HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 909 Property Insurance
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Callaway	Cooper

SUMMARY ANALYSIS

The PCS contains a myriad of changes to current law relating to property insurance. Specifically, the PCS addresses: public hearings on rate filings, assignment of post-loss benefits, reporting on non-catastrophic losses for Citizens Property Insurance Corporation (Citizens), and sinkholes.

Current law requires every property insurance company to make an annual rate filing with the Office of Insurance Regulation (OIR) setting out the company's proposed rates. The OIR reviews the rate filing and either approves or disapproves the proposed rates. The OIR must hold a public hearing for any rate filing exceeding 15 percent that is based in whole or in part on data from a computer model. Instead of requiring a public hearing on these rate filings, the PCS gives the OIR discretion to hold a public hearing on them.

Generally, an assignment of benefits allows a third party to collect insurance proceeds owed to the policyholder directly from the insurance company. Thus, the proceeds are not paid to the policyholder. Assignment of benefits can be made in two circumstances, pre-loss assignment of benefits and post-loss assignment of benefits. Pre-loss assignments are made before a claim arises and post-loss assignments are made after a first party loss. Under current law, insurers can include a provision prohibiting the policyholder from making pre-loss assignments without consent of the insurer, but post-loss assignments are not prohibited. The PCS allows a property insurance policy to prohibit the policyholder from post-loss assignment of rights, causes of action, or benefits under the policy. An exception is made for assignment of public adjuster fees. A post-loss assignment made is void if the policy prohibits the assignment.

The PCS requires Citizens to prepare a report by January 15th of each year on non-catastrophic losses.

The PCS also makes changes to the sinkhole law. Insurers are allowed to offer sinkhole loss coverage limits in specified amounts which are lower than the policy limit. Insurers are required to offer sinkhole deductibles of two percent, five percent, and 10 percent of the policy dwelling limits. Current law does not require various sinkhole deductibles to be offered, although the law allows insurers to include various sinkhole deductibles in insurance policies. In addition, current law allowing a one percent sinkhole deductible is repealed by the PCS. The PCS requires insurers to make payments for sinkhole repairs directly to the repair contractor selected by the policyholder if the property has no liens against it. Finally, the PCS repeals current law allowing a policyholder in a sinkhole claim to collect attorney fees if the claim goes to neutral evaluation and the insurer timely complies with the neutral evaluator's recommendation, but the policyholder declines to resolve the claim and opts to proceed to court and obtains a judgment more favorable than the recommendation.

The PCS has no fiscal impact on state or local governments. Policyholders with insurance policies that prohibit post-loss assignments may incur out of pocket expenses to pay the repair contractor or vendor up front; however, the policyholder should be reimbursed for these expenses by the property insurer when the claim is paid and settled. Citizens may incur additional costs, including staff time, to calculate and publish the report required for non-catastrophic losses. The changes to the sinkhole deductible and coverage limit could increase or decrease a homeowner's out of pocket expenses for a sinkhole claim and the premium for sinkhole loss coverage, depending on which deductible or coverage limit the homeowner chooses. The change to the attorney fee provision relating to neutral evaluations may reduce legal expenses for sinkhole claims incurred by insurers. The PCS is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Ratemaking Regulation for Property, Casualty, and Surety Insurance

The Rating Law for property, casualty, and surety insurance is located in Part I of ch. 627, F.S., (ss. 627.011 – 627.311, F.S.). The primary purpose of the Rating Law is to ensure insurance rates are not excessive, inadequate, or unfairly discriminatory. This standard applies to every property insurance rate.

Section 627.0645, F.S, requires every property insurance company to make a rate filing with the Office of Insurance Regulation (OIR) each year. The rate filing contains the insurance company's proposed rates. The OIR reviews the rate filing and either approves or disapproves the proposed rates. If an insurance company does not want to change its rates one year, instead of a rate filing, the insurer can file a certification by an actuary that the existing rate level produces rates which are actuarially sound and which are not inadequate.

An insurer has two options for a rate filing: a "file and use" rate filing or a "use and file" rate filing. If an insurer opts to file rates using a "file and use" rate filing, the rates must be filed for approval 90 days before the proposed effective date. OIR must finalize its review of the filing by issuing a notice of intent to approve or disapprove the rate filing within 90 days after receipt of the filing or the filing is deemed approved. If an insurer opts to file rates using a "file and use" rate filing, the rates must be filed for approval 30 days after the rate filing is implemented. If the OIR determines the rates already implemented are excessive, the insurer must refund that part of the rate found to be excessive to the policyholder.

