for full recoupment of an insurer’s Cat Fund premiums, but prohibits recoupment of reinsurance costs that duplicate Cat Fund coverage.
- Provides that standards and models approved by the Fla. Commission on Hurricane Loss Projection Methodology are no longer binding on DOI, but are admissible and relevant in any rate hearing.
- Requires insurers to separately file rates for hurricane coverage and to reflect such rates on premium notices to policyholders.
- Requires a public hearing for rates filings based on computer models and that propose a rate increase of more than 25%.

Required coverage of windstorm: Prohibits insurers from excluding windstorm coverage except in areas eligible for windstorm coverage from the FWUA.

Florida Windstorm Underwriting Association (FWUA): Revises assessment procedures to track those of the RPCJUA, which provide for multi-year assessments to be collected by insurers as a uniform percentage of all property insurance policies; specifies that the FWUA may issue bonds and incur other indebtedness, to pledge assessments and other revenues, and to accumulate reserves and retain surpluses.

Residential Property and Casualty Joint Underwriting Association (RPCJUA)

- Broadens the authority of the RPCJUA to pledge assessments and other revenues to fund bonds or other indebtedness.
- Authorizes the RPCJUA to issue either a standard or a basic policy, based on objective underwriting standards.
- Pegs the average RPCJUA rates in a county (until 1/1/98) to the insurer with the highest average rates in that county, among the top 20 insurers based on statewide market share, rather than the top 10 insurers.
- Revises agent compensation in connection with take-outs.
- Provides for take-out bonuses for insurers taking out condominium association policies.

Legislative Working Group on Residual Markets: Creates a legislative working group to recommend permanent solutions to the residual market.

1997 Regular Session

Ch. 97-55, L.O.F. (CS/SB 794)

In 1996, the Legislature created the Legislative Working Group on Residual Property Insurance Markets which issued recommendations to the Legislature that served as a basis for this act, which made the following changes:

Changes Affecting Both the FWUA and RPCJUA

- Provides greater flexibility to each board to establish different eligibility criteria and operational procedures for different geographic areas or types of coverage.
- Provides standards for the sale of bonds.
- Clarifies the policies and premiums that provide the base for regular and emergency assessments.

- Requires market equalization surcharges on residual market policyholders when either association imposes a regular assessment, in order to equalize the effect of assessments in the voluntary market.
- Makes various changes intended to secure financing for both associations.
- Limits regular assessment credits to 3 years with the possibility of an extension for 2 additional years.
- Increases from 30 to 60 days the notice requirement for any mid-term cancellation of a policy taken out by an authorized insurer at approved rates.
- Creates a coordinating council chaired by the Insurance Consumer Advocate and the executive directors and chairs of both associations, the purpose of which is to assure that each association is informed of the activities and plans of the other.

Changes to the FWUA

- Adds the Insurance Consumer Advocate and two consumer members to the board of directors of the FWUA.
- Provides that a risk is not eligible for coverage if coverage is offered by an authorized insurer at approved rates.
- Requires the adoption of underwriting standards to determine whether a risk is so hazardous as to be uninsurable, similar to current law for the RPCJUA.
- Provides legislative intent that rates be non-competitive with the voluntary market; requires the plan of operation to provide a mechanism to assure that the rates charged are reflective of approved rates in the voluntary market for hurricane coverage.
- Freezes the geographic boundaries of eligible areas until October 1, 1998, and grandfathers in the petitions for Okaloosa County and Martin County.
- Requires the FWUA to retain surplus for the payment of claims (and not be distributed to member insurers).

Changes to the RPCJUA

- Maintains the law that the rates for the RPCJUA for personal lines residential property insurance rates be tied to the top 20 insurers; requires the rates for mobile homes be tied to the top 5 rather than the top 8 insurers.
- Expands the condominium association take out bonus to all commercial residential policies (i.e., apartment buildings).
- Provides that take out bonus money held in escrow is the property of the RPCJUA until released to the take out insurer.

