



Florida Insurance Council **Legislative Week in Review**

P.O. Box 13686 · Tallahassee, FL 32317-3686 · TEL: 850.386.6668 · Fax: 850.386.7371

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Senate Expected to Tackle Property Insurance When it Meets Wednesday
*Senate Draft Expected Over the Weekend;
House Language May be Delayed*

We expect the upcoming week to be dominated by debate on the budget, taxes and property insurance so buckle up; it's going to be a bumpy ride.

Our lobbyists still believe the **Senate Banking & Insurance Committee** property package will be the topic of debate at its meeting scheduled for **Wednesday April 1, at 4 p.m. in Room 412, Knott Building** and that a draft outline touching on the components of the bill will be released today or over the weekend. Please check the **FIC** website later for details. We also will circulate to our property members any information we receive over the weekend so check emails.

We remind property committee members of our Property Committee call at 9 a.m. Monday morning. The call is still on. We will also add to the agenda discussion regarding HB 1171 by Rep. Bill Proctor which passed the House insurance committee early Friday. (See detailed report later on in this wrap-up).

Cat Fund fix Remains Key Focus

As we reported last week, many initiatives are underway to address a \$20 billion potential shortfall in the Florida Hurricane Catastrophe Fund. These include various proposals to reduce and eliminate over a period of time the \$12 billion Temporary Increase in Limits coverage authorized by the Legislature during the January 2007 special session.

The Cat Fund mandatory program is projected at \$17.2 billion for the 2009 hurricane season over a retention of \$7.2 billion. TICL would be an optional \$12 billion over that.

On Friday of last week, in the latest public update, Raymond James and Associates told the Cat Fund Advisory Council that the FHCF has \$4.1 billion in surplus, including this year's premium, and \$3.5 billion in funds from pre-event bonds, for a total claims-paying capacity of \$7.6 billion. Raymond James advised that \$1.5 billion to \$2 billion in bonding is possible in the current market crisis, step one of a plan being developed for consideration by the State Board of Administration Trustees on April 14.

That leaves the Cat Fund at least \$7 billion shy of financing the mandatory layer and \$19 billion to \$20 billion shy of financing mandatory plus TICL if it remained at \$12 billion.

Budget Talks Continue

State lawmakers are confronting a \$6 billion budget gap for the upcoming year. Roughly half of that gap will be filled with money from the stimulus package passed by Congress and pushed by President Obama. The **Senate** this week began rolling out initial versions of its budget that includes up to \$1 billion in cuts, according to **Sen. J.D. Alexander, R-Lake Wales** and the **Senate** budget chief. The **House** is not expected to release full details of its budget proposals until next week.

The **Senate** budget proposal does not include money from a hike in cigarette taxes, but a proposal to hike the tax will likely be taken up next week along with other fees and the repeal of some sales tax exemptions. Some **Senate** Democrats on Thursday criticized the initial **Senate** health care budget because it uses money from the stimulus package to free up \$1.6 billion in state money, nearly half of which went to other parts of the state budget. Right now, the **Senate** is proposing a 3 percent cut in rates to hospitals, nursing homes and HMOs even though the budget does restore funding to the state's Medically Needy program that provides help to working class people struggling to pay medical bills related to serious illnesses.

Week in Review

House Moves Workers' Comp "Fix" to Third Reading

The business and insurance coalition has been successful in convincing legislators in the **House** that the bill is an important step to prevent the further erosion of the state's economy and on Thursday a bloc of GOP lawmakers was able to beat back an amendment to **HB 903** that is supported by the trial bar. The amendment, though, was sponsored by Republican **J.C. Planas**, R-Miami.

While the bill was rolled to third reading in the House its fate in the Senate isn't as clear cut. Meanwhile, in a memo to members **House Majority Leader Adam Hasner** said if the Legislature doesn't pass the "fix," "the system will return to its to its pre-reform activity with regard to attorney's fees and rates will once again increase to the detriment of Florida's businesses, employers, and workers."

The bill restores a ceiling on plaintiff's attorneys' fees in comp cases, reversing the *Murray v Mariner* decision. The court decision said the caps precluded fees from being reasonable, also a requirement in the bill.

House Bans Emergency Response Fees

Legislation prohibiting accident response fees by local governments won another round in legislative committees this week, but it is being strongly opposed by the cities and counties and has several hurdles still ahead of it. The legislation is a major priority of the **FIC Auto Committee** and is being watched closely the Council.

