

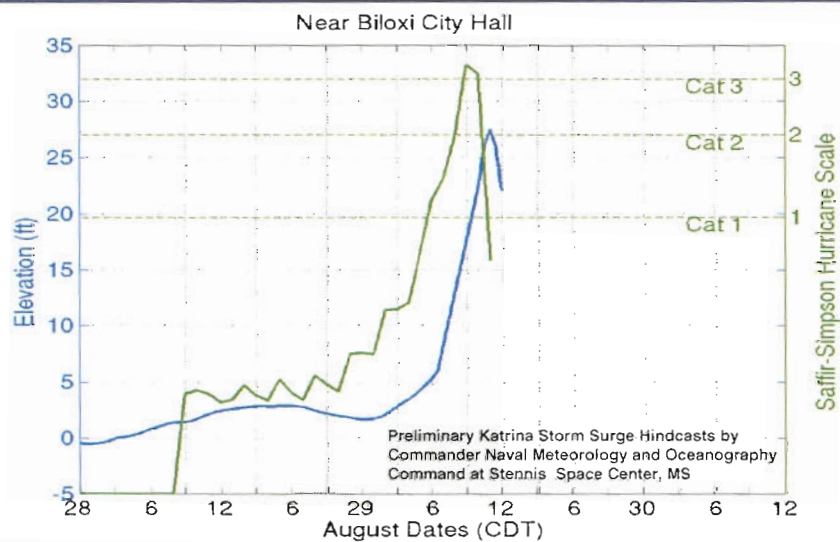


# THE INSURANCE CRISIS: The Need for Immediate Reform

Representative Gene Taylor  
February 29, 2008

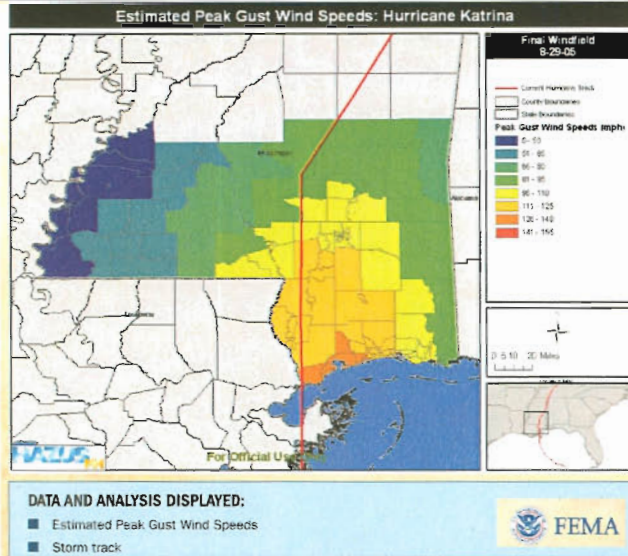


## Wind Speed vs. Water Level

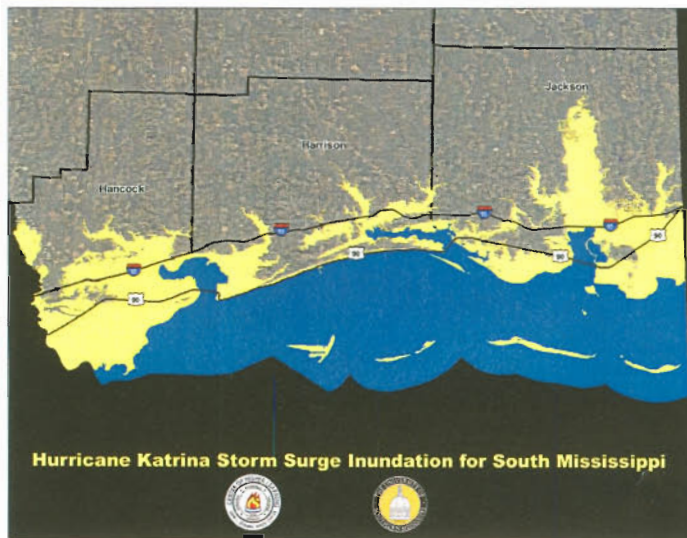




# Katrina Estimated Peak Gust Wind Speeds



# Areas Affected by Both Wind and Flood





# Policy Coverage



For many property owners today wind and flood insurance is only available through federal and state government plans

Property owners can opt to purchase wind coverage and NFIP through their private insurer, however private insurers are increasingly not providing wind coverage in coastal areas.