Rate Filings

- Revises the law allowing insurers to recoup in their rate filings the assessments made by the RPCJUA and the FWUA and limits the total amount to 3 percentage points above the ratio of the deficit assessments to the Florida direct written premium for the line of business for the year the assessment was paid.

- Requires any filing to recoup premiums paid to the Florida Hurricane Catastrophe Fund to include a complete calculation of the insurer's catastrophic load.
- Authorizes insurers to provide up to a 10-percent discount for mobile home owners who provide evidence of a current inspection and certification of tie downs.
- Provides that the standards and models found to be accurate or reliable by the Florida Commission on Hurricane Loss Projection Methodology are admissible and relevant in consideration of the rate filing in arbitration.

Hurricane Deductibles for Commercial Residential: Provides a maximum deductible of 5 percent of policy limits for condominium association and cooperative association policies, and a maximum deductible of 10 percent of policy limits for other commercial residential policies (apartment buildings), and requires the insurer to offer a deductible of 3 percent of policy limits for all such policies.

1998 Regular Session

Ch. 98-103, L.O.F. (CS/SB 1108)

Moratorium on Cancellations and Nonrenewals: Extends the moratorium limiting the number of residential property insurance policies that an insurer may cancel and nonrenew for the purpose of reducing hurricane exposure for a period of 2 years, from June 1, 1999, to June 1, 2001. (Note: This was not later extended or reenacted, and stood repealed on June 1, 2001.)

Freezing FWUA Boundaries: The FWUA provides windstorm coverage in areas within 29 of Florida's 35 coastal counties. Legislation in 1997 temporarily suspended the expansion of areas eligible for windstorm coverage from the FWUA until October 1, 1998. The 1998 act provides for an indefinite prohibition on future expansion.

1999 Regular Session

Ch. 99-217, L.O.F. (CS/CS/SB 1790) - Florida Hurricane Catastrophe Fund

- Limits the total amount the Cat Fund may reimburse all insurers for hurricane losses to \$11 billion for any one year, subject to increase in future years under certain conditions. (Previously, there was no identified limit. The total recovery was limited only by the balance of the Cat Fund and the maximum amount the SBA was able to raise through the issuance of revenue bonds financed by a 4 percent assessment on property and casualty policies,

estimated to be \$11 billion in 1998 and expected to be about \$11.6 billion for 1999.)

- Limits each insurer's payment from the Cat Fund for any one year, which generally equals each insurer's proportionate share of Cat Fund premiums; however, the two state-created residual market insurers, the FWUA and the RPCJUA are not be subject to this limitation.
- Increases the potential maximum assessments on property and casualty policies from 4 percent to 6 percent to fund Cat Fund bonds issued by the SBA, but limited to 4 percent for any one contract year. Any assessment authority not used for a contract year may be used for a subsequent contract year (subject to the 4 percent cap).
- Other changes: (1) specifying that the percentage growth in the insurers' retention is based on the percentage growth in the exposure to the fund, rather than the percentage growth in premiums for covered policies; (2) clarifying the types of policies covered by the fund; (3) deleting the requirement that the fund charge an equalization charge for insurers increasing their coverage level; (4) requiring insurers to report losses on an interim basis as directed by the SBA; (5) authorizing the SBA to audit records of each insurer's covered policies; (6) authorizing the SBA to collect interest on late reimbursement payments; (7) various provisions intended to protect the interest of bondholders of Cat Fund bonds and, thereby, help assure their marketability; and (8) authorizing the SBA to take any action necessary to enforce its rules and contract requirements.

Ch. 99-142, L.O.F. (SB 1464) - Take-Out Bonuses for RPCJUA

Deletes the provision that would have repealed the authority for the RPCJUA to provide take-out bonuses to insurer once the number of risks insured by the RPCJUA is less than 250,000.(On January 1, 1999, the policy count dropped below 250,000 policies.)