The bill (**HB 1043 & SB 2282**) was approved 9-6 Wednesday by the **House Military & Local Affairs Policy Committee**. It still has two more committee or council references in the **House**. In the **Senate**, the bill is on the **Community Affairs Committee** agenda for March 31. It was approved earlier by the **Senate Banking & Insurance Committee**. After that, it must be approved by or withdrawn from the **Finance and Tax; Policy & Steering Committee on Ways and Means**.

Expert Witness Bill Stalls in the House

The **House Civil Justice & Courts Policy Committee** this week temporarily postponed action on a bill that revises the circumstances under which a court may allow a witness who is qualified as an expert to testify to the facts at issue in a case. The bill, **HB 661** by **Rep. Michael Weinstein**, R-Orange Park has a companion bill in the **Senate**, **SB 1220**, sponsored by **Banking & Insurance Committee** chairman **Sen. Garrett Richter**.

The bill would provide an expert testimony standard more closely related to what the **U.S. Supreme Court** noted in a 1993 case, *Daubert v. Merrell Dow Pharmaceuticals*, that Congress had changed the expert testimony admissibility standard in federal courts when it adopted the Federal Evidence Code in 1976. That became known as the *Daubert* standard.

Nonetheless, many states, including Florida, continued to use the *Frye Standard* stemming from a case in 1923. That standard provides that in order to introduce expert testimony deduced from a scientific principle or discovery, the principle or

discovery must be sufficiently established to have gained general acceptance in the particular field in which it belongs.

If the bill were to pass as drafted, it would provide a three-part, conjunctive test to determine whether or not an expert may testify: the testimony is based upon sufficient facts or data; the testimony is the product of reliable principles and method; and the witness has applied the principles and methods reliably to the fact of the case.

Property Insurance

Legislation Slow to Make Appearance

Talks of property insurance have warmed up this session. We hesitate to say “heated” because it appears that the **House** leadership is intent this session any way on staying with the current system, but addressing significant issues involving the **Florida Hurricane Catastrophe Fund, Citizens Property Insurance Corporation** and private insurers.

House Committee Passes Bill that Could Pit High Surplus Insurers vs Low Surplus Insurers

A bill that would allow insurers with \$500 million or more in surplus to write homeowner’s policies in Florida free from rate regulation and free of assessments from the state-run **Citizens Property Insurance Corporation** won approval in the **House Insurance, Business and Financial Affairs Committee** Friday.

The bill, **HB 1171** by **Rep. William Proctor**, R-St. Augustine is seen by many observers as a way to keep the state’s largest private residential insurer, State Farm, from leaving the property market as it announced earlier this it would.

Insurers with smaller surplus see potential problems with the surplus requirement added to this latest version of the bill. Smaller companies see the surplus requirement as providing a small number of large companies with monopolies able to run other insurers out of business.

There are also unanswered questions about the timeframe for offering non-assessable policies. Some companies say language in the bill would not prevent policyholders of assessable policies from switching to non-assessable policies when an assessment is triggered and that could lead to a mass exodus from smaller companies to those few that are able to offer non-assessable policies.

Deputy Insurance Commissioner Belinda Miller appeared before the panel for information only, but she warned lawmakers that if the bill passed rates for those

types of policies would no doubt be significantly higher than rates for any current homeowner's policy and she said the state would have no authority to regulate those rates for excessiveness. She added her office has spent a great deal of time in the past few years ensuring companies do not charge excessive rates and this bill would circumvent that work.

Rep. John Wood, R-Haines City, and co-sponsor of the bill took issue with Ms Miller's contention that rates would be significantly higher as well as with comments OIR has made over recent months about State Farm having the highest rates in the state.

"I have two huge binders of nearly 1,000 State Farm policyholders and various quotes they received" since that company announced it intended to withdraw from the **Florida** homeowners' market. He said the quotes people looking to other companies for replacement policies are coming in significantly higher than their current policy with State Farm. "This tells me we are delivering a hurricane tax for the State Farm customer," he said. "How are we doing what's in the best interest for consumers if we are not going to give them the option (of purchasing a non-assessable policy)."

Rep. Alan Hays, R-Umatilla praised the bill. "I love this concept," he said, noting that **Citizens'** assessment authority is blind to most of their own policyholders. He said it was highly likely **Citizens** could be forced to attempt to sell \$25 billion in bonds when a major hurricane strikes and under today's economic climate it is doubtful it could but if it were possible, Citizens would have to assess for as much as \$80 billion to retire that debt. And he said, policyholders are largely unaware of the potential assessment.

Christine Turner representing **Citizens** also took no formal stand on the bill but she warned that the bill could have a negative effect on **Citizens'** bonding capacity.

