

STORAGE NAME: h1979z.in

DATE: May 7, 1999

****FINAL ACTION****

****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
EDUCATIONAL SERVICES
FINAL ANALYSIS**

BILL #: HB 1979 (PCB IN 99-01)

RELATING TO: Property insurance

SPONSOR(S): Committee on Insurance, Representative Bainter & others

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE YEAS 10 NAYS 3
- (2) FINANCE AND TAXATION YEAS 15 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS (W/D)
- (4)
- (5)

I. FINAL ACTION STATUS:

HB 1979 died on the House Calendar on April 30, 1999.

II. SUMMARY:

The size and the composition of the residual property insurance market in Florida have changed dramatically in the last several years. At its peak, the Residential Property and Casualty Joint Underwriting Association (RPCJUA) had more than 784,000 policies in force with exposures of more than \$81 billion. As of January 1999, the RPCJUA had 215,030 policies in force with exposures of \$32.3 billion. The Florida Windstorm Underwriting Association (FWUA) has grown steadily since Hurricane Andrew. At the end of 1992, the FWUA had 61,793 policies in force and \$7.3 billion in windstorm exposures. By January 1999, the FWUA's policy count had grown to 499,711, and its exposures had grown to more than \$91 billion. Since 1996, the FWUA's exposures have grown by more than \$50 billion, a 137 percent increase.

When losses paid exceed premium revenues and other resources, the RPCJUA or FWUA can assess voluntary market policyholders through insurers to cover the deficit.

This bill attempts to reduce the exposure of both residual market entities for the purpose of preserving the claims-paying ability of the residual market entities through premium revenues and lessen the risk and scope of large assessments being levied against voluntary market policyholders. Among other changes, the bill would:

- ◆ except for those with homes insured for less than \$500,000, further limit RPCJUA and FWUA coverage eligibility to those not only unable to secure coverage from authorized insurers as under current law, but also unable to procure coverage from surplus lines insurers;
- ◆ for eligible applicants or policyholders, generally limiting FWUA personal residential coverage to the first \$500,000 of losses and reducing commercial residential coverage from \$10 million to \$5 million, but permitting both authorized insurers and surplus lines insurers to provide excess coverage;
- ◆ for RPCJUA and FWUA policies only, raise the minimum mandatory deductible offer for personal residential risks of \$500,000 or more from 2 to 5 percent, and from 3 to 5 percent for commercial residential risks;
- ◆ restrict coverage for personal property such as artwork, jewelry, furs; and for structures such as tiki huts, pool houses, gazebos, tennis courts and swimming pools; and limit coverage for contents and additional living expenses;
- ◆ authorize insurers to offer supplemental insurance products to cover expenses not reimbursable because of the application of a deductible or other policy limitations;
- ◆ establish a maximum deficit surcharge payable by FWUA policyholders before assessments can be levied and set the amount at \$100 million for calendar year 2000, reduced each year thereafter by the cumulative percentage amount of statewide average rate increases approved for the FWUA; and,
- ◆ increase the maximum bonus the RPCJUA can pay to insurers removing policies from the RPCJUA, reduce the number of policies an insurer must remove to receive a bonus and receive assessment exemptions, and delete the prohibition against RPCJUA take-out bonuses when the policy count falls below 250,000.

This bill has a negative recurring fiscal impact of \$1.4 million to General Revenue.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Until August 24, 1992, regulation of property insurance policies received relatively little legislative attention. Hurricane Andrew changed that. Literally overnight, a property insurance crisis was created in Florida that resulted in sweeping legislative changes intended to stabilize the property insurance market. Hurricane Andrew remains the most costly natural disaster in U.S. history with \$16 billion in insured losses measured in current dollars. U.S. natural disasters, however, have produced insured losses of more than \$1 billion in every year since 1988. In contrast, the total insured loss from all natural disasters in the U.S. in 1960, the year of the last Category 4 storm in Florida before Andrew, was \$129 million.¹ In the post-Hurricane Andrew environment, premiums no longer represent the entirety of property insurance costs paid by consumers. Consumers are subject to mandatory charges (known as "assessments"). When losses paid exceed the premium revenues and other resources of the RPCJUA or FWUA, the RPCJUA and the FWUA can assess voluntary market policyholders through insurers.

