HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1171 Residential Property Insurance
SPONSOR(S): General Government Policy Council, Proctor and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2036

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	17 Y, 0 N, As CS	Callaway	Cooper
2)	General Government Policy Council	17 Y, 0 N, As CS	Callaway	Hamby
3)				
4)				
5)				

SUMMARY ANALYSIS

This bill permits insurers meeting certain criteria to sell a new type of property insurance policy, a “nonassessable residential property insurance policy.” This type of policy is not subject to a determination by the Office of Insurance Regulation (OIR) that the rate is excessive or unfairly discriminatory. The OIR is only authorized to disapprove a rate for this type of policy if the rate is inadequate or contains rating factors contrary to the unfair trade practices statute. The policy is not subject to assessments by Citizens Property Insurance Corporation (Citizens). The bill also requires notice to the consumer before the policy is issued or renewed that the policy’s rate is not regulated by the OIR and a policy with a rate regulated by the OIR may be available to the consumer.

Residential properties covered by nonassessable residential property insurance policies will be relieved of any assessments for deficits in Citizens. Nonassessable policies are likely to have higher premiums than those that are assessable and are fully regulated by the OIR, but some homeowners may be willing to pay the higher premium in exchange for not being subject to assessment by Citizens.

The bill will reduce the assessment base of Citizens through the removal of some residential property insurance policies. If the Citizens assessment base is reduced, then insurance policies that remain in the assessment base will be subject to higher assessment costs than currently. The degree to which the assessment base will be reduced cannot be determined because it is unknown how many homeowners will choose to purchase the new nonassessable coverage.

The bill has no fiscal impact on state or local government.

The bill is effective upon becoming a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

"Property insurance," as defined by s. 624.604, F.S., includes insurance covering personal lines residential risks, commercial lines residential risks, and commercial nonresidential risks as follows:

- Personal lines residential coverage - homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, cooperative unit owner's and similar policies,
- Commercial lines residential coverage - coverage provided by condominium association, cooperative association, apartment building and similar policies, and
- Commercial nonresidential coverage - coverage provided by commercial business policies.[1]

Generally, personal lines residential property insurance covers a policyholder's residence, providing reimbursement due to damages sustained by the residence, including windstorm damage.

The bill creates a new type of residential property insurance policy, a nonassessable residential property insurance policy. This type of policy is available for only personal lines residential coverage. To be eligible to offer this type of policy to consumers, insurers must:

- be authorized to write property insurance in Florida.
- maintain $500 million or more in surplus.
- not purchase coverage in the Florida Hurricane Catastrophe Fund for the temporary increase in coverage limit options (TICL options).[2]

However, insurers with surplus of $150 million or more but less than $500 million can offer nonassessable residential property insurance policies if the insurer's ratio of net written premium to surplus is no more than two to one, meaning the insurer writes $2 in net premium for every $1 of surplus the insurer maintains. The ratio of net written premium to surplus is generally viewed as an indication of the financial strength of an insurer with a lower ratio indicating greater financial strength. These insurers must still meet the other two eligibility requirements in order to offer nonassessable residential property insurance policies.

According to the OIR, there are 323 insurers currently licensed by the OIR to write personal lines residential property insurance that maintain $500 million or more in surplus or that maintain over $150 million but less than $500 million in surplus with a two to one ratio of net written premium to surplus.[3]

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[1] *See* s. 627.4025, F.S. (2008).

[2] The TICL options allow insurers to purchase reinsurance through the Florida Hurricane Catastrophe Fund in an amount up to $12 billion in excess of the reinsurance required by law to be purchased through the Fund.

Insurers are not required to offer nonassessable residential property insurance policies to policyholders; the insurer has the option of offering these policies. And if offered by the insurer, the consumer has the option to purchase these policies.

Before a nonassessable residential property insurance policy can be issued or renewed by an insurer, the insurer must provide notice to the applicant or policyholder in 12-point boldfaced type the policy's rate is not regulated by the OIR and may have a higher rate than a policy with a rate that is regulated and approved by the OIR. The notice must also indicate a policy subject to rate regulation can be purchased.

