

DRAFT 3/20/14

*Florida Hurricane Catastrophe Fund
Advisory Council Member Handbook*

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DIRECTORY

FHCF Advisory Council Members

<u>Name</u>	<u>Representing</u>
<u>John F. Auer</u>	<u>Insurers</u>
<u>Donald D. Brown</u>	<u>Reinsurers</u>
<u>M. Campbell Cawood</u>	<u>Consumers</u>
Jeffrey D. Evans	Agents
<u>Kurtis R. Gurley</u>	<u>Engineer</u>
William H. Huffcut, Jr.	Consumers
<u>David F. Walker</u>	<u>Consumers</u>
<u>M. Campbell Cawood</u>	<u>Consumers</u>
Floyd M. Yager	Actuary
<u>Judith A. Curry</u> <u>Vacant</u>	<u>Meteorologist</u>
<u>John F. Auer</u>	<u>Insurers</u>
<u>Donald D. Brown</u>	<u>Reinsurers</u>
<u>Kurtis R. Gurley</u>	<u>Engineer</u>
<u>David F. Walker</u>	<u>Consumers</u>
<u>Judith A. Curry</u>	<u>Meteorologist</u>

FHCF Staff Members

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GLOSSARY

Board of Trustees: an independent body, created by statutory or constitutional law to administer public property or a public program. See Section 20.03(12), Florida Statutes.

Board of Directors: the governing body of an entity. For statements regarding the powers of a particular Board of Directors, see Sections 163.566(3), 288.901, 440.385, and 617.01401, Florida Statutes.

Commission: an independent body, created by statutory or constitutional law, that exercises limited quasi-legislative powers, quasi-judicial powers, or both. See Section 20.03(10), Florida Statutes.

Committee: A Committee, under Florida law, generally refers to an advisory body, informally created (i.e., not created by law or constitution), which has an existence not

exceeding one year and which is limited to making recommendations. See Section 20.03(8), Florida Statutes.

Council or advisory council: an advisory body created by statute and given the task, on a continuing basis, to study specific problems or issues in a specified functional or program area of state government and to provide recommendations. See Section 20.03(7), Florida Statutes.

Executive Director: the “chief administrative employee or officer of a department headed by a board or by the Governor and the Cabinet.” See Section 20.03(6), Florida Statutes.

~~Florida~~-State Board of Administration of Florida: The ~~Florida~~-State Board of Administration of Florida is a corporate body created pursuant to Article IX, Section 16 of the Florida Constitution of 1885, as amended, and which is continued under Article XII, Section (9)(c) of the Florida Constitution of 1968, as amended. The State Board of Administration of Florida is headed by the Governor, as chair, the Chief Financial Officer, and the Attorney General.

ADVISORY COUNCIL MEETINGS CALENDAR

Based upon past years' experience, the Advisory Council generally meets 5 to 7 times per year, depending on the issues that need to be addressed. In general, members can expect the following meetings to be held each year:

January: One meeting to address hurricane losses, plan for the new year, select a new Vice Chair, review public comments made at the Rule Development Workshop on rules and provide permission to proceed with the rulemaking process. In general, this will mean reviewing proposed changes to Rules 19-8.029, F.A.C., Insurer Reporting Requirements. If necessary, Rule 19-8.012, F.A.C., Procedures to Determine Ineligibility for Participation in the Florida Hurricane Catastrophe Fund and to Determine Exemption from Participation in the Florida Hurricane Catastrophe Fund due to Limited Exposure, Rule 19-8.013, F.A.C., Revenue Bonds Issued Pursuant to Section 215.555(6), F.S., and Rule 19-8.030, F.A.C., Insurer Responsibilities will also be reviewed at this time. Rule 19-8.010, F.A.C., Reimbursement Contract and Rule 19-8.028, F.A.C., Reimbursement Premium Formula, move through the rule promulgation process on schedules separate from each other and from the other rules due to legislative timing requirements (for Rule 19-8.010, F.A.C.) and the time required to develop the premium rates and formula (for Rule 19-8.028, F.A.C.).

February: No meeting unless the rules were not reviewed in January.

March: Two meetings to discuss and approve the ratemaking formula, review the rulemaking process, discuss changes to the rules that were proposed at the Rule Hearing on all rules other than Rules 19-8.010, F.A.C., and 19-8.028, F.A.C., and to provide approval to file these rules for adoption. In addition, the Advisory Council [reviews public comments made at the Rule Development Workshop on Rule 19-8.028, F.A.C., Reimbursement Premium Formula](#), provides approval for a Notice of Proposed Rulemaking with respect to the [Reimbursement](#) Premium Formula Rule, 19-8.028, F.A.C., and may also select a new Vice Chair, if needed.

