



Florida Insurance Council ***Legislative Week in Review***

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*April 3, 2009*

*Lawmakers return for abbreviated legislative week*

## **Carryover Debate on Senate Property Bill; Out-of-Network Bill also Focus in Senate**

The Easter/Passover break will make for an abbreviated week of legislative activity when lawmakers return to Tallahassee on Monday, April 6.

The **Senate** has a full slate of committees scheduled for Monday and Tuesday before shutting down by 8:00 p.m. Tuesday. The **House**, meanwhile, has completed its regular committee work and is limited now to sessions of Policy Councils which are scheduled to meet until 6:00 p.m. Tuesday with an additional 4-hour time slot allotted for Wednesday morning if appropriations councils on government, health care and education do not complete their work on time.

Lawmakers will then return for the final three weeks of session on April 13.

## **Out-of-Network Bill Scheduled for Banking & Insurance Committee**

The **Senate** companion to the out-of-network bill that passed earlier this week in the **House** is now moving in the **Senate**. The bill, **SB 1122** by **Sen. Don Gaetz**, R-Fort Walton Beach, is scheduled to be heard before the **Senate Banking & Insurance Committee** Monday from 1:30 to 3:30 p.m. The bill is identical to **HB 855**, which was approved earlier this week by the **House General Policy Council**.

**FIC's health committee** has made no formal recommendation for or against the bill. Some individual companies, however, do oppose the bill, which requires insurers to make payment directly to providers outside of managed care networks.

Opponents say the bill would greatly impair the ability of health care networks to negotiate discounted rates for consumers, according to industry representatives. **Blue Cross & Blue Shield** of Florida 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.

**Jeff Scott**, lobbyist for the **Florida Medical Association**, testified in favor of the bill. He said the only difference between current law and the proposed law is "the address they (insurers) put on the check."

## Senate Property Bill Returns to Banking & Insurance Committee

Debate that was cut short on the Senate's property package, **SB 1950** by **Senate Banking & Insurance Committee Chairman Sen. Garrett Richter**, R-Sarasota, will continue and presumably the bill will be voted on this time around when the committee meets Monday at 1:30 p.m.

The 53-page bill is carefully crafted to address two major property insurance concerns: a potential \$18 billion shortfall in the **Florida Hurricane Catastrophe Fund**, and woefully inadequate rates in the state-run insurer, **Citizens Property Insurance Corporation**.

**Sen. Richter's** proposal aims to solve the **Cat Fund** crisis in a number of ways including allowing the **State Board of Administration** to purchase **Cat Fund** bonds. His proposal would also phase out over a period of six years, the expanded coverage from the **Cat Fund** that was authorized in special session two years ago.

In addressing the rate inadequacy within **Citizens**, the **Richter** plan would remove the rate freeze in effect now for more than two years and establish a glide path for raising **Citizens** rates making them "actuarially sound" through a maximum 10 percent a year increases for presumably five years.

**Sen. J.D. Alexander**, R-Gainesville, noted however that under the rate caps the government-run insurer may never achieve actuarially sound rates because the glide path is aimed at a stationary target while in reality, inflation and other factors continue to place upward pressures on rates.

"Will that every catch up with the actual rate?" he asked in reaction to comments from **Christine Turner** of **Citizens** who told the panel that based on 2007 data (she said they await 2008 data) **Citizens** would need to raise its rates 40 percent on the multi-peril policies and 55 percent on its wind-only policies to achieve actuarial sound rates.

The House version, **HB 1495** by **Rep. Bryan Nelson**, R-Apopka, was released on Thursday and debated by a special meeting of the **House Insurance, Business &**

**Financial Affairs Committee** Friday where it was voted out after more than two hours of testimony on the bill. It has several policy council stops before moving to the full **House** for a floor vote. Here are some comparisons of the two bills:

#### Florida Hurricane Catastrophe Fund Temporary Increase in Limits (TICL) program

- The House and Senate have similar language. TICL is reenacted, eliminating the pending sunset after the 2009 hurricane season. TICL will be extended through 2013, but reduced each year in \$2 billion increments.

#### Reducing coverage options in TICL

- The Senate does not address this issue while the House produces additional decreases in TICL through a decrease in the coverage options allowed insurers. The decreases would follow a glide path beginning in the 2009 Cat Fund contract year and continuing through year 2013.

#### Citizens ineligible for TICL

- In the House version, Citizens would no longer qualify as a "TICL insurer." Citizens purchased 40 percent of TICL during 2008. This revision would make more TICL capacity available for private insurers if they chose to buy it, but a lot of this might go unsold, helping reduce TICL total coverage closer to a level that can be financed. The Senate does not address this issue.

#### Cat Fund replacement reinsurance recoupment

- The House and Senate have similar language in which Insurers are provided with the option of purchasing private reinsurance to replace the TICL layer and to recover that cost in rates, which cannot exceed 10 percent of total premium. The rate recovery is limited to the reinsurance increase and cannot include added expense or profit factors.

#### TICL rates

- Both bills have similar language. The rapid cash build-up factor shall not apply to TICL. However, TICL premium shall be increased in the 2009 contract year "by a factor of two," by a factor of three in 2010, by a factor of four in 2011, by a factor of five in 2012 and by a factor of six in the 2013 contract year.

### Cat Fund liquidity

- Both bills contain similar language. Legislation provides that the State Board of Administration “may, consistent with sound investment policy,” invest in Florida Hurricane Catastrophe Fund bonds if the Cat Fund is unable to raise the funds it needs on the New York financial markets.