The residual property insurance market: size and exposure

The insurance availability problems resulting from Hurricane Andrew greatly increased Floridians' reliance on state-created property insurers of last resort which are funded in part by assessments on insurance companies and their policyholders. A residual market entity provides insurance coverage to an applicant unable, after a good faith effort, to procure coverage from a licensed insurance company in the "voluntary" or regular market. The Florida Windstorm Underwriting Association (FWUA) and the Residential Property and Casualty Joint Underwriting Association (RPCJUA) constitute the "residual market" for property insurance.

The size and composition of the residual property insurance market in Florida has changed dramatically in the last several years. At its peak, the RPCJUA had more than 784,000 policies in force with exposures of more than \$81 billion. As of January 1999, the RPCJUA had 215,030 policies in force with exposures of \$32.3 billion. The FWUA has grown steadily since Hurricane Andrew. At the end of 1992, the FWUA had 61,793 policies in force and \$7.3 billion in windstorm exposures. By January 1999, the FWUA's policy count had grown to 499,711, and its exposures had grown to more than \$91 billion. Since 1996, the FWUA's exposures have grown by more than \$50 billion, a 137 percent increase.

At its peak in October 1996, the residual market had more than 1 million policies in force covering windstorm. As of January 1999, the total residual market policy count (excluding policies that do not provide windstorm coverage) had declined to 714,266. The exposures of the residual market, however, were more than \$123 billion in January 1999, representing a slight increase over the October 1996 exposures.

The RPCJUA's risks are concentrated in Broward, Dade, and Palm Beach counties. These three counties account for approximately 90 percent of the RPCJUA's policies and exposures. Although the FWUA has grown dramatically in recent years, its concentration in Southeast Florida (Broward, Dade, Monroe, and Palm Beach Counties) has remained steady. Southeast Florida accounts for approximately 60 percent of FWUA policies and exposure, and other FWUA eligible coastal areas account for approximately 40 percent of FWUA policies and exposures. Southeast Florida is today responsible for more than 70 percent of all residual market exposure, other FWUA eligible coastal areas account for 28 percent of residual market exposure, and the RPCJUA outside of Southeast Florida accounts for less than 2 percent of all residual market exposure. As of January 1999, the RPCJUA had a total of 198,289 policies in Dade, Broward, Palm Beach and Monroe counties representing \$32.3 billion in exposure. As of January 1999, the FWUA had a total of 289,191 policies in Dade, Broward, Palm Beach and Monroe counties representing \$54 billion in exposure.

As of September 1998, the average annual expected loss of the FWUA is \$368.7 million, and its 100 year probable maximum loss is \$5.65 billion.

¹ 47 Years of U.S. Insured Catastrophic Losses, Best's Review, Property and Casualty Edition, April 1997.

The RPCJUA used four different models to estimate its average annual expected loss and 100 year probable maximum loss. As of January 31, 1999, the average annual expected loss is between \$72 million and \$87 million. The 100 year probable maximum loss of the RPCJUA is between \$1.56 billion and \$1.94 billion.

The size of the residual market affects all Florida property owners. Assessments levied on insurance companies and their policyholders provide the funding for the residual market whenever the premiums charged by the FWUA or the RPCJUA are insufficient to pay claims.

Governance

The FWUA operates under a fifteen member board of directors which includes the Insurance Consumer Advocate, two consumer representatives, and twelve members appointed by the insurance industry. The industry appoints five of the thirteen RPCJUA board members, and the remainder are appointed by the insurance commissioner.

Rate requirements

The RPCJUA and the FWUA rate filings are subject to the same DOI approval process as are filings by voluntary market insurers. The Legislature requires RPCJUA rates for personal lines residential property in a given county to be no lower than the average rates charged by the insurer with the highest average rates among the twenty insurers in that county based on premium volume. Florida Windstorm Underwriting Association rates must not be competitive with voluntary market rates and, beginning January 1, 1999, must be "reflective" of approved voluntary market rates for hurricane coverage.

The total cumulative statewide average rate increase for the RPCJUA since 1993 is 90 percent for homeowners, 83 percent for dwelling fire policies and 67 percent for mobile homeowners policies.

In 1995 FWUA rates were the same as they were in 1985. Since 1996, the FWUA has implemented three rate increases: 31 percent in June 1996, 3 percent in March 1997 and 12 percent in 1998.

Eligibility

To be eligible for RPCJUA or FWUA coverage, an applicant must be unable to secure coverage from an authorized voluntary market insurer. Coverage for an existing policyholder must be terminated if the policyholder is offered coverage from an authorized voluntary market insurer. Loss of eligibility is automatic.