April: One meeting, generally, to address rule promulgation issues, proposed changes, etc.

May: One meeting to review and approve estimated claims paying capacity and provide approval to file Rule 19-8.028, F.A.C., Reimbursement Premium Formula, for adoption.

June: One meeting to discuss the impact of the most recent legislative session and the use of the mitigation funds.

July: No meetings anticipated.

August: No meetings anticipated.

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September: One meeting to review public comments made at the Rule Development Workshop on Rule 19-8.010, F.A.C., Reimbursement Contract, and to provide permission to proceed with the rulemaking process with respect to this rule.

October: One meeting to review and approve estimated claims paying capacity, plan for the next hurricane season, discuss changes to Rule 19-8.010, F.A.C., Reimbursement Contract, that were proposed at the Rule Hearing and to provide approval to file this Rule for adoption.

November: No meetings anticipated.

December: No meetings anticipated.

**Article I -- Florida Hurricane Catastrophe Fund
Purpose
Mission Statement**

The Florida Hurricane Catastrophe Fund (FHCF) was created in the aftermath of Hurricane Andrew as a tool for maintaining a viable and orderly private sector market for property insurance in Florida.

The Mission of the FHCF is to responsibly and ethically administer the FHCF by:

1. Understanding the catastrophe financing needs of our beneficiaries and stakeholders;
2. Striving to satisfy a portion of the hurricane catastrophe financing needs of insurers in order to create additional insurance capacity for the state;
3. Protecting the public interest by maintaining insurance capacity in the state; and,
4. Providing exceptional investment, financial, and administrative services.

**Article II -- Florida Hurricane Catastrophe Fund
Oversight**

The FHCF was created as a state tax exempt trust fund under the direction and control of the ~~Florida~~ State Board of Administration of Florida (SBA). The SBA consists of the Governor, the Chief Financial Officer and the Attorney General (the Trustees). The Trustees appoint an Executive Director for the SBA who reports directly to the Trustees. The Chief Operating Officer, who is in charge of the day-to-day operations of the FHCF, reports directly to the Executive Director.

The Chief Operating Officer is also a member of the Florida Commission on Hurricane Loss Projection Methodology ~~(Commission)~~, which is an independent body housed within the SBA. The FHCF is required by Section 627.0628, Florida Statutes, to use to the extent feasible, hurricane loss projection models ~~projecting hurricane losses, that~~ which have been found to be accurate or reliable by the ~~Commission~~ commission; in developing reimbursement premium rates for the FHCF ~~to the extent feasible~~.

**Article III -- Florida Hurricane Catastrophe Fund Advisory Council
Name, Authority, and Required Expertise**

The FHCF is supported by the **Florida Hurricane Catastrophe Fund Advisory Council** (the FHCF Advisory Council), which was established to provide the SBA with information and advice in the specific areas of expertise set forth in the statute.

Section 215.555(8), Florida Statutes, which creates ~~sd~~ the FHCF Advisory Council and specifies its duties, reads as follows:

ADVISORY COUNCIL.—The State Board of Administration shall appoint a nine-member advisory council that consists of an actuary, a meteorologist, an engineer, a representative of insurers, a representative of insurance agents, a representative of reinsurers, and three consumers who shall also be representatives of other affected professions and industries, to provide the board with information and advice in connection with its duties under this section. Members of the advisory council shall serve at the pleasure of the board and are eligible for per diem and travel expenses under s. 112.061.

Article IV -- Florida Hurricane Catastrophe Fund Advisory Council Officers

The Officers of the FHCF Advisory Council shall be a Chair and a Vice Chair.

A. The **CHAIR** shall:

1. Preside at all meetings;
2. Be physically present at all meetings except those designated as conference call meetings;
3. Conduct a roll call of members at meetings;
4. Monitor all policies established by the FHCF Advisory Council;
5. Provide the Trustees with a semi-annual report on member participation; and,
6. Coordinate with the Chief Operating Officer in the creation of the agenda prior to FHCF Advisory Council meetings.

B. The **VICE CHAIR** shall:

1. In the absence of the Chair, preside at FHCF Advisory Council meetings and have the duties, responsibilities and prerogatives of the Chair; and,
2. If the Chair is not physically present, the Vice Chair shall preside.