### Cat Fund contact year

- The Senate bill provides that the Cat Fund contract year, beginning in 2011, commences on January 1 and ends on The House Bill does not address this issue.

### Citizens Property Insurance Corporation/Citizens rate freeze

- In the Senate bill the Citizens rate freeze is allowed to expire on January 1, 2010, as scheduled and actuarially sound rates must be developed and phased in over a period of years, however long that takes. Rate increases will be capped at 10 percent a year on any individual policyholder, adjusted for exposure change. The effect of the 10 percent policyholder increase cap is to prohibit a statewide average increase of probably anything higher than 5 percent.
- The House allows for greater annual rate increases to achieve actuarially sound rates once the rate freeze expires - 10 percent a year on a statewide average, 15 percent in a rating territory and 20 percent on an individual policyholder.

### My Safe Florida Home funding

- Both bills allocates 10 percent of the Citizens glide path increase to the state general revenue fund, presumably through the My Safe Florida Home program, for mitigation grants for single family homes and stipulates that only Citizens policyholders qualify for the grants.

### Rapid cash-build up factor

- Both bills contain similar language. Irrespective of the 10 percent cap, Citizens is allowed to increase its rates to recover the Cat Fund rapid cash build-up factor. Senate committee staff estimates the rate impact at less than 1 percent.

### Reduction in HRA territories

- In the Senate bill the pending reduction in the High Risk Account territories to achieve a 25 percent reduction in the HRA probable maximum loss would be postponed from February 1, 2010, to February 1, 2013. The pending reduction in HRA boundaries to achieve a 50 percent reduction in the PML is postponed from February 1, 2015, to February 1, 2018.
- The House bill repeals the 25 percent and 50 percent PML reduction mandates instead of postponing their effective date.

### Wind-only policies in Citizens HRA

- Both bills are similar. Current law is retained on Citizens offering wind-only coverage in the High Risk Account on structures valued at up to \$2 million, with Citizens or private insurers providing underlying perils coverage. A new provision allows authorized insurers (not surplus lines carriers) to offer ex-wind policies to homeowners no longer eligible for Citizens coverage and who are within the HRA - if the residential structure is valued at \$2 million or more or it is a structure valued at \$750,000 or more without opening protections.

### Flex rating

- In the House, residential property insurers could submit a rate filing not subject to Office of Insurance Regulation review for excessiveness if it produced an average statewide impact or plus or minus 10 percent and no more than a 15 percent increase in any one rating territory. The Senate bill does not address this issue.

### Use and file

- The Senate bill extends for one additional year, until December 31, 2010, the suspension of use and file rate filing procedures. The House bill apparently does not address this issue.

### Mitigation: My Safe Florida Home Program funding

- In the Senate bill 10 percent a year of revenues generated through the Citizens Property Insurance Corporation rate increases would be transferred to the state's general revenue fund and earmarked for hurricane loss mitigation, presumably to continue the My Safe Florida Home Program currently scheduled to sunset this year. The House bill contains similar

language except that only homesteaded property insured by Citizens would qualify for the grants.

#### Public adjusters

- In the House bill Public adjusters would be prohibited from soliciting homeowners for 20 days following a loss, instead of 48 hours as under current law. Public adjusters would be required to submit to examinations under oath, upon the request of an insurer. The Senate bill does not address this issue.

For a more comprehensive side by side comparison, go to the FIC website:  
<http://www.flains.org/content/view/3107/30/>

## Workers' Comp Bill to Return in Debate Following Easter/Passover Break

The **Senate Judiciary Committee** on Wednesday of this week postponed vote on the workers' compensation attorney fee fix on the heels of the bill winning final approval in the House the previous day.

With dozens of presenters lined up to speak both in favor and opposed to the bill, Committee **Chairman Sen. Lee Constantine**, R-Altamonte Springs, admonished competing sides in the debate for bringing the bill to his committee having not reached a compromise.

He said he was told by both sides heading into the meeting that they had the votes when in fact he said the both sides counted him as the fifth vote on the nine-member committee.

At a mid-session briefing sponsored by Associated Industries, **Tammy Perdue**, the lead on the business coalition supporting a fix to the attorney fee issue, said that **Sen. Constantine** "just doesn't want to be the deciding vote."

She said that heading into session the business community tried to work with the trial bar—the leading opponent of the fix outlined in the bill. "Any opportunity to compromise with the trial bar is not existent," she said.

**House Speaker Larry Cretul**, R-Ocala also appeared before the Friday morning briefing. He said the **House** is "tee'd up. When our dancing party is ready, we'll be dancing with the stars."

The **House** bill is **HB 903**. The **Senate** bill is **SB 2072**. Sen. Constantine said he would delay bringing the bill back before his committee until its next meeting after the Easter/Passover break.

## Surplus Lines Bill Inching Along

The **Senate Judiciary Committee** on Wednesday of this week approved the surplus lines so-called “Essex fix” bill in a tight 5-4 vote. The committee beat back an amendment that would have subjected surplus lines insurers to a number of the chapter 627 provisions that historically have never been applied to surplus lines insurers.

**Sen. Jeremy Ring**, D-Margate, tried unsuccessfully to amend the bill, **SB 1894**, but vowed to continue his fight at the next of several scheduled committee stops before the bill reaches the **Senate** floor.

Committee Chairman **Lee Constantine**, R-Altamonte Springs, voted for the bill in his committee but said he has a number of concerns over the lack of consumer protections that **Sen. Ring** attempted to place in the bill with his amendment.

The **House** version of the bill, **HB 853** passed the insurance committee in the lower chamber two weeks ago. It awaits **House Council** action.