Mississippi Windstorm Underwriting Association (MWUA) also known as the "wind pool" is the state insurance plan of last resort providing wind coverage in the absence of available coverage by private insurers



INSURER

National Flood Insurance Program (NFIP) provides U.S. government-backed insurance against flooding, but it is sold through private insurers who receive commissions and recoup administrative costs. Payouts come from the U.S. government.



# Katrina: How Claims Should Have Worked



Disaster strikes



Claim submitted



Claim assessed on its merits

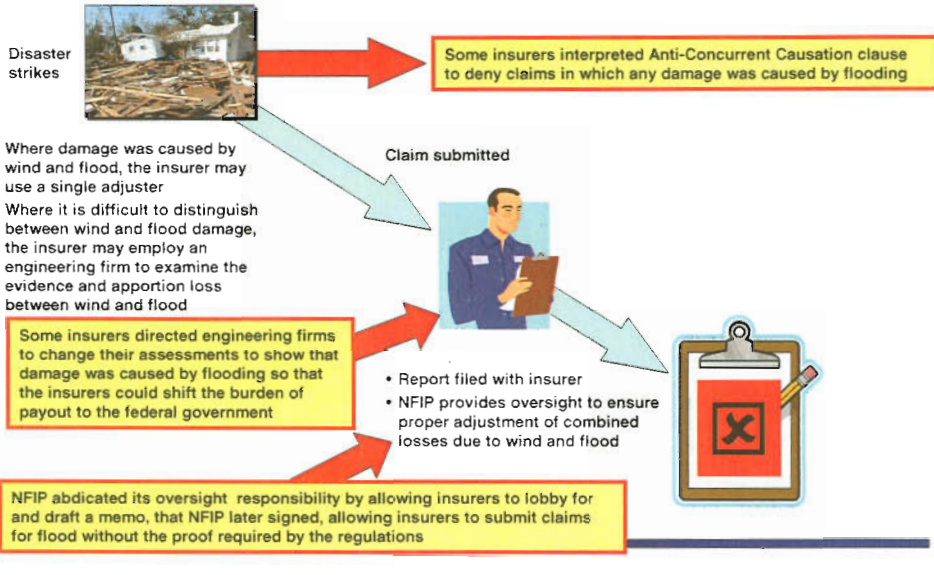
- Where damage was caused by wind and flood, the insurer may use a single adjuster
- Where it is difficult to distinguish between wind and flood damage, the insurer may employ an engineering firm to examine the evidence and apportion loss between wind and flood

- Report filed with insurer
- NFIP provides oversight to ensure proper adjustment of combined losses due to wind and flood





# Katrina: How Claims Process was Manipulated to Benefit Insurers



# Anti-Concurrent Causation Clause: Page 10 of a 25-Page SF Contract



**"We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these."**

**STATE FARM INSURANCE**

**FLOOD**

**1. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these."**

**2. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these."**

**3. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these."**

**4. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these."**

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## Anti-Concurrent Causation Violates the Contract with the Government



*National Flood Insurance Program Regulations, 44 CFR 62.23:*

"The primary relationship between the Write Your Own Company and the Federal Government will be one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended.

"The entire responsibility for providing a proper adjustment for both combined wind and water claims and flood-alone claims is the responsibility of the Write Your Own Company."



*State Farm Wind/Water Claim Handling Protocol, September 13, 2005:*

"Where wind acts concurrently with flooding to cause damage to the insured property, coverage for the loss exists only under flood coverage."



## Pressuring Engineering Firms to Change Their Reports



Internal e-mail from engineering firm fired and then re-hired by State Farm after agreeing to revise reports

**From:** "Randy Down" <rdown@forensic-analysis.com>  
**To:** "Bob Kochan" <rkochan@forensic-analysis.com>  
**Cc:** "Nellie Williams" <nwilliams@forensic-analysis.com>  
**Sent:** Tuesday, October 18, 2005 8:54 AM  
**Subject:** Re: We are back in business with SF... for now!

Bob,

That's very good news. But I have a serious concern about the ethics of this whole matter.