2002 Regular Session

Ch. 2002-240, L.O.F. (CB/SB 1418)

Citizens Property Insurance Corporation

- Merges the RPCJUA and the FWUA into a new single entity named the Citizens Property Insurance Corporation (Citizens), effective July 1, 2002.
- Citizens is structured to meet Internal Revenue Service (IRS) requirements for tax-exempt status, pursuant to an IRS private letter ruling issued to DOI on February 20, 2002.
- Citizens is governed by a 7-member Board of Governors appointed by the State Treasurer. All board members serve at the pleasure of the Treasurer who

also appoints the executive director and senior managers, as well as a technical advisory group.

- Citizens will issue personal and commercial residential, all perils policies, on a statewide basis (excluding FWUA eligible areas) and offer wind-only coverage for personal and commercial risks in current FWUA-eligible areas. Citizens will assess authorized insurers and surplus lines policyholders to pay regular and emergency assessments.
- Citizens will operate three separate accounts: personal lines, commercial lines, and a high risk account (in FWUA areas). The high risk account may provide “quota share policies.” whereby an insurer and Citizens is each solely responsible for a specified percentage of hurricane coverage of an eligible risk.
- If a deficit occurs in an account, insurers are liable for a regular assessment of up to 10 percent of its direct written premium for the subject lines of business for the prior year, or 10 percent of the deficit, whichever is greater. Any remaining deficit is recovered through emergency assessments for as many years as necessary to cover the deficits (or to satisfy bonds or other debt obligations), collected by insurers as surcharges on their policyholders.
- A market equalization surcharge must be levied upon Citizens policyholders in all 3 accounts should there be a deficit occurring in any of the accounts.
- When financing obligations are no longer outstanding, Citizens may use a single account for all revenues, assets, liabilities, losses, and expenses.
- The Department of Insurance may remove territory from the area eligible for wind-only and quota share coverage (the high-risk account) after a public hearing, under specified conditions.
- There will be a cap on CPIC rates for personal lines residential “wind-only” policies issued or renewed between July 1, 2002, and June 30, 2003, at no more than 10 percent above the June 30, 2002, FWUA rate. Beginning July 1, 2003, the current RPCJUA rate formula will apply to Citizens personal lines residential wind-only rates (i.e., the highest wind rate in the county among the top 20 insurers with the greatest total direct written premium in the state). The current RPCJUA rating law provisions will also apply to Citizens personal lines residential policies (i.e., the highest rate in the county among the top 20 insurers with the greatest total direct written premium in the state, but excluding wind). With respect to mobile homes, the five insurers with the greatest total written premium for that line of business in the preceding year will be used. Rates for commercial lines coverage will be subject to the rate standards under current law, s. 627.062, F.S.
- It is the Legislature’s intent that Citizens should, over time, reduce the 100-year probable maximum loss (PML) in the residual markets and thus reduce assessments levied on property insurers and policyholders statewide. An annual report must be provided to the President of the Senate and the Speaker of the House of Representatives showing the reduction or increase in the 100-year PML attributable to wind-only coverages and the quota sharing program combined under CPIC, as compared to the benchmark 100-year PML of the

FWUA (calculated in February 2001, and based on November 30, 2000, exposures). The bill mandates reduction of the boundaries of the high risk eligible areas (wind-only), beginning on February 1, 2007, if the PML is not reduced 25 percent from the benchmark. Furthermore, beginning on February 1, 2012, the bill requires a further reduction of the high risk area boundaries by eliminating any area that is not seaward of a line 1,000 feet inland from the Intracoastal Waterway, if the PML is not reduced by 50 percent from the benchmark.

- Citizens is prohibited from requiring flood insurance as a condition of coverage subject to the insured executing a specified form.
- The existing financial obligations of the RPCJUA and the FWUA in the newly created Citizens will be preserved.
- No part of Citizens income may inure to the benefit of any private person.
- Policyholders within Citizens will have the right or “choice” to select and maintain an insurance agent and may retain coverage in Citizens, notwithstanding take-out or keep-out offers, if the current agent is unwilling or unable to be appointed by the take-out insurer.
- The area within Port Canaveral is made eligible for coverage in Citizens’ high-risk account.
- Citizens may impose and collect an amount equal to the premium tax from policyholders to augment its financial resources. However, Citizens is exempt from corporate income tax.
- The same public records and open meeting exemptions which are currently in place for the RPCJUA, apply to CPIC.