The OIR may disapprove a rate filing if it determines the rates are excessive, inadequate, or unfairly discriminatory. In determining whether a rate is excessive, inadequate, or unfairly discriminatory, the OIR uses the following statutory factors.[1]

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, when applicable.
- A reasonable margin for underwriting profit and contingencies.
- Cost of medical services, when applicable.
- Other relevant factors impacting frequency and severity of claims or expenses.

The OIR must hold a public hearing for any rate filing exceeding 15 percent that is based in whole or in part on data from a computer model.[2] Instead of requiring a public hearing on these rate filings, the PCS gives the OIR discretion to hold a public hearing on them.

Assignment of Benefits in Property Insurance

[1] s. 627.062(2), F.S.
[2] s. 627.0629(6), F.S.

Generally, an assignment of benefits allows a third party to collect insurance proceeds owed to the policyholder directly from the insurance company. Thus, the proceeds are not paid to the policyholder. Assignment of benefits are commonly used in health insurance and personal injury protection insurance. In health insurance, a policyholder typically assigns his or her benefits to payment for a covered medical service to the health care provider. Thus, the treating physician gets paid directly from the insurer.

According to proponents of the PCS, assignment of benefits are becoming increasingly common in property insurance claims, especially in water damage claims where a homeowner assigns his or her right to receive benefits on their property insurance to a contractor or vendor who repairs the damaged property. Some insurers assert assignment of benefits to a contractor or vendor in a water damage claim can be problematic because if the contractor or vendor submits an invoice to the insurer that is more than what the insurer estimates it should cost to remediate and dry-out the policyholder's residence, the insurer must investigate the claim, determine why the invoice is higher than estimated by the insurer, and identify whether all the work indicated in the invoice was performed. Insurance policies typically provide authority for the insurer to take certain actions to investigate claims, such as requiring policyholders to file proofs of loss, to produce records, and to submit to examinations under oath. However, contractors or vendors obtaining an assignment of benefits for the claim many times allege they do not have to comply with the insurer's claims investigation authorized under the insurance policy because they agreed only to an assignment of the insurance benefits and did not agree to assume any of the duties under the insurance policy.

Assignment of benefits can be made in two circumstances, pre-loss assignment of benefits and post-loss assignment of benefits. Pre-loss assignments are made before a claim arises and post-loss assignments are made after a first party loss. Under Florida law[3], insurers can include a provision prohibiting the policyholder from making pre-loss assignments without consent of the insurer.[4] In other words, an insurer can include a prohibition in a property insurance policy that prohibits a policyholder from assigning his or her policy to a third party. However, such a prohibition does not prohibit the policyholder from assigning his or her rights under the policy once a claim arises.[5] Thus, even if the policy contains a provision prohibiting pre-loss assignment of benefits, the policyholder can still make a post-loss assignment of benefits.[6] One reason post-loss assignments are valid despite a provision prohibiting assignment without consent of the insurer in the policy is that once a loss occurs; the assignment is for moneys due under the policy and owed the policyholder (i.e., the policyholder's rights under the policy). If a post-loss assignment of benefits is made, the party receiving the assignment (assignee) cannot assert new rights of his or her own did not belong to the person assigning the rights (assignor). Also, the full extent of the assignor's claim is assignable so the assignee can collect the full value of the assignor's claim against the insurer.[7]

In addition, a contractual provision prohibiting an assignment of rights under the contract does not prohibit assignment of causes of action under the contract.[8]

The PCS allows a property insurance policy to prohibit the policyholder from post-loss assignment of rights, causes of action, or benefits under the policy. An exception is made for assignment of public adjuster fees. A post-loss assignment made is void if the policy prohibits the assignment.

Report by Citizens Property Insurance Corporation (Citizens) on Non-Catastrophic Losses

Currently, there is no required reporting on non-catastrophic losses for any insurer, including Citizens. The PCS requires Citizens to prepare a report by January 15th of each year on non-catastrophic losses.

[3] s. 627.422, F.S.

[4] This is usually done by an "consent to assignment clause." See Cordis Corporation v. Sonics International, 427 So.2d 782 (Fla. 3rd DCA 1983) noting "contractual provisions assignability are generally enforceable in Florida."

[5] Highlands Insurance Company v. Kravecas, 719 So.2d 320, (Fla. 3rd DCA 1998).