Lecky (is this a man or a woman?) seems to be a very highly qualified adjuster to be making engineering conclusions that are more accurate than ours. I really question the ethics of someone who wants to fire us simply because our conclusions don't match hers (his?). If SF is going to tell us what we are to put in our reports then I think we have a situation similar to SF wanting my personal financial information. In my opinion we need to find a more rational and ethical client to be dealing with. Too many eggs in this basket to be risking it on SF. They had already contradicted themselves regarding the reports - with Mark (?) wanting percentages stated and his counterpart calling a few days later and telling us to resubmit two reports that had shown percentages and saying that SF absolutely does not want them shown because they would then have to settle for the portion that was reportedly caused by wind. I see now why other firms are bowing out.



## Insurers: “Why are Mississippians Complaining?”



### WHAT INSURANCE INDUSTRY LOBBYISTS SAY:

The industry settled 95% of Katrina claims within the first year and have settled 99% to date

### WHAT INSURANCE INDUSTRY LOBBYISTS DON'T SAY:

- There were hundreds of thousands of wind-only claims throughout Mississippi, Louisiana, Alabama, and parts of Florida, Tennessee, and Georgia where there was no flooding. Disputes over wind and flood damage were confined to the portions of coastal counties and parishes that experienced both flooding and the most severe wind damage.
- Bob Hartwig of the Insurance Information Institute testified in Congress that “A claim that was completely excluded, for example, because it wasn’t covered under the policy to begin with wouldn’t be in these statistics to begin with... We consider a claim when there is some damage that is compensable under the insurance policy.” In other words, these statistics don’t consider all claims filed, only those that the insurer decided to pay.
- The majority of contentious wind/water disputes involved a few large insurance companies that manipulated adjustments and engineering reports. The Mississippi Wind Pool and several insurance companies paid wind claims and had only a few lawsuits filed against them.
- State Farm started settling claims in 2007 (16 months after Katrina), but only after losing *Broussard v. State Farm*, in which Federal Judge L.A. Senter Jr. ruled that State Farm had to prove that damage was caused by flooding in order to deny wind coverage.



## Insurers: “Why are Mississippians Complaining?”



### WHAT INSURANCE INDUSTRY LOBBYISTS SAY:

Investigations have found no evidence of fraud.

### WHAT INSURANCE INDUSTRY LOBBYISTS DON'T SAY:

The Government Accountability Office (GAO) findings:

- “[A]n inherent conflict of interest exists when the same insurance company is responsible for determining the extent of the flood damage that NFIP must pay and the extent of the wind damage that is the responsibility of the company itself.”
- FEMA cannot determine the accuracy of flood insurance payments because it does not require companies to explain how they divided wind and flood damage.
- Property owners with separate wind and flood policies cannot buy insurance and know in advance that hurricane damage will be covered.

Interim Inspector General of the Dept. of Homeland Security findings:

- Because FEMA oversight of wind/water claims is minimal, the Inspector General subpoenaed records from 15 insurance companies to investigate their procedures.
- Adjusters working for the insurance company or for companies hired by the insurance company have a conflict of interest when handling flood claims.
- Anti-concurrent causation language in insurance policies creates the potential to bill flood insurance for damage that is caused by both wind and flooding.
- It is difficult to distinguish between wind and flood damage, especially when there is nothing left of the property except a foundation.



## Katrina: Impact of Claims Manipulations—“Loss of Use”



Not only does the insurer not pay for the house to be rebuilt—they don't pay living expenses for the property owner who would be entitled to them if the claim was approved

### Denial of Claims Based on Anti-Concurrent Causation



Denial of Claims Results in Denial of “Loss of Use” Benefits



## Loss of Use Defined



### “Loss of Use”

1. **Additional Living Expense.** When a Loss Insured causes the residence premises to become uninhabitable, we will cover the necessary increase in cost you incur to maintain your standard of living for up to 24 months. Our payment is limited to incurred costs for the shortest of: (a) the time required to repair or replace the premises; (b) the time required for your household to settle elsewhere; or (c) 24 months. This coverage is not reduced by the expiration of this policy.
2. **Fair Rental Value.** When a Loss Insured causes that part of the residence premises rented to others or held for rental by you to become uninhabitable, we will cover its fair rental value. Payment shall be for the shortest time required to repair or replace the part of the premises rented or held for rental, but not to exceed 12 months. This period of time is not limited by expiration of this policy. Fair rental value shall not include any expense that does not continue while that part of the residence premises rented or held for rental is uninhabitable.
3. **Prohibited Use.** When a civil authority prohibits your use of the residence premises because of direct damage to a neighboring premises by a Loss Insured, we will cover any resulting Additional Living Expense and Fair Rental Value. Coverage is for a period not exceeding two weeks while use is prohibited.