Florida Hurricane Catastrophe Fund

- The SBA, when developing factors to determine premiums for the Cat Fund, may include a factor for providing for a more rapid cash buildup in the fund, until its capacity for a “single hurricane season” is fully funded.
- Provides that the Cat Fund coverage will include losses for additional living expenses under specified percentages, however, covered losses do not include fair rental value associated with personal and commercial residential exposures or business interruption losses associated with commercial residential exposures.

Ch. 2002-221, L.O.F. (CS/SB 1126) - Insurance Policy Holder Protection Act

- Currently, the FWUA and the RPCJUA must refuse coverage to those persons who receive an offer of coverage in the voluntary market. The act creates an exception to this requirement, providing that a risk remains eligible for coverage if the policyholder’s agent is “unable” or “unwilling” to be appointed by the insurer making the offer of coverage.
- Revises the compensation for agents when a FWUA and JUA risk is taken out by an insurer.

- Provides that the area within Port Canaveral in Brevard County will be eligible for windstorm coverage from the FWUA.
- The provisions of this act are also contained in CS/SB 1418, to apply to the newly created Citizens Property Insurance Corporation.

2004 Regular Session

Ch. 2004-27, L.O.F. (CS/CS/CS/CS/SB 2488) - Florida Hurricane Catastrophe Fund

- Expands the maximum amount of coverage (capacity) available from the Fund from \$11 billion to \$15 billion for both the initial and subsequent storm seasons, and provides for the capacity to be adjusted annually based upon the percentage change in the exposure of the fund from the previous contract year. But, the capacity cannot grow by an amount greater than the increase in the fund's cash balance from the previous year.
- Lowers the aggregate insurer retention (deductible) from an estimated \$4.866 billion for contract year 2004-05, to \$4.5 billion. In subsequent years the new retention will be adjusted based upon the reported growth in exposure from the prior contract year. (Effective June 1, 2004.)
- Provides an option for insurers to select coverage for contract year 2004-2005 either under current law or under the expanded coverage offered in the bill.
- Increases the FHCF assessment authority against property and casualty insurers from 4 to 6 percent for any single year's storm and from 6 to 10 percent for multiple storm seasons, in order to fund the increased capacity of the fund.
- Includes surplus lines policies in the fund assessment base.
- Excludes medical malpractice premiums from the assessment base until May 31, 2007.
- Allows insurers to collect a surcharge from policyholders to pay for an emergency assessment without making a rate filing with the Office of Insurance Regulation.

Ch. 2004-370, L.O.F. (CS/CS/SB 2038)

Property insurance provisions of this act are as follows:

- Requires that the Division of Consumer Services of the Department of Financial Services designate an employee as a primary contact for consumers on insurance issues relating to sinkholes.
- Requires the Florida State University Department of Risk Management and Insurance to conduct a study of a potential Florida Sinkhole Insurance Facility and other matters related to the affordability and availability of sinkhole insurance, due on April 1, 2005.