[6] Slominski v. Citizens Property Insurance Corporation, 99 So.3d 973(4th DCA 2012), citing Kroener v. Florida Insurance Guaranty Association, 63 Sol.3d 914 (Fla. 4th DCA 2011)).

[7] Highlands Insurance Company v. Kravecas, 719 So.2d 320, (Fla. 3rd DCA 1998).

[8] Cordis Corporation v. Sonics International, 427 So.2d 782 (Fla. 3rd DCA 1983).

Specifically, the report must provide Citizens' loss ratio for non-catastrophic losses on a statewide and county basis. A loss ratio is the percentage of each premium dollar an insurer spends on claims.[9] For example, a loss ratio of 115 means for every $1 in premium collected by the insurer, the insurer pays out $1.15 in losses on a claim. The report must be provided to the OIR and posted on the Citizens Internet website.

Sinkholes

Background

A sinkhole is defined in Florida law as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater.[10] Sinkholes occur in certain parts of Florida due to the unique geological structure of the land. Sinkholes are geographic features formed by movement of rock or sediment into voids created by the dissolution of water-soluble rock. This type of subsidence formation may be aggravated and accelerated by urbanization and suburbanization, by water usage and changes in weather patterns.

Since 1981, insurers offering property coverage in Florida have been required by law to provide coverage for property damage from sinkholes.[11] In 2007, Florida law was amended to require insurers in Florida to cover only catastrophic ground cover collapse, rather than all sinkhole loss, in the base property insurance policy.[12] However, insurers must also offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents.[13] At a minimum, sinkhole loss coverage includes repairing the covered building, repairing the foundation, and stabilizing the underlying land. By law, sinkhole loss coverage by Citizens does not cover sinkhole losses to appurtenant structures, driveways, sidewalks, decks, or patios. All property insurers can restrict catastrophic ground cover collapse and sinkhole loss coverage to the property's principal building. Furthermore, insurers can require an inspection of the property before providing sinkhole loss coverage.

For sinkhole loss coverage in residential property insurance, current law allows insurers to include a deductible that applies only to sinkhole loss in the following amounts: 1% of policy dwelling limits, 2% of policy dwelling limits, 5% of policy dwelling limits, or 10% of policy dwelling limits. The insurer has the option to choose which sinkhole loss deductible is offered to policyholders and currently, most insurers, including Citizens, offer policyholders only a 10% sinkhole loss deductible.

Property insurers can nonrenew policies that contain sinkhole loss coverage in the base property insurance policy and offer policyholders a base policy containing coverage for only catastrophic ground cover collapse and offer coverage for sinkhole loss as an endorsement to the base policy for an additional premium.

Notice of all sinkhole claims, including initial, reopened, or supplemental claims must be given to the insurer in accordance with policy terms within two years of the policyholder knowing about the sinkhole loss or within two years from when the policyholder reasonably should have known about the sinkhole loss.

Substantial changes to Florida's sinkhole law occurred in 2005, 2006, and 2011.[14] In 2011, the Legislature reviewed the sinkhole law and enacted comprehensive reforms addressing all areas of the law. Data collected by the Office of Insurance Regulation (OIR) in 2010, before the reforms were enacted, showed a significant increase in the number and cost of sinkhole claims from 2006 to 2010.[15] These increases impacted the financial stability of property insurers in Florida, including Citizens Property Insurance Corporation (Citizens), and were used by insurers to justify property insurance rate increases.

[9] http://www2.iii.org/glossary/l/ (last viewed March 24, 2013).
[10] s. 627.706(2)(b), F.S.
[11] Ch. 1981-280, L.O.F.
[12] Section 30, Ch. 2007-1, L.O.F.
[13] s. 627.706, F.S.
[14] Ch. 2005-111, L.O.F.; Ch. 2006-12, L.O.F.; Ch. 2011-39, L.O.F.
[15] Report on Review of the 2010 Sinkhole Data Call by the Office of Insurance Regulation, dated November 8, 2010, link available at http://www.floir.com/Office/DataReports.aspx (last viewed March 10, 2013).

The sinkhole reforms enacted in 2011 were in response to the increasing number and cost of sinkhole claims. The goal of the reforms was to keep sinkhole loss insurance available to homeowners while providing more certainty in sinkhole claims for homeowners and insurers in terms of coverage, costs, repairs, and exposure.