We do not cover loss or expense due to cancellation of a lease or agreement.

State Farm Policy FP-7955, pp. 4-5



## Katrina: Impact of Claims Manipulations—Taxpayer’s Burden



Denial of claims not only hurts individual property owners, but shifts burden to all U.S. taxpayers

Denial of Claims Based on Anti-Concurrent Causation

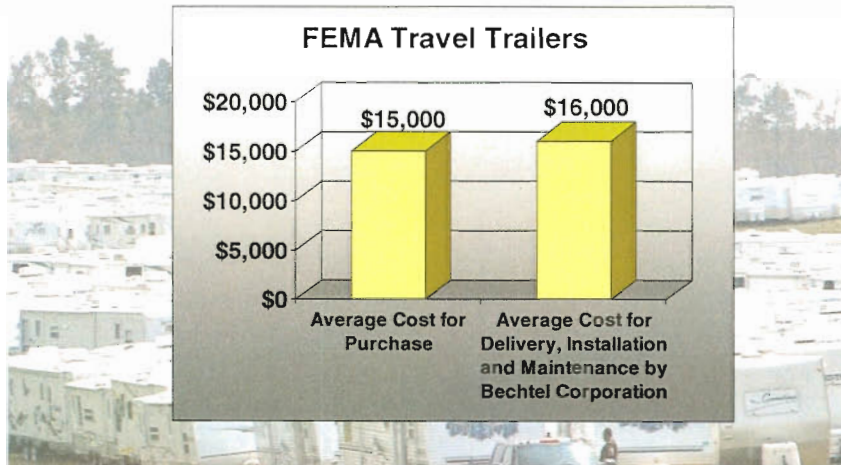


Liability Shifts to U.S. Taxpayer Through NFIP for Flood

Support Costs Shifts to U.S. Taxpayers—FEMA Trailers



## Taxpayers Assume Costs for Denial of “Loss of Use” by Insurers



42,000 Families x \$31,000/Trailer = \$1.3B

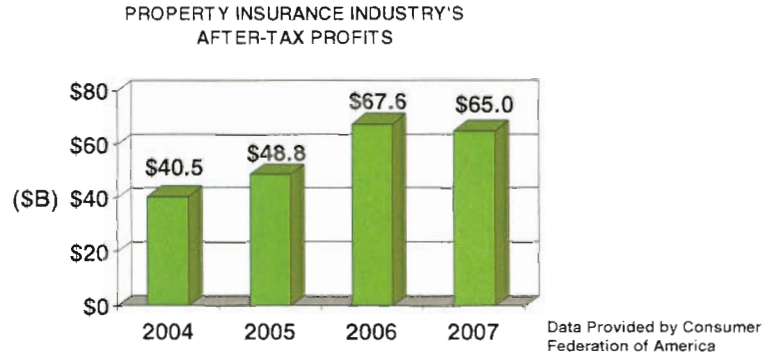




## While Taxpayers Foot the Bill: Billions of Dollars in Profits for Insurers



Despite billions of dollars in profits, private insurers are increasingly refusing to provide coverage in coastal areas citing excessive risk



## The Insurance Industry's Anti-Trust Exemption



Some may say that the insurance industry's actions simply reflect the marketplace at work, but the insurance industry doesn't have to play by normal business rules. They are exempt from federal anti-trust oversight meaning they are free to conspire to raise rates, lower coverage and not pay claims. This exemption needs to be revoked.

- In 1944, the U.S. Supreme Court ruled that an insurance company that conducted a substantial part of its business across state lines was engaged in interstate commerce and thereby subject to federal antitrust laws. (*United States v. South-Eastern Underwriters Ass'n*, 322 U.S. 533).
- The next year, in 1945, Congress enacted the McCarran-Ferguson Act:  
Title 15 Section 1012 of US Code
  - (a) State regulation  
The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.
  - (b) Federal regulation  
No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended [15 U.S.C. 41 et seq.], shall be applicable to the business of insurance to the extent that such business is not regulated by State Law.
- The U.S. Supreme Court has ruled that the McCarran-Ferguson Act prohibits the federal government from regulating the relationship between insurance companies and policyholders, the types of policies that insurance companies can issue, the interpretation of insurance policies, or the enforcement of insurance policies.