- Provides that if a mortgage lender fails to timely pay an insurance premium, and the payment is not more than 90 days overdue, the insurer must reinstate the insurance policy retroactive to the date of cancellation, and the lender must reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner to reinstate the policy. If the premium payment is more than 90 days overdue, or if the insurer refuses to reinstate the policy, the lender must pay the difference between the cost of the previous insurance policy and a new, comparable policy for 2 years.
- Mandates that insurers follow the following requirements, unless the insurance policy provides otherwise, when a homeowner's insurance policy provides for the adjustment and settlement of first-party losses based on repair or settlement costs:
 - Any physical damage that occurs as a result of the repair or replacement and that is covered by the policy shall be included in the loss to the extent of any applicable limits.
 - The insurer may not require the insured to pay for betterment required by ordinance or code, except the applicable deductible, unless specifically excluded or limited by the policy.
 - If the repaired or replaced items do not match in quality, color, or size, the insurer must make reasonable repairs or replacement of items in adjoining areas of the home. In determining the extent of repairs or replacements of items in adjoining areas, the insurer may consider cost, the degree of uniformity that can be achieved without such cost, the remaining useful life of the undamaged portion, and other relevant factors.
- Prohibits an insurer from using a single claim on a property insurance policy which is the result of water damage to cancel or non-renew coverage, unless the insured failed to take action reasonably requested by the insurer to prevent a future similar occurrence.
- Requires the Legislative Auditing Committee to contract with the Department of Risk Management and Insurance at Florida State University to conduct an analysis of factors affecting costs and potential assessments on consumers, and availability of personal lines property and casualty insurance in Florida generally and, in particular, in those areas in which coverage is underwritten by the Citizens.
- If an insurer refuses to provide private passenger automobile or personal lines residential property insurance to an applicant due to adverse underwriting information, the insurer must provide to the applicant specific information regarding the reasons for the refusal to insure. If the refusal to insure is based on a loss underwriting history or a report from a consumer reporting agency, the insurer must identify the loss underwriting history and notify the applicant of his right to obtain a copy of the report from the consumer reporting agency.

December, 2004, Special Session

Ch. 2004-480, L.O.F. (HB 9-A)

Hurricane Deductibles for Multiple Hurricanes

This act appropriates up to \$150 million from the Florida Hurricane Catastrophe Fund for the Department of Financial Services to reimburse residential property insurance policyholders whose property was damaged by two or more hurricanes in 2004 and whose insurer applied more than one hurricane deductible, up to specified limits.

The act also requires that residential policies issued on or after May 1, 2005, apply the hurricane deductible (typically, 2% or 5% of policy limits) on an annual basis, rather than a per-event basis, to all hurricanes that occur during the calendar year. However, insurers may apply the “other perils” deductible (typically, \$500), or the remaining amount of the hurricane deductible, whichever is greater, to a loss for a second hurricane and each subsequent hurricane that year. Insurers may require policyholders to report claims below their deductible and to maintain records or receipts in order to apply the loss to a subsequent hurricane.

2005 Regular Session

Ch. 2005-111, L.O.F. (CS/SB 1486)

Florida Hurricane Catastrophe Fund (FHCF): Lowers the “retention” or amount of residential hurricane losses that all insurers must meet in total (on average) in order to be reimbursed from the FHCF, from an estimated \$4.96 billion to \$4.5 billion per hurricane, for the 2005 contract year. The act further reduces the retention to one-third of the full retention for the third and each additional hurricane in a year (in order of loss magnitude). As under current law, the retention increases each year by the same percentage as the increase in the Fund’s exposure to losses.

Low-interest loan program for hurricane loss mitigation: Requires the Department of Community Affairs (DCA) to establish a low-interest loan program, by subsidizing or guaranteeing private sector loans, for homeowners to retrofit their homes to reduce hurricane losses, beginning in FY 2006-2007. For FY 2005-2006, up to \$1 million of the \$10 million annually appropriated to DCA from the FHCF could be used for establishing a pilot project in one or more counties.

Insurance Rating Law

- Requires a public hearing for property insurance rate filings exceeding 15 percent, (rather than 25 percent, currently) if based on a computer model.
- Provides that hurricane loss models approved by the Florida Commission on Hurricane Loss Projection Methodology are admissible and relevant in a rate proceeding only if the Commission, the Office of Insurance Regulation (OIR) and the insurance consumer advocate have access to all aspects of the model. This provision does not take effect unless HB 1939, which was passed by the Legislature, becomes law which provides a public records exemption for such information that qualifies as a trade secret.
- Requires OIR to propose to the Legislature, by January 15, 2006, a standard territory rating plan for residential property insurance, but not to be implemented unless authorized by further act of the Legislature.
- Prohibits an insurer from recouping more than one year of reimbursement premium paid to the FHCF at a time.