Because the FWUA only insures against windstorm losses, the FWUA policyholders typically receive their underlying "all-other-perils" coverage from a voluntary market insurer or the RPCJUA. Unlike RPCJUA policyholders, FWUA policyholders have two separate insurance policies. When an insurer makes an offer to take out a FWUA policy, the insurer providing the underlying coverage automatically loses the policy.

Coverages

The residual market entities providing property coverage are statutorily mandated nonprofit associations of insurance companies. The Legislature created the RPCJUA in 1992 as a result of Hurricane Andrew. The Legislature created the FWUA twenty-two years earlier in 1970. The RPCJUA writes residential property insurance policies generally covering the windstorm risk and all-other perils risk throughout the state. The FWUA writes residential and commercial non-residential property insurance policies covering only losses caused by windstorm, and writes these policies only in certain approved coastal areas. After Hurricane Andrew, the DOI expanded FWUA eligibility to include Dade and Broward Counties east of I-95. The DOI recently expanded FWUA boundaries to include coastal areas of Palm Beach County.

Currently, contents coverage available from the RPCJUA for a personal lines residential policy is equal to 50 percent of dwelling limits. Currently, the FWUA has no limit to the amount of contents coverage available. For example, the structure of a residential dwelling that is insured by the FWUA for \$100,000 could have contents coverage of \$200,000.

Coverage offered by the RPCJUA for additional living expenses is 10 percent of policy dwelling limits. The FWUA offers 20 percent of policy dwelling limits for additional living expenses.

The FWUA currently insures items such as artwork, jewelry, furs and rare books. The FWUA also offers a total of over \$1 million in building coverage for 120 chickees and a total of \$717,975 in building coverage for 110 tiki huts. The FWUA offers \$1.67 million in coverage for 218 hot tubs and \$13.45 million in coverage for 497 tennis courts.

Assessments

When premium revenues and other resources are insufficient to pay claims, the RPCJUA and FWUA boards must levy assessments against property insurers in proportion to their market share. Generally, the assessments must be enough to recoup in one year the entire amount of the deficit.

Single-year assessments and the first year of a multi-year assessment are levied against insurers. They are then permitted to pass these so-called "regular" assessments on to their policyholders and recover them as an operating expense through the rate making process. As a depopulation incentive, the Legislature has authorized various insurer exemptions from regular assessments.

The assessments levied in the out years of a multi-year assessment, known as "emergency assessments," are not levied on insurers, but instead are *collected by* insurers from their policyholders; the insurer has no liability, but instead acts as the collection agent for the residual market entity.

The RPCJUA has levied assessments twice since its inception in 1992. In 1994, the RPCJUA assessed personal lines residential policies for \$17.7 million on deficits. In 1995, the RPCJUA levied another regular assessment on personal lines residential policies for a deficit of \$22.8 million.

The FWUA has levied regular assessments four times since 1993: in 1993, for \$3.24 million; in 1995, for \$33 million and \$84 million; and in 1998, for \$100 million.

Neither the RPCJUA nor the FWUA have ever levied emergency assessments.

Deductibles

Florida law establishes myriad requirements for hurricane or wind deductibles. These requirements vary depending on the value of the risk, the nature of the risk, and the type of property covered. There are the so-called "mandatory offers," which are deductibles that insurers must offer to their policyholders, and "maximum offers," which are deductibles that insurers cannot exceed regardless of the desires of their policyholders. Deductible requirements apply without distinction to both voluntary market and residual market insurers.

For personal residential risks an insurer is required to offer a hurricane or wind deductible of \$500 or 2 percent of policy dwelling limits, depending on the policy dwelling limits.

For commercial residential risks, the current requirement is that insurers offer a deductible amount of 3 percent of policy dwelling limits.

Exposure reduction through depopulation

In general, a depopulation program is a set of incentives designed to encourage insurers to take over risks insured by a residual market entity ("take-out plan") or to provide coverage for a risk that would otherwise become an applicant for residual market coverage ("keep-out plan").

In 1995 and 1996, the Legislature created incentives for authorized voluntary market insurers to take over risks that were insured by the RPCJUA. These incentives primarily consisted of cash rewards and exemptions from RPCJUA deficit assessments. Under a "take-out" plan, an RPCJUA policyholder is offered coverage from a voluntary market insurer. Since any offer from a licensed insurer disqualifies an applicant from eligibility for RPCJUA coverage, if the policyholder rejects the offer, the RPCJUA may not continue to provide coverage to the policyholder.