# Insurers Abandoning Coastal Mississippi



## INSURANCE AVAILABILITY IN SOUTH MISSISSIPPI (Hancock, Harrison, Jackson, Pearl River, Stone and George Counties)



- Will not sell new property insurance policies in Mississippi
- Homeowner policy renewal will be on a case-by-case basis



- Will not renew wind coverage south of Interstate 10
- Wind coverage north on Interstate 10 will be offered on a limited basis



- No new wind coverage sold in South Mississippi
- Customers who have had automobiles insured with Allstate for a minimum of 60 days may buy homeowner insurance in South Mississippi—but without wind coverage



- No new wind coverage sold in South Mississippi

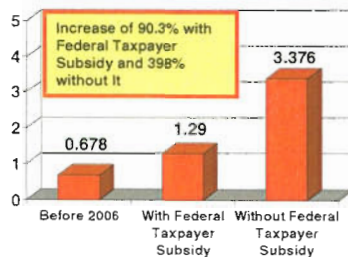
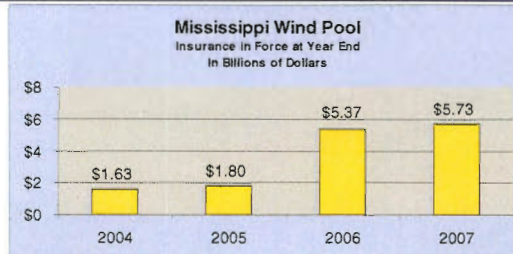
Sun Herald, 2/14/2008



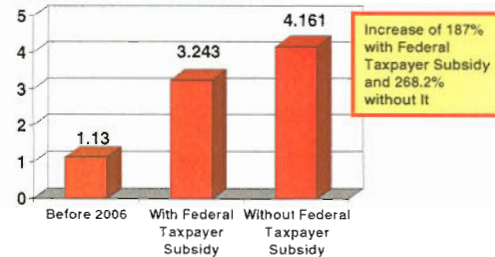
# Insurers Abandon Coastal Areas: Mississippi Windpool Assumes Burden



Data Provided by Mississippi Windstorm Underwriting Association (MWUA)



Residential Property Rate/\$100



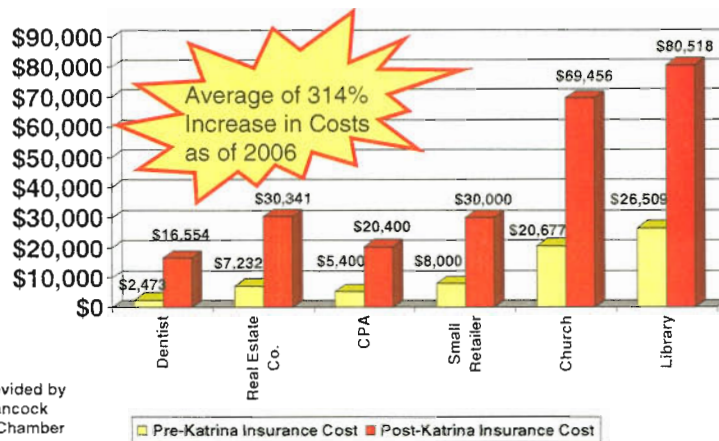
Commercial Property Rate/\$100



## Impact of Insurers Abandoning Coastal Areas: Cost of Premiums



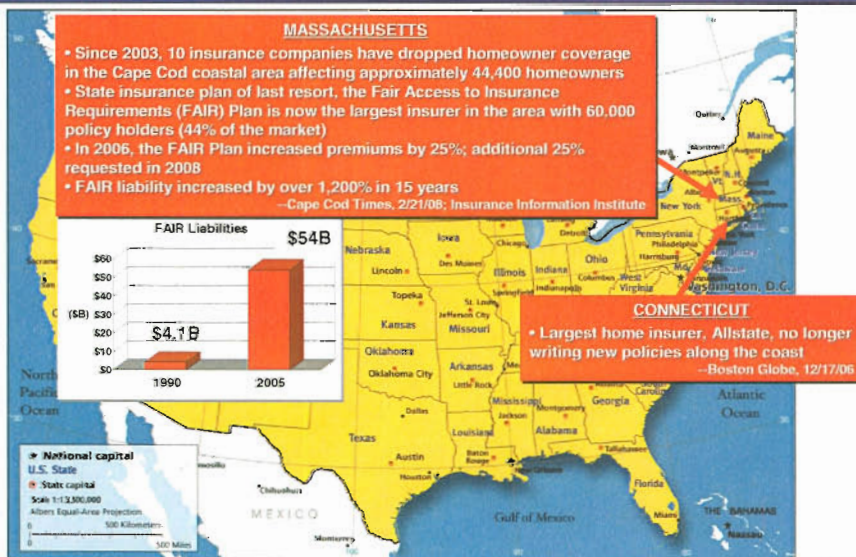
The lack of available coverage along the coast has led to skyrocketing prices for property insurance coverage