The first complete year the reforms were in effect was 2012.[16] No data has been collected on an industry-wide basis on the number of claims, claim severity, or claim costs since the reforms were enacted, so their impact on sinkhole claims and costs on an industry-wide basis is unknown. However, Citizens performed a sinkhole study in 2012 to compute the impact of the 2011 reforms on their policies.[17] This study looked at actual sinkhole claim files from Citizens and readjusted the losses and expenses associated with the claims as if the 2011 reforms had been in effect. The actuarial analysis which accompanied the study projected the 2011 reforms would reduce Citizens' expected incurred sinkhole losses for 2013 by almost 55 percent.

Insurance Adjusting of Sinkhole Claims

Under current law, when a claim is made for sinkhole loss, the insurer must inspect the property to determine if there is structural damage resulting from sinkhole activity.[18] The definition in current law for "structural damage" was enacted in 2011 and is based on descriptions of structural damage in the Florida Building Code that are applicable to sinkholes.

Following the insurer's initial inspection, the insurer must provide written notice to the policyholder detailing:[19]

- the insurer's initial determination of the cause of the damage, if a determination is made,
- when the insurer must hire a professional engineer or professional geologist to verify or eliminate sinkhole loss,
- when the insurer must hire an engineer to recommend land and building stabilization and foundation repairs,
- a statement of the policyholder's right to demand certain testing be conducted by a geologist or engineer,
- when the policyholder can demand testing, and
- when a policyholder has to pay for testing.

For insurance policies covering sinkhole loss, if the insurer's inspection of the damaged property confirms structural damage to the property, but does not identify the cause of the damage, or if the damage seen on inspection is consistent with sinkhole loss, the insurer must hire, and pay for, an engineer or geologist to conduct sinkhole testing to determine the cause of the damage to the property.[20] The engineer or geologist must issue a report on his or her findings (the report is discussed below).

If the insurer determines there is no sinkhole loss, the insurer can deny the sinkhole claim.[21] If an insurer determines there is no sinkhole loss and denies the sinkhole claim without sinkhole testing, the policyholder can demand testing. Policyholders can demand testing only if the insurance policy covers sinkhole loss. This prevents insurers from having to pay for sinkhole testing if the policy would not cover the damage. The policyholder's demand for testing must be communicated to the insurer within 60 days after the receipt of the denial of the sinkhole claim.[22] In addition, the policyholder demanding testing must pay the lesser of 50 percent of the sinkhole testing and sinkhole reporting costs or $2,500. But, the insurer must reimburse these costs to the policyholder if the testing reveals a sinkhole loss. However, if a policyholder submits a sinkhole claim without good faith grounds after sinkhole testing

[16] The reforms were effective on May 17, 2011 when the bill (CS/CS/CS/SB 408) was signed by the Governor.
[17] Citizens Property Insurance Corporation Senate Bill 408 Sinkhole Analysis, prepared by Insurance Services Office, dated July 19, 2012, link available at https://www.citizensfla.com/about/mDetails_boardmtgs.cfm?event=419&when=Past (last viewed March 10, 2013).
[18] S. 627.707(1), F.S.
[19] S. 627.707(3), F.S.
[20] S. 627.708(2), F.S.
[21] S. 627.707(4)(a), F.S.
[22] ss. 627.707(4)(b) and (6), F.S.

that reveals there is no sinkhole loss or that sinkhole activity did not cause the damage to the property, the policyholder must reimburse the insurer the lesser of 50 percent of the testing costs or $2,500.

Testing standards for sinkholes are established in s. 627.7072, F.S. The professional geologist or engineer must perform whatever tests are sufficient to determine the presence or absence of sinkhole loss or cause of damage within reasonable professional probability and to allow the engineer to make recommendations regarding any necessary building stabilization and foundation repair. Typically, the testing procedures used are shallow boring, ground penetrating radar, and deep boring.

Once testing is complete, the engineer or geologist performing the testing issues a report and certification to the insurance company and policyholder.[23] The requirements of the sinkhole report and certification are found in s. 627.7073(1), F.S. and are based upon sinkhole testing. If sinkhole loss is verified in the sinkhole report and certification, in addition to the other statements required by law, the report and certification must state structural damage to the covered building has been identified within a reasonable professional probability. In addition to other statements required by current law, if there is no structural damage or if sinkhole activity is eliminated as the cause of damage to a covered building, the report and certification must state there is no structural damage or the cause of structural damage found is not sinkhole activity within a reasonable professional probability. Florida law gives a presumption of correctness to specified information contained in the report.[24]

If the insurer verifies there is a sinkhole loss, the insurer must pay to stabilize the land and building and repair the foundation pursuant to the policy coverage and terms and in accordance with the recommendation of the professional engineer.[25] The policyholder is also given notice of the repairs to be done.