Assessments on Personal Residential Property Insurance
Under current law, all personal residential property policies are assessable for deficits in the Florida Insurance Guaranty Association (FIGA), the FHCF, and Citizens.

Florida Insurance Guaranty Association
A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance carrier. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums[4] to policyholders. Insurers are required by law to participate in guaranty associations as a condition for transacting business in Florida.

When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures policyholders that have paid premiums for insurance are not left without valid claims being paid. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

FIGA levies assessments when it does not have sufficient financial resources to pay the insurance claims of insolvent insurers. FIGA assessments on personal residential property are a maximum 2 percent assessment for one year with emergency assessments of up to 2 percent levied for the life of the bonds supporting the assessment. Emergency assessments can only be issued to pay claims of insurers rendered insolvent due to a hurricane.[5] FIGA assesses solvent insurance companies directly for both assessments and the insurance company is allowed by law (s. 631.57(3)(a), F.S.) to pass the assessment on to their policyholders.

FIGA will continue to be able to assess a nonassessable residential property insurance policy created by the bill.

Florida Hurricane Catastrophe Fund
The Florida Hurricane Catastrophe Fund (FHCF or "fund") is a tax-exempt trust fund created after Hurricane Andrew as a form of reinsurance for residential property insurers.[6] The fund reimburses (reinsures) insurers for a portion of their hurricane losses to residential property. All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The fund charges insurers the "actuarially indicated" premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

Insurers must first pay hurricane losses up to their "retention" for each hurricane, similar to a deductible, before being reimbursed by the fund for their losses. In addition, each insurer has a maximum amount of reimbursement it can receive from the fund.

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[3] Not all 323 insurers may be currently writing personal lines residential property insurance in Florida, although they are licensed to do so.
[4] The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for six months or one year, and which is still owed on the unexpired potion of the policy.
[5] s. 631.57(3), F.S.
[6] s. 215.555, F.S.

When the FHCF does not have sufficient financial resources to reimburse property and casualty insurers for property claims paid, the fund must levy emergency assessments. The FHCF is authorized to levy emergency assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation accident and health, federal flood and, until May 31, 2010, medical malpractice), including surplus lines policyholders. FHCF emergency assessments on personal residential property policyholders are capped at six percent of premium per year to fund hurricane losses from any one year and a maximum of 10 percent of premium per year to fund hurricane losses from multiple years. FHCF assessments can be levied for up to 30 years.[7] The assessments are "fronted" by insurers and subsequently passed through to policyholders at policy issuance and renewal.

In 2007, the fund had to levy emergency assessments for the first time since its creation in 1993. The assessment was needed to raise funds to reimburse insurers for property insurance losses resulting from the hurricanes hitting Florida in 2005. Consequently, the fund levied a one percent assessment on virtually all property and casualty insurance for eight years.

The FHCF will continue to be able to assess a nonassessable residential property insurance policy created by the bill.

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[8] It is not a private insurance company.[9]

Citizens' book of business is divided into three separate accounts[10]:

1. Personal Lines Account (PLA) – Multiperil Policies
   Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies.

2. Commercial Lines Account (CLA) – Multiperil Policies
   Consists of condominium association, apartment building and homeowner's association policies.

3. High-Risk Account (HRA) – Wind-only and Multiperil Policies
   Consists of personal lines wind-only policies, commercial residential wind-only policies and commercial non-residential wind-only policies issued in limited eligible coastal areas. In addition, in 2007, Citizens began offering personal and commercial residential multiperil policies in the limited coastal areas

As of February 28, 2009, Citizens provides property insurance to almost 1.1 million Florida homeowners and is the largest property insurer in Florida. Citizens writes 27 percent of the residential property insurance market in Florida.

