

# 2008 Florida Legislative Update

**Southern Oak Insurance Company**  
**April 4, 2008 – 4:00 p.m.**  
**Fred E. Karlinsky, Esq.**  
**[www.cftlaw.com](http://www.cftlaw.com)**



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# ATTENDEES

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- Joel Fass, Shareholder
- Fred Karlinsky, Shareholder
- Rich Fidei, Partner
- Katherine Scott Webb, Associate
- Erin Siska, Associate
- Trevor Mask, Associate



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# STATEWIDE OFFICIALS



**Charlie Crist** (R-St. Petersburg): Elected Governor in 2006. Defeated Jim Davis in the General Election. Term began January 2007.

- Native Floridian: Born in St. Petersburg, Florida
- Served for 6 years in the Florida Senate beginning in 1992
- Appointed by then Governor Jeb Bush as the Deputy Secretary of the Department of Business and Profession Regulation
- Elected Commissioner of Education in 2000
- Elected Attorney General in 2002



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# STATEWIDE OFFICIALS



**Bill McCullum** (R- Winter Park): Elected Attorney General in 2006. Defeated Skip Campbell in the General Election. Term began January 2007.

- Native Floridian: Born in Brooksville
- Served on active duty and as an officer in the Judge Advocate General's Corps in the U.S. Navy
- Served in the United States Congress from 1981 until 2001
- Returned to private practice with the firm of Baker and Hostetler, LLP, until he was elected as the Attorney General



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# STATEWIDE OFFICIALS



**Alex Sink** (D- Tampa): Elected Chief Financial Office in 2006. Defeated Tom Lee in the General Election. Term began January 2007.

- Former President of Bank of America, Florida's Largest Bank
- Appointed by Governor Lawton Chiles to the Commission on Government Accountability to the People
- Served as Vice Chair of Florida Tax Watch



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# STATEWIDE OFFICIALS



**Charles Bronson** (R- Tallahassee): Re-elected Agricultural Commissioner in 2006. Defeated Eric Copeland in the General Election. Term began January 2007.

- Native Floridian: Born in Kissimmee
- Appointed Agricultural Commission in 2001 and Elected in 2002
- Elected to the Florida Senate in 1994 and re-elected in 1998



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# STATEWIDE OFFICIALS



**Kevin McCarty:** Florida's First Appointed Insurance Commissioner, January 2003.

- Appointed by the Financial Services Commission comprised of the Governor and Cabinet
- Served with the Department of Labor and Employment Security beginning in 1998
- Served with the Florida Department of Insurance beginning in 1991



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# FLORIDA SENATE

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## Current Composition of the Florida Senate

- 26 **Republicans**
- 14 **Democrats**



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# FLORIDA SENATE

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Senator Ken Pruitt (R- St. Lucie): President of the Florida Senate, 2006-2008.



Senator Steve Geller (D- Hallandale Beach): Minority Leader of the Florida Senate, 2006-2008.



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# FLORIDA SENATE

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Senator Jeff Atwater (R- North Palm Beach):  
President Elect of the Florida Senate, 2008-  
2010.



Senator Al Lawson (D- Tallahassee): Minority  
Leader Elect of the Florida Senate, 2008-  
2010.



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# FLORIDA SENATE

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Senator Mike Haridopolos (R-Melbourne): President Elect of the Florida Senate, 2010-2012.



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# FLORIDA HOUSE OF REPRESENTATIVES

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## Current Composition of the Florida House

- 77 **Republicans**
- 42 **Democrats**
- 1 Vacant seat
  - House District 55: Formerly held by Frank Peterman Jr. (D-St. Petersburg)



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# FLORIDA HOUSE OF REPRESENTATIVES

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Representative Marco Rubio (R- Miami):  
Speaker of the Florida House of  
Representatives, 2006-2008.



Representative Dan Gelber (D-Miami Beach):  
Minority Leader of the Florida House of  
Representatives for 2006-2008.



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# FLORIDA HOUSE OF REPRESENTATIVES



Representative Ray Sansom (R-Fort Walton Beach): Speaker Designate of the Florida House of Representatives for 2008-2010.



Representative Franklin Sands (D-Plantation): Minority Leader Designate of the Florida House of Representatives 2008-2010.



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# FLORIDA HOUSE OF REPRESENTATIVES



Representative Dean Cannon (R-Winter Park): Speaker Designate of the Florida House of Representatives for 2010-2012.



Representative Will Weatherford (R-Zephyrhills): Speaker Designate of the Florida House of Representatives for 2012-2014.



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# FLORIDA'S REGULAR LEGISLATIVE SESSION

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- 60 day Session held annually. Generally, from the beginning of March until the beginning of May.
- 2008: March 4 to May 2



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# FLORIDA PROPERTY INSURANCE

## *Current Situation*

- Enormous financial risk now rests squarely on the state's shoulders by virtue of the expanded exposure of Citizens Property Insurance Corporation (Citizens) and the Florida Hurricane Catastrophe Fund (FHCF).
- Bond liquidity and cash reserves of Citizens and FHCF remain issues. Prior bond issuance has not been fulfilled. Citizens intends to issue \$2 Billion in pre-event bonds.



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# FLORIDA PROPERTY INSURANCE

- Citizens currently has approximately \$6.5 billion in surplus funds, and approximately \$6.5 billion in borrowed funds to be reimbursed from FHCF.
- Approximately \$4.175 billion (45 percent) of Citizens' liquid funds were affected by the subprime crisis.
- FHCF currently has a cash balance of \$2.8 billion and total liquidity of \$8.37 billion that includes Pre-event Notes.
- FHCF would have to rely heavily on the ability to secure bonds in the event of a catastrophic event.



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# FLORIDA PROPERTY INSURANCE

- The House Insurance Committee has undertaken an investigation of FHCF and Citizens liquidity, bonding and assessment issues.
- The results have been highlighted by House Insurance Committee Chairman Don Brown as revealing serious issues pertaining to possible assessment liabilities related to FHCF and Citizens.
- The Legislature and the Office of Insurance Regulation (OIR) have been investigating why the 2007 reforms did not bring about expected rate reduction.



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# FLORIDA PROPERTY INSURANCE

## *OIR Investigations*

- Insurance Commissioner McCarty has subpoenaed records from certain insurance companies filing for rate increases and non-renewal plans.
- To date, Auto Owners Insurance Group, State Farm Insurance Companies, Cincinnati Insurance and Cincinnati Indemnity, and Allstate, among others, have been issued subpoenas.
- OIR continues to investigate State Farm, despite a settlement to lower homeowners rates by 9%.
- On February 24, 2008, State Farm announced it will no longer accept new homeowners business in Florida.



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# FLORIDA PROPERTY INSURANCE

- Allstate is under fire for dropping homeowners policies, filing for rate increases, and failing to comply with subpoenas.
- The Allstate subpoenas specifically require the production of “any and all Documents and Communications either from or to Risk Modeling Companies.”
- On January 16, 2008, Insurance Commissioner McCarty suspended the certificate of authority of Allstate Companies to write new insurance in Florida until they fully comply with the subpoenas.



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# FLORIDA PROPERTY INSURANCE

- Two days later, a state appellate court issued an order staying the suspensions pending disposition of Allstate's appeal.
- On February 19, 2008, Insurance Commissioner McCarty filed an administrative complaint on a non-emergency basis seeking to suspend the certificates of authority of the Allstate Companies to write new insurance policies in Florida.



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- Additionally, Governor Crist has enlisted the help of three trial lawyers in what could become a class-action suit against Florida's insurers.
- These trial attorneys will look at every company that has applied for a rate increase for possible violations of anti-trust laws and conspiring to artificially inflate rates for homeowners insurance.



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# FLORIDA PROPERTY INSURANCE

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## *2008 Legislative Session*

- The new Select Committee on Property Insurance Accountability was formed by the Florida Senate to further investigate these issues within the property insurance industry in Florida.
- Senior insurance executives from Hartford, American Strategic Insurance Company, Nationwide, Florida Farm Bureau and Allstate Floridian have testified before the Committee regarding various market issues.



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# FLORIDA PROPERTY INSURANCE

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- As a result of the Select Committee's hearings, it has proposed sweeping revisions to insurance laws, including:
  - Repealing the "use" and "file" rate filing option for property insurance.
  - Permitting insurers to use only approved hurricane loss models.
  - Authorize OIR to adopt rules on allowable profit and contingency factors and strengthen excess profit laws.



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# FLORIDA PROPERTY INSURANCE

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- Establish standards for allowable reinsurance expenses included in rate filings.
- Require certifications and filings pertaining to certain non-renewal plans.
- Repeal arbitration as a remedy for OIR disapproval of rate filings.
- Imposing more stringent fines and penalties.
- Removing state antitrust exemptions for insurers and insurance rating and advisory bodies.



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# FLORIDA PROPERTY INSURANCE

## *Senate Bill 2860*

- The Senate Banking and Insurance Committee approved SB 2860 which contains many of the recommendations published by the Senate Select Committee on Property Insurance Accountability. The following provisions are included in the bill.
  - Section 1 – makes the Insurance Capital Incentive Program permanent.



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# FLORIDA PROPERTY INSURANCE

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- Section 2 – applies the state antitrust laws to “the business of insurance.”
- Section 3 – allows OIR to require insurers to file claims handling practices and procedures based on the findings of a market conduct examination. Claims handling procedures are public records and not trade secrets.



# FLORIDA PROPERTY INSURANCE

- Section 4 – deems the failure of an insurer to provide documents and information subpoenaed by OIR an “immediate and serious danger to public health, safety and welfare,” and grants OIR the authority to immediately suspend the COA of such an insurer.
- Section 5 – increases the maximum fine in lieu of suspension to \$25K per violation or per day an insurer is not in compliance with the Florida Insurance Code. The maximum fine for willful violations would now be \$100K.



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- Section 6 – requires a notice of trade secret to be filed with documents or information submitted to OIR or the trade secret protection is waived.
- Section 7 – insurers must give 90 days notice to OIR when planning to nonrenew more than 10K residential policies, including the reasons for nonrenewal, effective dates and arrangements to offer other coverage. OIR may not approve the plan unless such nonrenewals are staggered over a reasonable period of time.



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- Section 8 - Unfair insurance trade practices; fines
  - Nonwillful violations: increases the maximum fine to \$25,000 per violation (instead of \$2,500), and removes the \$10,000 aggregate cap on all fines for all nonwillful violations arising out of the same action.
  - Willful violations: increases the maximum fine to \$100,000 per violation (instead of \$20,000), and removes the \$100,000 aggregate cap on all fines for all nonwillful violations arising out of the same action.



# FLORIDA PROPERTY INSURANCE

- Section 9 – deems insurers’ failure to provide prompt estimates of damage, consideration of discriminatory factors in evaluating or settling claims, and failure to pay undisputed amounts within 30 days as unfair insurance trade practices.
- Section 10 – permanently repeals use and file rate filings for property insurance, except to decrease rates. The extent to which reinsurance may be considered in ratemaking would be restricted. Projected hurricane losses must be estimated using a commission approved model. An immediate review of an *approved* rate based upon an insurer’s nonrenewal activity would be allowed.



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- Section 11 – repeals the statute allowing an insurer to require arbitration of the rate filing in lieu of demanding a hearing.
- Section 12 – conforming change regarding the consumer advocate consistent with section 11.
- Section 13 – requires insurers to use, without modification, commission approved models in determining hurricane loss factors and probable maximum loss levels.
- Section 14 – requires OIR to develop a methodology for mitigation discounts and credits by February 2009. Insurers must apply this methodology by that October.



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- Section 15 – provides massive changes for Citizens including the following:
  - Eliminates the distinctions between homestead and non-homestead property.
  - Removes the restrictions on Citizens eligibility for properties valued at \$1 million or more.
  - Requires Citizens to offer multiperil policies and prohibits Citizens from writing new wind-only policies as of July 1, 2008 (but allows Citizens to renew wind-only policies that were in force on that date).



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- Lowers the maximum percentage for regular assessments from 10 to 8 percent and leaves the aggregate amount of emergency assessments in any given year to the discretion of Citizens' Board of Governors.
- Removes the immediate Citizens policyholder surcharge, but allows for surcharges upon renewal or issuance of policies to reduce the amount of any Citizens regular assessment.



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- Freezes Citizens rates through December 31, 2009. In addition, Citizens' annual rate filings for 2010, 2011, and 2012 may have rate increases no higher than 10 percent overall for all multiperil policies, and 10 percent for any given policyholder.
- Citizens' annual rate filings for 2010, 2011, and 2012 may have rate increases no higher than 15 percent overall, and a 15 percent increase for any given policyholder, for the wind-only account.
- Repeals forced-purchase of Citizens bonds by assessable insurers.



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# FLORIDA PROPERTY INSURANCE

- Citizens shall make its database of policies available to prospective takeout insurers upon their execution of a confidentiality agreement without categorically removing policies from eligibility for removal.
- Citizens may not instruct prospective take-out insurers to avoid the selection of policies for which the agent has disapproved policy renewals.
- Citizens must require agents to accept or decline appointment for any policy selected and, if declination, must notify the policyholder that an insurer, identified by name, selected the policy for a take-out offer, but that the policyholder's agent refused to be appointed by the insurer.



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- The notice must also provide the policyholder with the take-out insurer's contact information so that the policyholder can contact the company directly and make his or her own determination of whether to seek coverage from the take-out insurer.
- Section 16 – guarantees renewability for at least three years on a dwelling that meets the wind-borne debris protection requirements of the Florida Build Code.



# FLORIDA PROPERTY INSURANCE

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- Section 17 – requires the seller of a property to disclose the property’s windstorm mitigation rating.
- Section 18 – provides felony penalties for a person who willfully signs or files with OIR a materially false or misleading rate filing. Provides felony penalties for any person attempting to influence, obstruct or impede the lawful regulation of the business of insurance.



# FLORIDA PROPERTY INSURANCE

## *House Bill 7021/Senate Bill 2156*

- Florida's Chief Financial Officer Alex Sink proposed reform to FHCF to reduce the potential for future FHCF assessments on Florida's insurance consumers.
- HB 7021/ SB 2156 reorganizes FHCF by creating a "Division" of the FHCF to report directly to a "Board" consisting of the Governor and the Cabinet.
- The Division would evaluate the reinsurance markets and the feasibility/risk associated with bond transactions relative to current financial markets.



# FLORIDA PROPERTY INSURANCE

- The Division would make recommendations to the Board regarding which FHCF optional coverages to offer, limits, and pricing for such coverages for the upcoming reimbursement contract year based on its evaluation of the financial markets and the private reinsurance markets.
- The Board would be authorized to determine which FHCF coverages to offer, their limits, and their pricing by February 15 of each year. FHCF's mandatory coverage would not be impacted.



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- Residential property insurers would have an incentive to purchase their reinsurance coverage from the FHCF unless they can obtain reinsurance coverage for less in the private reinsurance or capital markets.
- The proposal eliminates the TICL coverage options of \$10 billion, \$11 billion, and \$12 billion, so that a maximum of \$9 billion will be offered.
- The proposal would only offer reimbursement of 70% of the insurer's losses within the TICL layer purchased, as opposed to the current maximum of 90% that the vast majority of insurers have selected.



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- A handwritten amendment to SB 2156 on April 3, 2008, was adopted by the Senate Governmental Operations Committee extending the availability of an additional \$10 million of coverage from FHCF to those companies with limited apportionment status.
- The additional layer would be at a level significantly below the normal FHCF rate.
- This \$10 million represents an additional layer of reinsurance coverage from the FHCF.



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# FLORIDA PROPERTY INSURANCE

- HB 269/SB 754 Hurricane Preparedness and Insurance. Creates the Citizens Property Insurance Corporation Mission Review Task Force to analyze and compile data and to develop a report setting forth the statutory and operational changes relating to Citizens.
- HB 563/SB 1018 Property Insurance Appraisal Umpires. Provides license application, issuance, biennial renewal, or continuation fees for property appraisal umpires.



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# FLORIDA PROPERTY INSURANCE

- HB 565/SB 2528 Insurance Agents. Expands the list of applicants eligible for exemption from certain examination requirements. Authorizes agents qualifying as unaffiliated insurance consultants to transact insurance business within the scope of the agent's license.
- HB 661/SB 1098 Insurance Adjusters. Prohibits a public adjuster from soliciting or entering into a contract with any insured or claimant under an insurance policy for a specified period after the occurrence of an event that may be the subject of a claim.



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- HB 679,1249,1349/SB 2086,2470 Condominium Associations. Requires hazard insurance be based upon the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. Provides policies may include deductibles as determined by the association's board of directors.
- HB 993/SB 2784 Windstorm Insurance Coverage. Provides for application of FHCF to costs of the Florida Windstorm Insurance Program. Revises certain reimbursement contract board obligation limitations. Revises emergency assessment requirement provisions to include application to these policies.



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- HB 1001/SB 1422 Commercial Property Insurance. Provides rate standards for nonassessable commercial property insurance. Provides nonassessable commercial property insurance is not subject to a determination that the rate is excessive or unfairly discriminatory. Excludes nonassessable commercial property insurance, as it relates to assessment by Citizens, from the definition of "subject lines of business."



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- HB 1219/SB 2076 Arbitration. Provides the Florida Arbitration Code does not apply to certain insurance policies. Provides mandatory binding arbitration is void and unenforceable except as provided by federal law. Provides a financial or personal interest in the outcome of a proceeding or an existing or past relationship with a party constitutes grounds for removal of the arbitrator.



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- HB 5057 - Insurance Capital Build-Up Incentive Program.
  - Provides for appropriation of state funds in exchange for surplus notes issued by residential property insurers
  - Revises conditions & requirements for providing funds to insurers
  - Requires commitment by insurers to meet minimum premium-to-surplus writing ratios for residential property insurance & for taking policies out of Citizens Property Insurance Corporation
  - Authorizes SBA to charge fees for late payments



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# FLORIDA PROPERTY INSURANCE

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- Provides that amendments made by act do not affect terms of surplus notes approved prior to specified date
- Authorizes SBA & insurers to renegotiate such terms consistent with such amendments
- Requires Citizens Property Insurance Corporation to transfer funds to General Revenue Fund for appropriation by Legislature for program purposes



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# FOR MORE INFORMATION

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