Public Hurricane Loss Model

Requires insurers to report loss and exposure data to OIR or to a type I center within the state university system (currently, the Hurricane Research Center at Florida International University) for developing and updating the public hurricane loss model. This provision does not take effect unless HB 1939

not defined. becomes law which provides a public records exemption for such data that is specific to a particular insurance company.

Citizens Property Insurance Corporation (“Citizens”)

- Changes appointments to the board of governors from seven appointed by the Chief Financial Officer (CFO), to two members each appointed by the Governor, CFO, President of the Senate, and Speaker of the House or Representatives (eight total).
- Authorizes a pilot project in Monroe County to require that rates be actuarially sound and not excessive, inadequate, or unfairly discriminatory, rather than the highest average rate in a county compared to the 20 leading insurers in the state, for those areas where OIR determines that a reasonable degree of competition does not exist.
- Requires Citizens to create a Market Accountability Advisory Committee to report at each board meeting, consisting of members appointed by agent associations, insurers, OIR, the Citizens board, a realtor association, and a bankers association.
- Provides legislative intent that Citizens provide service that is of the highest possible level.
- Clarifies that Citizens may issue bonds to refinance outstanding debt.
- Requires Citizens to make its best efforts to procure reinsurance to cover its projected 100-year probable maximum loss.
- Requires the Auditor General to conduct an operational audit of Citizens.
- Requires Citizens to submit a report to the Legislature.

Standard Personal Lines Residential Policies: Requires the CFO to appoint an advisory committee to develop standard personal lines policies to submit to the Legislature by January 15, 2006, but insurers are not be required to offer a standard policy unless required by further act of the Legislature.

Disapproval of Policy Forms: Authorizes OIR to disapprove a policy form for residential property insurance if it contains provisions that are unfair, inequitable, or that encourage misrepresentation.

Checklist of Coverage: Requires that insurers provide a checklist of coverage for personal lines residential policies, on a form adopted by the Financial Services

Commission, including whether certain specified risks are covered, premium discounts, deductibles, replacement cost or actual cash value coverage, etc.

Hurricane Deductibles

- Increases the maximum allowable deductible for personal lines residential policies from 5 percent to 10 percent of the dwelling limits.
- Requires insurers to offer deductibles of 2 percent, 5 percent, and 10 percent of dwelling limits for personal lines residential policies, rather than just 2 percent.
- Requires that the dollar amount of a percentage deductible be specified and provides other disclosure requirements.
- Requires that for condominiums and other commercial residential policies, the insurer must offer both an annual hurricane deductible and a per event deductible, beginning January 1, 2006. The mandatory annual hurricane deductible enacted in the December, 2004 Special Session, would be limited to personal lines residential policies.

Building Code (“Law and Ordinance”) Coverage: Requires insurers to offer coverage in homeowners policies equal to 50 percent of dwelling limits for the additional costs to meet applicable building codes, as an option to the 25 percent coverage that must currently be offered or provided. The (OIR) would be required to study the issue of requiring insurers to provide law and ordinance coverage.

Replacement Cost Coverage: Requires 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.

Mediation Program: Expands the mediation program for resolving property insurance disputes, administered by the Department of Financial Services, to commercial residential policies, and provides a penalty for insurers failing to notify claimants of their right to mediation.

Valued Policy Law (Mierzwa): In response to a recent district court opinion (*Mierzwa v. Florida Windstorm Underwriting Assoc.*, 877 So.2d 774, Fla. 4th DCA 2004) the bill provides legislative intent that the valued policy law is not intended to create new or additional coverage, or to require an insurer to pay for a loss caused by a peril other than the covered peril. If a loss is caused in part by a covered peril and in part by a noncovered peril, the insurer’s liability is limited to the amount of the loss caused by the covered peril. However, if the covered perils alone would have caused the total loss, then the valued policy law applies and the insurer must pay policy limits, not exceeding the amounts necessary to repair,

rebuild or replace the insured structure. These provisions will not be applied retroactively and shall apply only to claims filed after the effective date of this bill.