Rep. Proctor said residents in Florida do not even know what **Citizens** rates really are because they "don't know the total assessments." He said, "We are in grave danger of a serious financial (crisis because the state has) built insurance policy on a false premise."

The companion bill is SB 2036 by Sen. Mike Bennett, R-Bradenton. It has not been heard by Senate Banking & Insurance, but this panel has several more meetings this session. It currently applies to any insurer, not just insurers with surplus of \$500 million or more. In addition, the policies authorized under the Bennett will would be exempt from Florida Hurricane Catastrophe Fund assessments as well as Citizens assessments.

Limiting the new rate regulation and Citizens assessment-proof policies to companies with \$500 million or more in policyholder surplus was included in

a strike-all amendment offered by Proctor and accepted by the committee today. The amendment also stated that the new policy would continue to be subject to assessments from the Florida Hurricane Catastrophe Fund.

Meanwhile Cat Fund Conversion Plan Presented in House Workshop

Rep. Ellyn Bogdanoff's plan to convert the **Cat Fund** into a state program insuring all hurricane risks in Florida would require only a 7 percent property insurance rate increase, according to estimates from Pinnacle Actuarial Resources.

Ms. Bogdanoff noted during a workshop on her plan before the **House Insurance, Business and Financial Affairs Committee** March 24 that is far less than the 10 percent average annual increase probably facing **Citizens Property Insurance Corporation** policyholders. No action was taken on the bill (**HB 1157**) which is being sponsored in the **Senate** by **Sen. Mike Fasano**.

The **Cat Fund** would be converted into a state-run residential hurricane insurer entitled the "**Florida Hurricane Protection Program**." The program initially would provide hurricane coverage on all residential structures valued at up to \$2 million, with private insurers, including, **Citizens Property Insurance Corporation**, providing coverage for all other perils. The legislation establishes a transition intended to return **Citizens** to the insurer of last resort in all-other-perils coverage, following transfer of **Citizens** hurricane exposure to the **Florida Hurricane Protection Program**.

Ms. Bogdanoff told the **House** committee **Citizens** and the **Cat Fund** would eventually be dismantled and that the large national insurers who have left Florida or dramatically reduced their exposure would come back to write the ex-hurricane risk. She discounted concerns raised by Florida-based insurers they would be unable to compete with the large national carriers for the ex-hurricane coverage.

Surplus Lines Hit Snags

The **Senate Banking & Insurance Committee** this week gave approval to SB 1894 sponsored by **Sen. Mike Bennett**, R-Bradenton, which clears any misunderstanding about the legislative intent regarding surplus lines carriers by stating clearly that "the provisions of chapter 627 do not apply to surplus lines carriers."

Before passing the bill, though, the committee gave the nod to a trial-bar backed amendment that seemingly contradicts the intent of the bill by applying regulations back on the surplus lines that the bill seeks to exempt them from. Those provisions

deal with the insurer granting payment options to the awarding of attorney fees in cases involving surplus lines carriers. The amendment passed on a close 5-4 vote despite testimony from representatives of surplus lines carriers and **Belinda Miller** of the **Office of Insurance Regulation** who testified that the law has always been interpreted as exempting surplus lines carriers from the 627 provisions.

The question over the exemption stems from a **Supreme Court** decision last June in which the court noted a discrepancy in statutes which is considered a clerical error that the court rules exempting the surplus lines carriers from only a part of the laws relating to surplus lines carriers. **Miller** said **OIR** never interpreted law the way the courts interpreted the law.

Committee member **Sen. Mike Fasano**, R-New Port Richey who calls himself no friend of the surplus lines carriers and says tells his constituents not to purchase insurance through the surplus lines carriers, took issue with the interpretation and **Sen. Ring's** exploitation of the error to open what should have been a glitch bill to a host of additional provisions. Even with the amendment gaining approval, the industry went on record in support of **Sen. Bennett's** bill in hopes of dealing with the bad amendment at later stops before it hits the **Senate** floor.

Senate Criminal Justice OKs Sinks Annuities Bill; Agrees to Industry Amendments

The **Senate Criminal Justice Committee** approved this week the annuities suitability bill sponsored by Bradenton **Senator Michael Bennett** on behalf of **Chief Financial Officer Alex Sink**. The bill, **SB 1372**, was amended before being passed.

Paul Sanford, lobbyist for **FIC** and **ACLI** has been working the issue to make it more palatable for the insurance and financial industries. On the **House** side, **Insurance Committee Chairman Pat Patterson** has said he does not intend to bring up the bill in the **House**.