Regarding repair of sinkholes paid for by the insurer, the insurer can initially pay actual cash value of the sinkhole claim, except for the underpinning and other below foundation repair costs, until the policyholder enters into a contract to repair the sinkhole damage.[26] However, the insurer must pay for only repairs recommended in the sinkhole report prepared by the insurer's geologist or engineer.[27] The insurer must obtain approval of the property lienholder, and not the policyholder, in order to pay repair costs directly to the repair contractor. The policyholder chooses who makes the repairs.

For verified sinkholes, the policyholder must repair the property in accordance with the repair recommendations made by the insurer's engineer in the insurer's sinkhole report. The policyholder must enter into a contract to stabilize the building and repair the foundation within 90 days after the insurer confirms coverage for the sinkhole loss and notifies the policyholder of the confirmation.[28] Once the contract is entered into, the insurer pays the amount needed to begin repair work. The insurer continues to pay for repair work as the work is completed and repair costs incurred. The policyholder cannot be required to advance money for the repairs.

Sinkhole repairs must be complete within 12 months after the repair contract is entered into. The exceptions to this 12-month limitation are: mutual agreement between the insurer and the policyholder, neutral evaluation of the claim, litigation of the claim, or appraisal or mediation of the claim. Once the repairs are completed, the engineer overseeing the repairs must issue a report certifying the repairs are properly performed.

If after repairs are started, the insurer's engineer determines that repairs cannot be completed within policy limits, the insurer must either complete the repairs or pay policy limits to the policyholder, without reducing the payment for repair costs already paid. In this case, insurers pay over policy limits on a sinkhole claim.

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[23] S. 627.7073(1), F.S.

[24] S. 627.7073(1)(c), F.S. See Universal Insurance Company of North America v. Warfel, 82 So.3d 47 (Fla. 2012) for a discussion of the presumption of correctness in sinkhole cases.

[25] S. 627.707(5),F.S.

[26] S. 627.707(5)(a), F.S.

[27] S. 627.707(5), F.S. Although a sinkhole report can be prepared by an engineer or a geologist, only an engineer can recommend sinkhole repairs. Furthermore, insurers are allowed in the law to hire professional structural engineers to recommend repairs on the damaged structure.

[28] The 90-day time period is tolled during the neutral evaluation and begins again 10 days after the neutral evaluation is completed.

Although current law requires the homeowner to repair the property affected by a verified sinkhole, often times the insurer and homeowner settle the sinkhole claim before repair work is started.[29] Homeowners that settle sinkhole claims are not required to use claim settlements to repair or remediate the home and land. Thus, arguably, homeowners are incentivized to file sinkhole claims, reach a settlement with the insurer, and use the settlement proceeds for something other than repair and replacement of the sinkhole and resulting damage.

Insurers are not allowed to nonrenew a property insurance policy because a sinkhole claim is filed if the sinkhole claim payment equals or is less than policy limits or if the property was repaired. But, insurers can nonrenew a property insurance policy if policy limits or more are paid.

Insurers who pay a claim for sinkhole loss must file a copy of the engineer or geologist report and certification with the county clerk of court. Information filed must also include:

- the legal description of the property,
- the neutral evaluation report verifying sinkhole activity as the cause of the damage to the property, if the claim has gone to neutral evaluation,
- a copy of the certification indicating sinkhole stabilization has been completed, and
- the amount paid on the sinkhole claim.

The clerk must record the report and certification. The policyholder must also file a copy of any sinkhole report prepared for the policyholder with the clerk of court before accepting payment from the insurer on a sinkhole claim. When sinkhole repairs are completed, the engineer overseeing the repairs must issue a report to the property owner specifying what repairs were done and certifying the repairs were done properly. A copy of this report must also be filed by the engineer with the clerk of court who records the report.

When property that is the subject of a paid sinkhole claim is sold, the seller who filed the sinkhole claim must disclose to the buyer that a sinkhole claim has been paid. In addition, the seller must disclose whether or not the full amount of claim payment was used to repair the sinkhole damage.

The Alternative Dispute Resolution Process for Sinkhole Claims

Section 627.7074, F.S., provides an alternative dispute resolution process for sinkhole claims. The process supersedes the mediation procedures for property insurance claims contained in s. 627.7015, F.S., but does not invalidate the appraisal clause in the property insurance policy. Thus, a sinkhole claim can go through the neutral evaluation process and subsequently go through the appraisal process. The neutral evaluation process begins once an insurer receives the sinkhole report under s. 627.7073, F.S., or denies a sinkhole claim. When either occurs, the insurer must notify the policyholder of the right to participate in the neutral evaluation process. The insurer must also send a pamphlet on the neutral evaluation process prepared by the DFS to the policyholder.