Article V -- Florida Hurricane Catastrophe Fund Advisory Council Terms of Officers and Members

Term of Members: The nine members of the FHCF Advisory Council shall be appointed by and shall serve at the pleasure of the Trustees. Resignations, death, incapacity, or other inability to serve shall be brought to the attention of the Trustees by the Executive Director of the SBA as soon as practicable.

Term of Officers: The Chair and Vice Chair shall serve until such officer resigns, is removed, is unable to serve or the officer's term of office expires. In general, a Chair's term of office expires, the Vice Chair rotates into the office of Chair and a new Vice

Chair is to be chosen in the first quarter of each calendar year during an FHCF Advisory Council meeting. If, however, the Chair is replaced by the Vice Chair and a new Vice Chair is chosen or both the Chair and the Vice Chair are replaced and these replacements occur after May 31st, there shall be no new election in the first quarter of the calendar year immediately following these replacements unless the members vote to hold a new election.

Election of Officers: A majority roll call vote is required to elect any officer. In general, the Chair is not elected but is filled by the Vice Chair upon the expiration of the Chair's term of office, or the Chair's resignation, removal or inability to serve. If both the Chair and the Vice Chair positions become vacant, an election shall be held as soon as practicable and both officers shall be chosen by a majority roll call vote.

Removal of Officers: If the Chair or Vice Chair fails to attend four (4) FHCF Advisory Council meetings during his or her term of office, the members may, by a majority roll call vote, replace the officer. If the Vice Chair is the officer removed due to absences, a new election shall be held for a Vice Chair. If the Chair is the officer removed due to absences, the Vice Chair shall assume the position of Chair and a new Vice Chair shall be elected.

Replacement of Officers: In the event the Chair resigns, is removed, or is unable to serve, and this occurs prior to the expiration of the term, the Vice Chair shall move into that position for the remaining portion of that term of office and an election for a new Vice Chair shall be held as soon as practicable. In the event the Vice Chair resigns, is removed, or is unable to serve, and this occurs prior to the expiration of the term, an election for a new Vice Chair to serve the remaining portion of that term shall be held as soon as practicable.

Article VI -- Florida Hurricane Catastrophe Fund Advisory Council Member Duties and Responsibilities

The purpose of the FHCF Advisory Council is to provide the Trustees with information and advice. To accomplish this purpose, each member has been carefully chosen for his or her particular expertise; therefore, each member's contribution cannot be underestimated. Each FHCF Advisory Council member has an important role and needs to make every effort to attend all meetings and be prepared to participate. In particular, each member is responsible for the following duties:

1. Prepare and participate in each FHCF Advisory Council meeting;
2. Attend each meeting in person unless the meeting is designated as a conference call meeting or the member is otherwise unable to participate;
3. Due to the need for a quorum, the need for members to travel, and the expense and complexity of making the arrangements for a meeting, members shall take no more than one (1) week (absent special circumstances) to respond to FHCF

e-mails requesting a member's meeting date preference and no more than one week (absent special circumstances) in responding to FHCF e-mails requesting that a member confirm whether he or she will be attending a scheduled meeting;

4. A member, who has confirmed attendance at a particular meeting and realizes later that he or she will not be able to attend, shall provide the FHCF with at least twenty-four (24) hours notice prior to the meeting of the member's inability to attend that meeting. The same notice requirements apply for those members who have confirmed but will need to leave a meeting early;
5. In meetings designated as conference call meetings and in those cases where a member is unable to attend a meeting in person and must participate by telephone, all participants need to ensure that they announce their presence on the telephone at the earliest possible time and, if they must leave the meeting early, let the Chair know before they leave;
6. Ethics: FHCF Advisory Council members are expected to meet the highest standards of ethical behavior. [Ethical conduct also includes the expectation that FHCF Advisory Council Members are to provide the administration of the FHCF with advice and information pursuant to s. 215.555\(8\), Florida Statutes, rather than use their positions as Advisory Council members to engage in advocacy outside of the scope of their statutory duties.](#)
- ~~6.~~7. [Applicability of the Code of Ethics for Public Officers and Employees:](#) FHCF Advisory Council members ~~may be~~are subject to the Code of Ethics for Public Officers and Employees, ss. 112.311-112.326, Florida Statutes¹, including, but not limited to, s. 112.313(7), Florida Statutes, relating to conflicting employment of contractual relationships; and s. 112.3143, Florida Statutes, relating to voting conflicts. The disclosure of financial interests requirements of the Code of Ethics do not apply to Advisory Council members pursuant to s. 112.3145(1)(c)2., Florida Statutes. It is understood, given the nature of the FHCF Advisory Council members' expertise, that, from time to time, conflicts of interest may arise. Members are expected to be alert to any such conflicts.
- ~~7.~~8. Article IX, below, defines "conflict of interest" and provides guidelines for disclosure and recusal.
- ~~8.~~9. Abide by the requirements of Florida's Sunshine Law. A summary of the requirements of this law is contained in Article VIII, below.