Life & Health

Out-of-Network Bill Approved Despite Industry Objections

Despite strong opposition from insurers and health plan administrators, the **House Insurance, Business & Financial Affairs Policy Committee** voted overwhelmingly in favor of a bill to allow patients to assign benefits to out-of-network health providers. The bill, **HB 855** by **Rep. Marcelo Llorente**, R-Miami would greatly impair the ability of health care networks to negotiate discounted rates for consumers, according to industry representatives.

FIC lobbyist **Paul Sanford** urged **House** committee members to vote down the bill saying it will lead to health care providers leaving the networks and make future negotiations for discounted rates ever more difficult. The impact to the State of Florida's health plan he said would be \$22 million this year alone.

"You're being asked to provide benefits of a contract to a provider with none of the obligations," **Sanford** said. The benefit, he said is that networks give health care providers a steady, high-volume stream of customers in return for discounted rates for their services. If the bill were to pass both houses of the legislature as currently written, **Sanford** said there would be no reason for health care providers to want to remain in the network. The end result would be higher health care costs for consumers, he said.

Jeff Scott, lobbyist for the **Florida Medical Association** called false those claims by health care network providers that the bill would allow physicians to balance bill patients. "They can bill for the difference now," he said. He said the only difference between current law and the proposed law is "the address they (insurers) put on the check."

The bill has several more committee references but today's meeting is the last day for regularly scheduled House committee meetings.

House Deletes Prohibition on Arbitration in Insurance Contracts

Language prohibiting the use of arbitration agreements in all insurance policies was removed from **HB 1135** by the **House Civil Justice & Courts Policy Committee**. The committee adopted a strike-all amendment offered by the bill's sponsor. The original 16-page bill, filed by **Rep. Ralph Poppell**, R- Titusville, has been whittled down to only three pages.

The committee also gave approval to **HB 363** which gives parents the authority to waive liability for their children. The trial bar supported a number of amendments that were run on the bill by **Rep. Kevin Ambler**, R-Tampa, including an amendment that would require a vendor issuing a waiver agreement to also obtain proof of insurance or offer customer an at risk, accident-only policy with a minimum limit of \$100,000. Both of Ambler's amendments failed.

A third amendment by committee chairman **Rep. Nick Thompson**, R-Fort Myers that adds language used by **Court Justice Charles Canady** that says waivers and releases are strictly construed. The amendment was approved as was a fourth amendment by **Rep. Audrey Gibson**, D-Jacksonville that says nothing in the bill is to construe to illegal acts.

Office of Insurance Regulation: Dependent Coverage up to Employee

After meeting with interested parties for about an hour on Thursday **Office of Insurance Regulation Deputy Insurance Commissioner for Life & Health Mary Beth Senkewicz** said employees—not employers—should have the choice whether to keep certain adult children on their policies through the age of 30.

The extension of dependent coverage from age 25 up to age 30 was one of the components' of the **Cover Florida** legislation last years but has been in dispute since October when it was slated to take effect. The **OIR** held a workshop in Tallahassee this week where a multitude of questions were asked about implementation of the bill, which was passed in the 2008 session. **Senkewicz** said she won't issue a rule but will keep the record open for another 10 days.

Senkewicz said OIR's interpretation of the law is that the employer does not have to contribute to any of the coverage of the dependent adult child, regardless of whether the employer previously contributed to the costs of coverage. If an adult dependent child give birth during the calendar year, Senkewicz said, the dependents coverage ceases on the day the baby is born. The newborn, however, is eligible for coverage under separate newborn statutes. It is ambiguous, Senkewicz, conceded and, therefore, it is not clear whether it applies to both group and individual policies.

In Other News from OIR

The office has refilled **690-149.003,.005,.007** relating to **Health Rate Filing Standards**. This is the rule, according to **AHIP** Florida team of lobbyists that the group challenged last year and after **AHIP's** appeal the rule was subsequently withdrawn. **OIR** has not made substantive changes and instead filed a nearly identical draft to the one that was repealed.

Cabinet Briefs

Ash Williams, executive director of the **State Board of Administration**, told **Gov. Charlie Crist** and members of the **Cabinet** that he has begun working on trying to convince the federal government to extend Florida a letter of credit for the battered **Florida Hurricane Catastrophe Fund**. **Williams** said that Florida was trying to build an "informal alliance" with other states that may have similar situations. He said that the group has already come up with draft of legislation for the federal government to consider and that he would be meeting with the Florida delegation in Washington D.C. in early April.