Data Provided by the Hancock County Chamber of Commerce

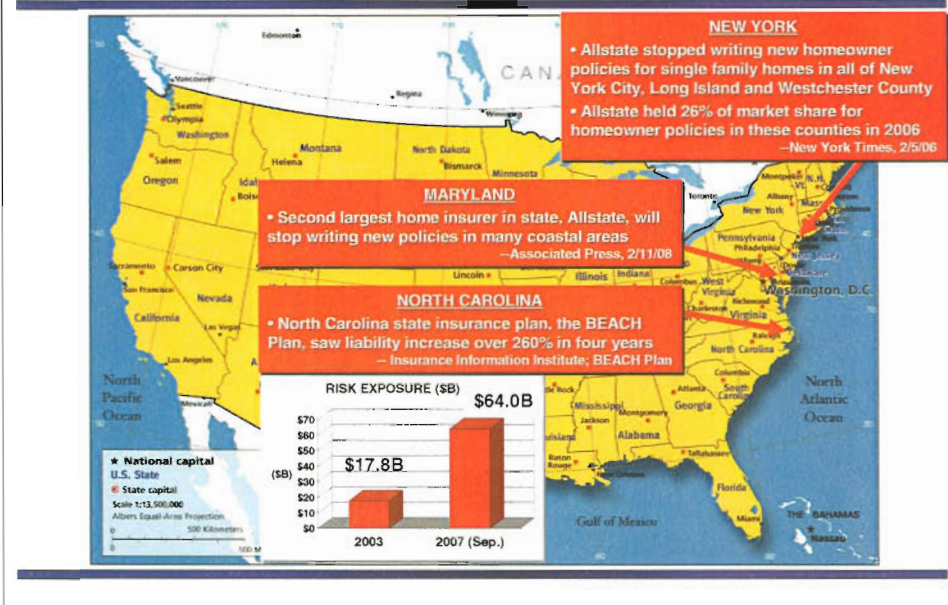


## Why is This a National Problem? Because It's not Just Us

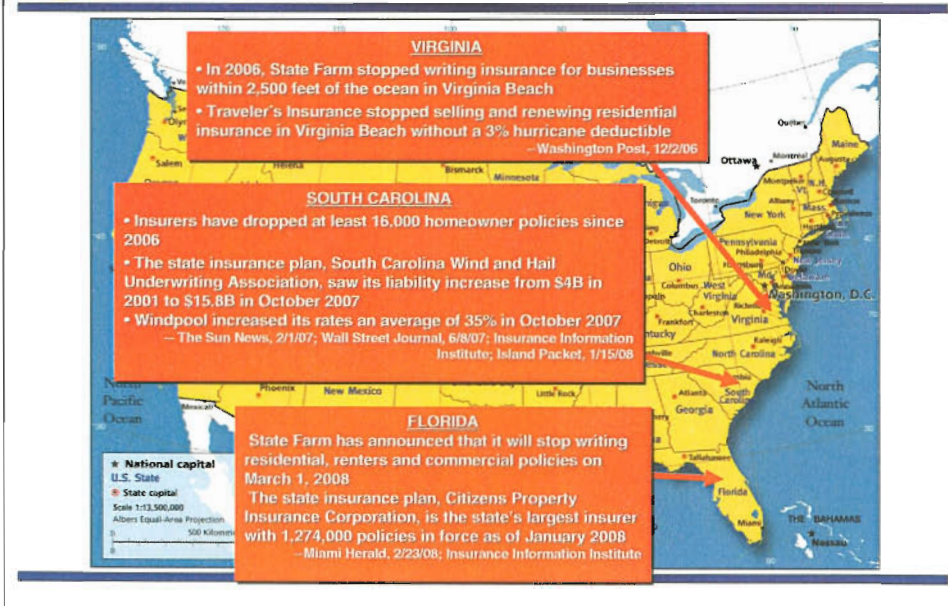




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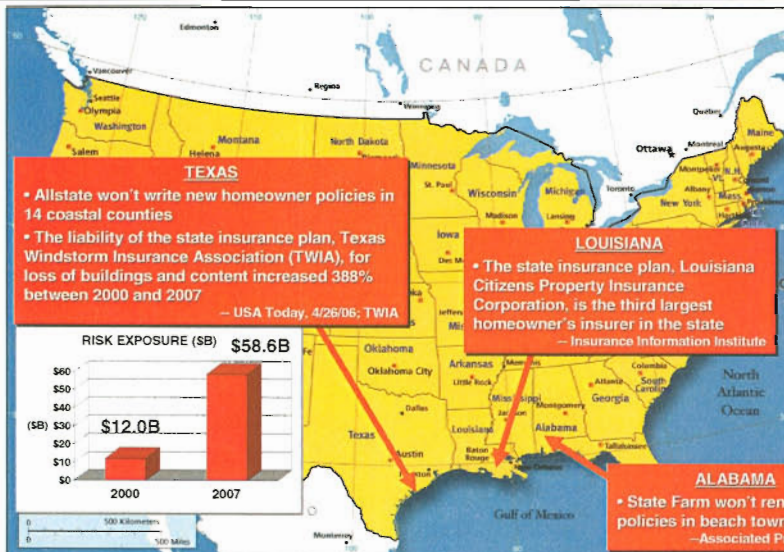


## Why is This a National Problem? Because It's not Just Us

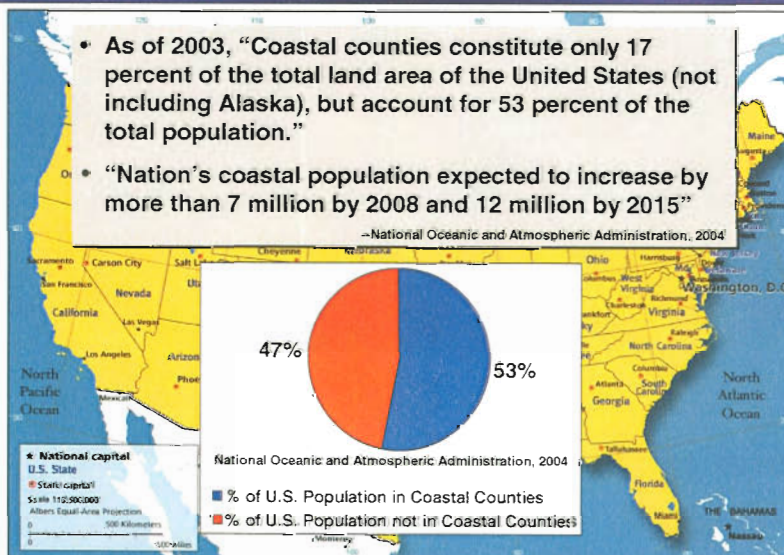




## Why is This a National Problem? Because It's not Just Us



## U.S. Coastal Population is Increasing





## National Problems Require National Solutions



- Unless changes are made, U.S. taxpayers will foot the bill when another hurricane strikes
  - Through NFIP assumption of liability when insurers adjust claims from wind to flood
  - Direct federal assistance in the form of housing due to lack of insurance
- Solutions:
  1. A risk-based, actuarially-sound national pool to allow property owners to purchase coverage for both wind and water
  2. A revocation of the insurance industry's anti-trust exemption
- My legislation, Multi-Peril Insurance, provides for a national wind and flood pool and I am a lead co-sponsor of legislation to eliminate the insurance industry's anti-trust exemption (H.R. 1081)



## Multi-Peril Insurance Legislation: Spreads Risk Across Our Nation



- Multiple Peril Insurance will allow property owners to buy both wind and flood coverage from the National Flood Insurance Program.
- Residential coverage - \$500,000 for structure, \$150,000 for contents and loss of use; Nonresidential - \$1 million for structure, \$750,000 for contents and business interruption
- Property owners would be able to buy insurance and know in advance that hurricane damage would be covered without disputes over the cause of damage.
- The premiums for the new coverage would be risk-based and actuarially sound. The Congressional Budget Office has agreed that the program would pay for itself.
- Windstorm insurance would be available only where local governments adopt and enforce the International Building Code or equivalent building standards.
- The federal multiple peril program will spread risk geographically to form a much more stable insurance pool than state pools that cover a small area.
- All taxpayers would benefit when more damage is covered by insurance instead of by inefficient government disaster assistance programs.
- Insurance companies could return to coastal communities to sell fire, theft, and liability coverage, and excess coverage above the \$500,000 or \$1 million federal policy limits.