Sinkhole Claims

- Specifies that sinkhole coverage includes the costs to stabilize the land and building and to repair the foundation.
- Allows an insurer to deny a sinkhole claim if the insurer determines there is no sinkhole loss, but the insurer must provide written notice to the policyholder of their right to demand testing.
- If the policyholder demands testing, the insurer must engage an engineer or a geologist to conduct testing.
- Testing must be conducted in compliance with specified standards and a report must be issued as to the cause of the loss, with recommendations for stabilization and repair.
- The findings and recommendations of the engineer and geologist are presumed correct and the insurer must pay the costs of stabilization and repair in accordance with the recommendations.
- The insurer may limit its payment to the actual cash value of the sinkhole loss until such time as expenses related to land and building stabilization and foundation repairs are incurred, including underpinning and grouting. But, the insurer cannot require the policyholder to advance payments. The insurer must pay the expenses after a policyholder enters into a contract for stabilization or foundation repairs, and pay amounts necessary to begin and perform repairs as the work is conducted.
- If repair has begun and the engineer selected or approved by the insurer determines that the repair cannot be completed within the policy limits, the insurer must either complete the engineer's recommended repair or tender the policy limits to the policyholder without a reduction for the repair expenses incurred.
- If an insurer pays a sinkhole claim, it must file a copy of the professional report with the county property appraiser.
- Establishes a sinkhole database to track sinkhole insurance claims.
- Requires the seller of real property to disclose to the buyer that a sinkhole claim has been paid and whether or not the insurance proceeds were used to repair the sinkhole damage.

Notice of Premium Discounts for Hurricane Loss Mitigation: Requires insurers to notify applicants and policyholders of the availability and amount of premium discounts and credits for fixtures and construction techniques that reduce the amount of loss in a windstorm.

Prohibited Cancellation of Coverage: Prohibits an insurer from canceling or nonrenewing a residential property insurance policy covering a dwelling damaged by a hurricane until 90 days after the dwelling has been repaired, with certain exceptions. It also prohibits an insurer from canceling coverage for anyone during the duration of a hurricane, until 72 hours after the last hurricane watch or warning is issued anywhere in the state.

Additional Staffing for Insurance Consumer Advocate: Appropriates \$350,000 from the Insurance Regulatory Trust Fund and four positions to the Office of the Consumer Advocate appointed by the CFO.

Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market: Creates the Task Force to consider issues relating to the creation and maintenance of insurance capacity in the private sector and public sector which is sufficient to ensure that all property owners in the state are able to obtain appropriate insurance coverage for hurricane losses. The Task Force is also charged with studying various issues relating to Citizens Property Insurance Corporation. The report and recommendations are due by April 1, 2006. The Task Force is administratively housed within the office of the CFO and has twelve members consisting of three members each appointed by the Governor, CFO, the Senate President, and Speaker of the House.

Ch. 2005-264, L.O.F. (CS/HB 1939)

Public Records and Meetings (Hurricane Loss Data)

- Creates a public records exemption for reports of hurricane loss and associated exposure data which are specific to a particular insurance company, as reported by an insurer or licensed rating organization to the Office of Insurance Regulation (OIR) or to a state university, for the development of a public hurricane loss model. (A separate bill, CS/SB 1486, above, requires insurers to report such data in a time and manner as specified by OIR.).
- Also provides a public records exemption for a trade secret, as defined in s. 812.081, F.S., that is used in designing and constructing a hurricane loss model, that is provided by a private company to the Florida Commission on Hurricane Loss Projection Methodology (Commission), OIR, or the consumer advocate. The bill also creates a public meetings exemption for that portion of a meeting of the commission or of a rate proceeding on an insurer's rate filing at which confidential information is discussed. This is also related to CS/SB 1486, that provides that the findings of the Commission are admissible and relevant in a rate proceeding only if OIR and the consumer advocate have

access to all of the assumptions and factors that were used in developing the model and are not precluded from disclosing such information in a rate proceeding.

- These exemptions are subject to repeal on October 1, 2010, unless reviewed and reenacted pursuant to the Open Government Sunset Review Act of 1995.