Article VII -- Florida Hurricane Catastrophe Fund Advisory Council Meetings Quorum, Voting, Schedules, Location

Quorum: The attendance of five FHCF Advisory Council Members is required in order for the Advisory Council to vote on any matter. For the purpose of determining whether

¹ Under s. 112.313(1), F.S., "the term 'public officer' includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body." FHCF Advisory Council members are therefore "public officers" for purposes of the Code of Ethics.

there is a quorum, attendance shall be defined as either a physical presence or as participation by any other means that allows the FHCF Advisory Council members to communicate simultaneously with those members who are present (i.e., via telephone, video conference, etc). In addition, if a member must abstain from voting on an issue for ethical reasons, that member is still counted for purposes of computing a quorum for a vote on that question. Once a quorum is present, a majority of those members actually voting is sufficient to decide the issue.

Voting: All voting shall be by roll call vote and all issues subject to a vote will be decided by a majority of those voting. No member can abstain from voting except for reasons of conflict.

Issues subject to a Vote:

1. Choosing and removing officers;
2. Issues on which the Trustees have requested a vote by the FHCF Advisory Council (Examples: Rules and Premium Formula);
3. Issues on which FHCF management has requested a vote by the FHCF Advisory Council (Example: ~~bonding~~[claims paying capacity](#) estimates); and,
4. Other matters where there is a need for clarity with regard to the FHCF Advisory Council's position on any issue where disagreement may or may not exist.

Meeting Schedules: The Chair, at the end of each meeting, will attempt to schedule the next meeting by confirming the date and polling the members to obtain confirmation as to whether a quorum will be present. If the next meeting cannot be scheduled at the end of the meeting, the FHCF will contact members to schedule the next meeting. Any member may request that a special meeting be scheduled by contacting the Chief Operating Officer, who will confer with the Chair, check into availability of facilities, court reporter, publication requirements, etc. and will respond to the requesting member regarding the member's request.

Meeting Notices: Written notice of a meeting of the FHCF Advisory Council shall be provided to each member as soon as possible and, at a minimum, except in the event of an emergency meeting [or when an issue emerges involving an unexpected deadline](#), at least fourteen (14) days prior to the date scheduled.

Agendas: Agendas listing topics planned for discussion and issues which are planned to be put forward for a vote shall be furnished to each member prior to the meeting. However, the agenda is to be used as a guide and topics not listed may be raised and discussed or the members may choose not to address an issue or topic listed on the agenda. Any member who wishes to add an item to the agenda should contact the Chief Operating Officer at least two (2) weeks prior to the next scheduled meeting and provide him with all pertinent information on the issue or issues. All items subject to a vote should be listed on the agenda in order to ensure that all members and the public have advance notice.

Location: Meetings shall be held in Tallahassee, Florida, unless special circumstances arise.

Article VIII -- Florida Hurricane Catastrophe Fund Advisory Council Sunshine Law

Section 286.011, Florida Statutes, a/k/a “The Sunshine Law,” applies to the FHCF Advisory Council activities. The Florida Supreme Court, in the Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974), in response to an argument that an advisory council should not be subject to the Sunshine Law because it had no power to bind the state, held that “**advisory boards whose powers are limited to making recommendations** to a public agency and which possesses no authority to bind that agency in any way **are subject to the Sunshine Law.**” (Emphasis supplied). In addition, the Governor, Chief Financial Officer, and Attorney General are subject to the Sunshine Law when carrying out their duties as the ~~Florida~~-State Board of Administration of Florida. Thus, care must be taken to ensure that all communications between members of the FHCF Advisory Council or between members and any Trustee or staff member of a Trustee are in compliance with Florida’s Sunshine Law.

Application of the Sunshine Law: The Florida Supreme Court has held that the Sunshine Law, since it was enacted to protect the public, should be so construed to give the law broad application while the exemptions from the law should be narrowly construed. Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (Fla. 1969).