## Multi-Peril Insurance Legislation: Status



- The Multiple Peril Insurance Act was introduced as H.R. 920 in February, 2007.
- H.R. 920 had 33 cosponsors - 27 Democrats and 6 Republicans.
- In July, Maxine Waters, Chair of the Housing Subcommittee, included the text of H.R. 920 in the Flood Insurance Reform and Modernization Act, H.R. 3121.
- The House passed H.R. 3121 on September 27, 2007 by a vote of 263 to 146.
- Because of the support and leadership of Speaker of the House Nancy Pelosi, Financial Services Committee Chairman Barney Frank, and Majority Leader Jim Clyburn, the Multiple Peril Insurance provision survived several attempts to remove it from the bill.
- Because of a grassroots effort led by Mississippi Coast home builders, the Multiple Peril Insurance proposal was endorsed by the National Association of Home Builders, The National Association of Realtors and the American Banking Association also endorsed H.R. 3121 with the multiple peril insurance provision included.
- During flood consideration of H.R. 3121, the House passed the Taylor amendment to prohibit insurance companies that contract with the flood insurance program from using anti-concurrent causation language to exclude coverage of wind damage simply because flooding also contributed to the damage.



## Multi-Peril Insurance Legislation: Why We Need Your Help



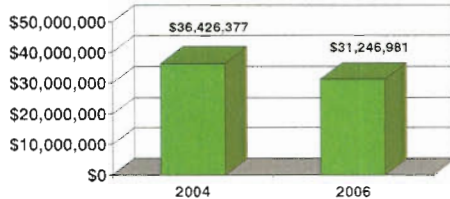
- In November, the Senate Banking Committee approved S. 2284, a flood insurance reform bill that does not include the wind insurance provision.
- Committee Chairman Chris Dodd, D-CT, said that he could not support the addition of wind coverage without more study regarding the costs.
- Senator Richard Shelby, R-AL, the Ranking Republican on the committee, opposed any new coverage.
- Senators Charles Schumer, D-NY, and Mel Martinez, R-FL, expressed support for adding the wind coverage option, but chose not to offer an amendment in the committee because of the opposition of Dodd and Shelby.
- Senators Thad Cochran and Roger Wicker of Mississippi, Mary Landrieu and David Vitter of Louisiana, and Lindsey Graham of South Carolina have expressed support for an amendment to add wind coverage when the bill is considered by the full Senate.
- Insurance industry is lobbying to block the amendment from coming to a vote in the Senate.



## The Insurance Industry's Political Muscle

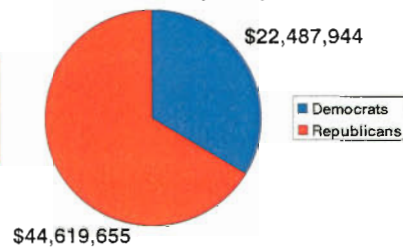


Insurance Industry Political Contributions By Election Cycle



**Insurance industry lobbyists have lots of money for political contributions and they are not shy about spending it**

Insurance Industry Political Contributions By Party 2004 - 2006



Data from The Center for Responsive Politics



## What Am I Asking You to Do?



**This is the people versus the lobbyists and we need the grassroots support of you, your family and your friends to pass this legislation**

- Call, e-mail and write your senators and tell them you support efforts to amend Senate bill (S.2284) to include Multi-Peril Insurance
- Call, e-mail and write your friends and family and tell them to call, e-mail and write their senators in support of efforts to amend Senate bill (S.2284) to include Multi-Peril Insurance
- Tell any groups or associations that you belong to—veterans, businesses, churches—that they should endorse and support efforts to amend Senate bill (S.2284) to include Multi-Peril Insurance. Everyone is adversely impacted by the current system and we need everyone to help if we are going to change it!