Each Citizens' account is a separate statutory account and therefore has separate calculations of surplus and deficits. By statute, assets of each account may not be commingled or used to fund losses in another account.[11]

In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute.[12] The three Citizens' accounts calculate deficits and resulting assessment needs independently.

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[7] s. 215.555(6)(a), F.S.
[8] Admitted market means insurance companies licensed to transact insurance in Florida.
[9] s. 627.351(6)(a)1., F.S.
[10] s. 627.351(6)(b).2., F.S.
[11] s. 627.351(6)(b)2.b., F.S.
[12] s. 627.351(6)(b)3.a.,d., and i ., F.S.

The amount of Citizens' assessments paid by personal residential property owners varies depending on whether the property is insured by Citizens or insured by a private insurer in the admitted market. If a personal residential property is insured by Citizens and Citizens incurs a deficit, the total maximum amount the insurance policy covering that property can be assessed is 75 percent, a maximum of 45 percent as part of the Citizens Policyholder Assessment and another 30 percent as part of the Citizens' emergency assessment.

The Citizens Policyholder Assessment is the first assessment levied by Citizens if the corporation does not have sufficient financial resources to pay its insurance claims. This assessment is only levied against Citizens' policyholders in an amount up to 15 percent of premium. A 15 percent assessment can be levied on each Citizens account. Thus, the total maximum Citizens Policyholder Assessment is 45 percent of premium. This assessment can be collected for 12 months.[13]

If the monies collected from the Citizens Policyholder Assessment are not sufficient to eliminate the deficit, Citizens must levy a regular assessment of up to six percent of premium or six percent of the deficit, whichever is greater. This assessment is also levied per account, for a maximum total assessment of 18 percent. However, this assessment is **not** levied against policyholders of Citizens. It is levied against all property and casualty policyholders in the private admitted market, with a few exceptions.[14] Thus, a personal residential property owner insured with Citizens does not pay this assessment.[15]

Personal residential property owners insured with Citizens, however, must pay any emergency assessment levied by Citizens. This assessment is levied if the Citizens Policyholder Assessment and the regular assessment do not raise sufficient funds to defray the Citizens' deficit. The maximum amount of this assessment is ten percent of premium or ten percent of the deficit, whichever is greater. The assessment is levied per account for a total maximum assessment of 30 percent per policy. This assessment is levied on virtually all property and casualty policies in the state, including Citizens policies.[16] The assessment can be levied for as many years as is necessary to cure the deficit.[17]

Personal residential property not insured by Citizens would pay substantially less in Citizens' assessments than those insured by Citizens. This policyholder could pay a maximum assessment of 48 percent of premium or 48 percent of the deficit. Residential property not insured by Citizens is only assessed the Citizens' regular and emergency assessments. The total maximum amount of a Citizens regular assessment is 18 percent and the total maximum of a Citizens emergency assessment is 30 percent, for a total of 48 percent.

The nonassessable residential property insurance policy created by the bill cannot be assessed by Citizens for its deficits as the policy is exempt from the Citizens' assessment base.

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 that insurance rates are not excessive, inadequate, or unfairly discriminatory. This is the standard that every insurance rate regulated by this part is held to. Every rate for the classes of insurance that the Rating Law applies to must be submitted by the insurer to the Office of Insurance Regulation (OIR or office), which reviews the rate and either approves or disapproves the rate.

[13] s. 627.351(6)(b)3.i., F.S.
[14] The Citizens regular assessment is levied on all property and casualty policies insuring property in the state except workers' compensation, medical malpractice, accident and health, federal crop, or federal flood insurance policies. *See* s. 627.351(6)(b)f., F.S.
[15] s. 627.351(6)(b)3.a. and b., F.S.
[16] *Supra note 12.*
[17] s. 627.351(6)(b)3.d., F.S.

In determining whether a rate is excessive, inadequate, or unfairly discriminatory, the office uses the following statutory factors.

- 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.

Nonassessable residential property policies created by the bill are not subject to the same rate regulation covering assessable residential policies. For nonassessable residential property polices, the Office of Insurance Regulation (OIR) is only authorized to disapprove the rate if it is inadequate or uses rating factors that are unlawful under the unfair trade practices statute. It cannot disapprove the rate because the rate is excessive or unfairly discriminatory as allowed under current law.

B. SECTION DIRECTORY:

Section 1: amends s. 627.062, F.S. relating to insurance rate standards.

Section 2: amends s. 627.351 relating to Citizens Property Insurance Corporation.

Section 3: amends s. 627.4025, F.S. relating to the definitions of residential coverage; adds definitions of “assessable residential property insurance” and “nonassessable residential property insurance.”

Section 4: creates s. 627.7031, F.S. relating to residential property insurance, authorizes the sale of a nonassessable residential property insurance policy by insurers meeting certain criteria and requires certain disclosure before issuance or renewal of such policy.

Section 5: provides an effective date of “upon becoming a law.”

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Residential properties covered by nonassessable residential property insurance policies will be relieved of any assessments for deficits in Citizens, particularly after a major hurricane. Nonassessable policies are likely to have higher premiums than those that are assessable and are fully regulated by the OIR, but some homeowners may be willing to pay the higher premium in exchange for not being subject to assessment by Citizens (though they will still be subject to FIGA and FHCF assessments).

The bill will reduce the assessment base of Citizens through the removal of some residential property insurance policies. If the Citizens assessment base is reduced, then insurance policies that remain in the assessment base will be subject to higher assessment costs than currently. The degree to which the assessment base will be reduced cannot be determined because it is unknown how many homeowners will choose to purchase the new nonassessable coverage.

D. FISCAL COMMENTS:

Personal lines residential premium totals over $8.5 billion, out of which Citizens' premium is over $1.8 billion.[18] The assessment base for Citizens' regular assessment is approximately $33 billion and is approximately $37 billion for the emergency assessment.[19] Thus, personal lines residential premium represents at least 20 percent of the assessment base for Citizens' regular assessment and at least 23 percent of the Citizens' emergency assessment base.[20]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill 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 in the bill.

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[18] Information received from Citizens Property Insurance Corporation on March 26, 2009 based on QUASR data collected by the OIR as of the 3rd quarter of 2008. The data does not include personal lines residential premium written by surplus lines insurers.
[19] Presentation by Citizens Property Insurance Corporation to the Insurance, Business & Financial Affairs Policy Committee on February 3, 2009.
[20] The Citizens' regular assessment base does not include Citizens' policyholders, but they are included in the emergency assessment base.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The OIR notes in the agency analysis that allowing the sale of nonassessable residential insurance policies could affect bond agreements of Citizens as the available premium base for assessments levied by Citizens is changed by the bill. This assumes insurers decide to offer nonassessable residential insurance policies and consumers decide to purchase such policies.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 27, 2009, the Insurance, Business & Financial Affairs Policy Committee considered the bill, adopted a strike all amendment and reported the bill favorably. The strike all amendment changed the original bill as follows:

- Added requirements that insurers must meet in order to be able to offer nonassessable residential property insurance policies.
- Removed provisions in the original bill exempting nonassessable residential property insurance policies from FHCF assessments.
- Required disclosure on the policy's notice of renewal stating the nonassessable residential property insurance policy is subject to rate regulation for adequacy only and is not subject to Citizens' assessments.
- Allowed the OIR to disapprove a rate filing for a nonassessable residential property insurance policy if the filing uses a rating factor that is unlawful under the unfair trade practices law.

The staff analysis was updated to reflect the committee substitute.

On April 14, 2009, the General Government Policy Council considered the bill, adopted one amendment, and reported the bill favorably with a council substitute. The amendment added additional requirements that insurers must meet in order to be able to offer nonassessable residential property insurance policies and changed the notice language required to be given to applicants for or policyholders of nonassessable residential property insurance policies.

The staff analysis was updated to reflect the council substitute.