Scope of the Sunshine Law: The Sunshine Law² applies to any gathering of two or more Advisory Council members where such members discuss matters that will foreseeably come before the Council. Any gathering that includes an FHCF Advisory Council member and a Trustee or a Trustee’s staff member may be subject to the Sunshine Law if matters that are to come before the FHCF Advisory Council or the Trustees are discussed.³

² Penalties for Violation of the Sunshine Law: Criminal--Second Degree Misdemeanor for *knowing* violations (\$500 fine and/or 60 days in jail); Civil--\$500 fine possible. In addition, if a lawsuit results from the failure to comply with the Sunshine Law, the member may be required to pay attorney’s fees.

³ Section 286.011, F.S., applies to meetings of “two or more members” of the same board, council or commission; however, there may be times when the Sunshine Law will apply where one member of a board, council or commission meets with a non-member to discuss board, council or commission business. For example, in AGO 85-36, the question was whether a mayor who was not a member of the town council could meet individually with a member of the town council. The opinion states that whether or not the Sunshine law applies to such “business-related” conversations “turns on the nature of the relationship between the mayor and the town council.” Where the mayor has a voice in the decisions, the meeting would be subject to the Sunshine Law; however, if the mayor only has veto power over an ordinance passed by the town council, the Sunshine Law would not apply. In accord, AGO 75-210 and 81-88. However, in AGO 99-55, an opinion was issued stating that a member of a school board did not violate the Sunshine Law when meeting with a member of an advisory committee appointed by the school board because the school board member could not cast a vote in determining which

Basic Requirements: All “meetings” subject to the Sunshine Law must be:

1. Open to the Public;
2. Noticed; and,
3. Minutes must be taken and preserved.

Open to the Public: Any member of the public shall have access to all FHCF Advisory Council meetings. The FHCF ensures that all meetings of the FHCF Advisory Council are held in a location that is readily accessible to the general public and, upon notice of the need, accommodations are provided for those with disabilities.

Notices: The FHCF ensures that all meetings of the FHCF Advisory Council are properly and timely filed for public notice in the Florida Administrative ~~Weekly Register~~ and that the notices are also placed on the FHCF’s website.

Minutes: The official minutes of the FHCF Advisory Council meetings will consist of a verbatim transcript unless special circumstances arise. The transcript will be available to the public electronically (sent by e-mail) free of charge. There will be a nominal charge to the public for copies of transcripts in paper form or on a compact disc. An unofficial summary of the minutes will be distributed to members ~~as soon as possible following each meeting~~ and posted on the FHCF website.

General Guidelines to ~~ensure~~ Assure Adherence ~~with~~ to the Sunshine Law:

1. Members should not discuss information or issues likely to come before the FHCF Advisory Council with any other member outside of a regularly scheduled and noticed meeting;
2. Members should not discuss issues brought or likely to be brought before the FHCF Advisory Council at social events at which any other member may be present;
3. Members should not use a memorandum to solicit comments from other members of the FHCF Advisory Council on issues brought or likely to be brought before the FHCF Advisory Council as this would be viewed as a communication subject to the Sunshine Law.

Article IX -- Florida Hurricane Catastrophe Fund Advisory Council Ethics Requirements

FHCF Advisory Council members are to adhere to the highest ethical standards and do nothing that would impair the confidence of the Public, Trustees, Legislature, or the

recommendations would be sent by the advisory committee to the entire school board, neither individual had been delegated any decision making authority and neither was acting as a liaison between members of their respective boards.

Insurance Industry in the ability of the FHCF Advisory Council to carry out its duties or the ability of the FHCF to accomplish its mission and purpose.

Conflicts of Interest: A member shall be deemed to have an employment conflict of interest if the member holds any employment or contractual relationship that will create a continuing or frequently recurring conflict of interest between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties. A member shall be deemed to have a voting conflict of interest, and shall refrain from voting or influencing decisions as to any issue which the member knows would inure to his or her private gain or loss; which the member knows would inure to the private gain or loss of any principal or parent organization or subsidiary of a corporate principal, by whom the member is retained; or which the member knows would inure to the special private gain or loss of a relative or business associate of the member.

A member shall give notice of any voting conflicts of interest. If a voting conflict of interest arises and the conflict is apparent before the meeting, the member must give advance notice to the FHCF's ~~senior~~ attorney; if the conflict becomes apparent during a meeting, the member should immediately inform the Chair or Vice Chair or member presiding as Chair. The conflicted member shall recuse him or herself from any activity of the FHCF Advisory Council in the area of the conflict.