Participation in the neutral evaluation process is mandatory if one party requests it, however, it is nonbinding. Either the policyholder or the insurer can request neutral evaluation of a sinkhole claim. At the conclusion of the neutral evaluation, the neutral evaluator prepares a report containing recommendations about the validity of the sinkhole claim. The specific areas the neutral evaluator must opine on in the report is set forth in s. 627.7074(12), F.S. The recommendation of the neutral evaluator is not binding on either party, thus, either party can opt to litigate the sinkhole claim in court regardless of the neutral evaluator's recommendation on the claim. If the insurer timely agrees to comply with the neutral evaluator's recommendations in writing and does so, but the policyholder declines to resolve the claim and opts to proceed to court on the claim, the insurer is not liable for extracontractual damages for issues determined by the neutral evaluator and the insurer's actions to comply with the recommendation is not a confession of judgment that can be used in the court proceeding as an admission of liability on the part of the insurer. Furthermore, in the court proceeding, the insurer is not liable for attorney's fees unless the policyholder obtains a court judgment more favorable than the neutral evaluator's recommendation.

[29] The OIR noted in its report on the 2010 data call sinkhole repairs were initiated in only 20 percent of the total claims reported.

Effect of Proposed Changes Relating to Sinkhole Claims
The PCS makes several changes to current law relating to sinkhole claims. First, it requires insurers to offer a deductible amount of two percent, five percent, or 10 percent of the policy dwelling limits, with appropriate discounts offered with each deductible amount. This new requirement replaces the current statutory authorization which permits insurers to offer a deductible amount of one percent, two percent, five percent, or 10 percent. The effect of this change is that homeowners, if they choose a lower deductible, will pay more in premium, but will have to self-insure for less.

The PCS also requires insurers to offer sinkhole coverage for 50 percent, 75 percent, and 100 percent of the policy dwelling limits, with appropriate premium discounts offered with each coverage limit. Currently, insurers are not authorized to offer any limit on the amount of sinkhole loss coverage lower than 100 percent of the policy dwelling limit. With this change, homeowners will have a choice to accept an amount of sinkhole loss coverage lower than the insured value of the dwelling and will experience lower premium as a result. Conversely, if the sinkhole damage exceeds the coverage limits, the homeowner will not be insured for that amount over the limit.

The third change in the PCS relates to direct payments for repair work. Currently, if there is a lienholder on the damaged property, insurers, with the lienholder's approval, may make payments directly to the repair person. The PCS requires such direct payment if the lienholder approves. The PCS also makes insurers directly pay the repair person, if there is no lienholder.

The PCS also changes current law regarding attorney fees. In matters relating to the neutral evaluation process, insurers currently are not liable for attorney fees unless the policyholder obtains a judgment that is more favorable than the recommendation of the neutral evaluator. The PCS removes an insurer's liability for attorney fees in this situation.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.0629, F.S., relating to residential property insurance; rate filings.

Section 2: Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 3: Amends s. 627.422, F.S., relating to assignment of policies.

Section 4: Amends s. 627.706, F.S., relating to sinkhole insurance; catastrophic ground cover collapse; definitions.

Section 5: Amends s. 627.707, F.S., relating to investigation of sinkhole claims; insurer payment; nonrenewals.

Section 6: Amends s. 627.7074, F.S., relating to alternative procedure for resolution of disputed sinkhole insurance claims.

Section 7: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

The OIR will no longer incur costs associated with conducting public rate hearings if it decides to forgo all or some rate hearings current law requires to be held.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Policyholders with insurance policies that prohibit post-loss assignments may incur out of pocket expenses to pay the repair contractor or vendor up front; however, the policyholder should be reimbursed for these expenses by the property insurer when the claim is paid and settled.

Citizens may incur additional costs, including staff time, to calculate and publish the report required for non-catastrophic losses.

The changes to the sinkhole deductible and coverage limit could increase or decrease a homeowner's out of pocket expenses for a sinkhole claim and the premium for sinkhole loss coverage, depending on which deductible or coverage limit the homeowner chooses.

The change to the attorney fee provision relating to neutral evaluations may reduce legal expenses for sinkhole claims incurred by insurers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The PCS does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the PCS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES