



# ASSOCIATED INDUSTRIES OF FLORIDA

*The Voice of Florida Business Since 1920*



## 2009 SESSION PRIORITIES

## Insurance

Florida's \$2 trillion insured coastal properties and its ranking as the most hurricane prone state makes **property insurance** a perennial AIF priority. Surplus lines insurance is also added to this year's priorities as a result of a Supreme Court decision which had a negative impact on this critically important issue. After the 2004 and 2005 hurricanes, property insurance rates began to rise. To keep rates in check, the state dramatically assumed greater responsibility for hurricane losses by increasing reinsurance coverage provided by Florida's Hurricane Catastrophe Fund (Cat Fund); by authorizing the state's insurance company, Citizens, to unfairly compete with private property insurance companies; and by shifting Citizens' policies to newly formed Florida-only insurers (take-out insurers).

The state's success in suppressing rates and timely payment of claims by Citizens and take-out insurers hinges on the financial viability of the Cat Fund. Citizens and take-out insurers rely heavily on Cat Fund reinsurance reimbursement in setting their rates and for their claims-paying capacity. The 2007 Legislature mandated that insurers and Citizens reduce rates to reflect savings realized through purchase of the expanded Cat Fund coverage priced substantially below similar coverage provided by private reinsurers. Most of the rate reductions from the 2007 reforms are due to the expanded Cat Fund coverage which the state cannot hope to fund in today's economic downturn.

For 2009, the Cat Fund lacks the liquidity (cash and bonding capacity) to meet its maximum potential obligation of \$28 billion to reimburse Citizens and property insurers. The Cat Fund staff and financial advisors are projecting an estimated \$19 billion potential shortfall. Failure of the Cat Fund to fully meet its obligations in the event of a major or series of hurricanes will result in substantial delays or non-payment of claims and the financial failure of many take-out insurers. Florida Insurance Guaranty Association (FIGA) will assume responsibility for paying claims of insolvent insurers. In addition, Florida businesses and other policyholders will be responsible for funding losses through "hurricane taxes" imposed by the Cat Fund, Citizens, and FIGA in excess of 40 percent on all their property and casualty insurance premiums. Florida businesses and other insurance consumers have voiced outrage over the increased cost of insurance resulting from these taxes.

Thus, the state has created a dilemma: potential financial meltdown resulting from the Cat Fund's short-

falls versus increasing homeowners' property insurance rates. The most popular response among the state's executives and lawmakers to this dilemma is a "federal bailout." AIF's response is to reduce Florida's reliance on the Cat Fund and protect properties against losses from hurricanes through mitigation efforts.

AIF supported 2006 legislation which established the **My Safe Florida Home** program within the Department of Financial Services. To help Floridians identify how they can strengthen their homes against hurricanes and to reduce hurricane damage exposure in Florida, the My Safe Florida Home program conducted more than 400,000 free wind inspections by qualified hurricane mitigation inspectors to eligible homeowners. Based on these inspections the Program awarded 35,000 grants. The grants helped homeowners defray the cost of retrofitting their properties to make them less vulnerable to hurricane damage.

AIF supported 2007 legislation authorizing the Financial Services Commission to adopt a uniform **home rating scale** to grade the ability of a home to withstand a hurricane. The grading scale has been developed and is used primarily by property insurers in establishing mitigation premium discounts or credits. While important, insurance savings should not be the only incentive for homeowners to retrofit their homes against hurricane losses. Protecting homes against hurricane damage is the best long-term strategy in managing Florida's hurricane losses with the hope of bringing costs down over time.

Finally, Florida law designates insurance coverage for risks which are rejected by licensed Florida insurers as "**surplus lines insurance.**" Surplus lines insurance may be procured from insurers licensed in other states. To facilitate the policy design and pricing of coverage for unique or hard to place risks, surplus lines insurance historically have not been subject to policy content requirements or the rate approval process set forth in Florida Law. On June 26, 2008, the Florida Supreme Court ruled that surplus lines insurance is not exempt from all of these requirements. The practical impact of the Supreme Court decision is the elimination of surplus lines insurance in Florida. If this finding is not addressed legislatively, insurance will not be available for hard to place or unique commercial risks as well as high value or unique residential properties. Approximately 14 percent of commercial insurance and 5 percent of residential properties are currently written through surplus lines.

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**For the 2009 Session, AIF will be advancing legislation in the following areas of insurance:**

### **Property Insurance**

**AIF OPPOSES the expansion of Citizens Insurance Company at the expense of businesses in Florida.** Instead, AIF supports legislation that returns Citizens to an insurer of last resort; returns Citizens' assessment base to only residential insurance; and lifts the freeze on Citizens' rate increases needed to reduce the magnitude of assessments following a hurricane. In addition, AIF supports legislation reducing the Cat Fund coverages, thus reducing the potential for Cat Fund funding shortfalls and deficit assessments on Florida's businesses as advocated by CFO Alex Sink, which AIF strongly supported last year.

### **My Safe Florida**

**AIF SUPPORTS continued funding of the My Safe Florida Home mitigation grants, as well as funding of the home inspection program.** AIF joined CFO Alex Sink in urging the 2007 Legislature to continue funding My Safe Florida Home and its inspection programs. With the state facing a revenue crisis and a \$4 billion budget hole, it is unclear if the dollars will be available in 2009 for this worthy program. Nevertheless, legislators would be prudent to invest in mitigation efforts as this is the only way to reduce hurricane damages. In addition, AIF will seek legislation increasing penalties against hurricane mitigation inspectors who materially falsify inspection reports for the purpose of arriving at insurance premium discounts fraudulently.

### **Home Hurricane Rating System**

**AIF and its Home Hurricane Rating Coalition (HHRC) will seek legislation that provides funding for updating the existing grading scale used for premium credits and develops a simpler voluntary grading system, which can provide prospective home buyers with guidance as to the ability of a particular home to withstand hurricanes.** Although in many cases consumers will be motivated by greater protection and potential insurance savings on their wind insurance, it is also hoped that many consumers will undertake hardening (or "mitigation") of their homes to realize a return on their investment through reduced

property losses from future storms and, possibly, a higher resale value of their homes.

### **Surplus Lines Insurance**

**AIF SUPPORTS legislative efforts to ensure the accessibility of surplus lines insurance in Florida.** Continued access to this type of insurance is essential for a number of employers and consumers in Florida who must rely on out-of-state providers for their insurance coverage.

### **Bad Faith Reform**

**AIF SUPPORTS efforts to reform Florida's insurance laws regarding bad faith lawsuits, thereby establishing reasonable procedures which will benefit consumers.** In all states, including Florida, an insured may sue their own insurance company to recover judgment amounts in excess of policy limits if the company failed to deal fairly and in good faith in attempting to settle a claim when handling a lawsuit on behalf of the insured. However, Florida bad faith litigation procedures are very favorable to trial lawyers and, unlike other states, in addition to the insured, allow an injured third party plaintiff to sue an insurer for the amount of the judgment in excess of the policy limits. These procedures make insurance companies the target for excessive lawsuits that may result in judgments which exceed policy limits resulting in the payment of questionable claims. Legislators should reform the law by establishing that only an insured person not "any person" can bring a "bad faith" action. In addition, adequate timeframes should be established so that an insurance company has a reasonable opportunity to investigate a claim before making a settlement decision and to be responsive to a claimant before they are found to have acted in "bad faith." These reforms will help Florida businesses continue to have insurance protection at a reasonable cost.

### **AIF Lobby Team Members Assigned to the Area of Insurance Include:**

Nick Iarossi	Property Insurance
Tamela Perdue	Bad Faith Reform
Gerald Wester	Property Insurance General Insurance Issues