The depopulation law specifically authorizes two types of financial incentives for take-out insurers: cash bonuses and RPCJUA or FWUA assessment exemptions. The RPCJUA has offered bonuses of up to \$200 per policy. As of March 1, 1999, the RPCJUA has awarded more than \$72 million in take-out bonus payments. These funds are held in escrow until the take-out company has held the policies for three years. The first release of escrow funds will occur in March 1999. An insurer may receive exemptions from regular deficit assessments by the FWUA and the RPCJUA for policies removed from the RPCJUA.

The Legislature has not enacted any statutory authorization for bonuses or exemptions from FWUA assessments as FWUA depopulation incentives. However, the FWUA has implemented both "keep-out" and "take-out" programs in response to the general statutory authority given to the FWUA for take-out programs in 1997. The FWUA received several take-out proposals from insurers, and in January 1998, the FWUA submitted its take-out rule to the DOI. In May 1998, the FWUA made changes to the rule and resubmitted the rule to the DOI in September 1998. The rule has neither been approved, nor formally rejected by the DOI.

Surplus lines insurers

"Surplus lines insurance" is insurance coverage provided by an insurance company that is not licensed in Florida, but that is allowed to do business in the state because the particular coverage offered is not available from Florida-licensed companies. In general, insurance is eligible for export to surplus lines insurers if the full amount of insurance required cannot, after diligent effort by the agent, be procured from any admitted insurer; if the premium is no lower than the rate actually in use by a majority of admitted insurers for the same coverage on a similar risk; if the policy form is no more favorable to the insured, as to coverage or rate, than the forms currently in use by a majority of admitted insurers; and if the policy contains no deductible other than those currently in use by any admitted insurer. In order for an insurer to be an eligible surplus lines insurer, it must have been licensed in its state or country of domicile for at least three years, must have surplus of at least \$15 million, must have a good reputation, and must meet the trustworthiness and criminal history requirements that apply to admitted insurers under s. 624.404(3), F.S. By contrast, the required minimum surplus to maintain a certificate of authority as a property and casualty insurer is \$4 million.

A.M. Best's ratings

The Best's Rating represents an opinion based on a comprehensive quantitative and qualitative evaluation of a company's financial strength, operating performance and market profile. Best's ratings range from A+++ (superior) to F (in liquidation). A rating of B++ is defined by A.M. Best as very good. A.M. Best considers those companies to "meet their ongoing obligations to policyholders."

B. EFFECT OF PROPOSED CHANGES:

The bill would make a number of changes affecting property insurance, principally the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association.

Eligibility

The FWUA and RPCJUA would be able to provide coverage to a new applicant or provide continued coverage to an existing policyholder only if no "qualified offer of coverage" is made. A qualified offer of coverage would be an offer of coverage from an authorized insurer or from a surplus lines insurer rated at least B++ by A. M. Best; except that, in the case of a personal residential risk with policy dwelling limits of less than \$500,000, an offer of coverage from an authorized insurer. Therefore, existing eligibility requirements would continue to apply to personal residential risks of less than \$500,000; that is, they would only have to show they cannot obtain coverage from an authorized voluntary market insurer instead of also showing they could not obtain coverage from a surplus lines insurer.

The automatic loss of eligibility requirement would remain in the event a qualified offer of coverage is made, but not the automatic transfer of the underlying coverage. The FWUA would be required to give the insurer providing the underlying coverage the right of first refusal to offer the wind coverage and retain the underlying coverage. Only if the insurer refused to provide windstorm coverage could the FWUA approve the take-out offer from another insurer.

Assessments

Rather than charging assessments to non-FWUA policyholders through assessments levied against insurers from the first dollar of deficits incurred, FWUA policyholders would be responsible for paying "deficit surcharges" to a first dollar maximum, beginning in calendar year 2000 with the first \$100 million of deficits. The maximum amount of deficit surcharge FWUA policyholders would be responsible for paying would be reduced each year by a percentage amount equal to the percentage statewide average rate increase from January 1, 2000, through the date of the surcharge.

Surplus lines insurers would be subject to the requirement to collect emergency assessments, when levied, as other insurers are currently required to do.

Deductibles

For personal residential risks with policy dwelling limits valued at more than \$500,000, the FWUA and RPCJUA could not offer less than a 5 percent deductible and would not have to offer a 2 percent or \$500 deductible. Deductibles for risks valued at under \$500,000 would remain unchanged.

For commercial residential risks, without regard to value, the FWUA and RPCJUA could not offer less than a 5 percent deductible, rather than the current 3 percent.

For nonresidential commercial risks, again without regard to value, the FWUA could not offer less than a 5 percent deductible.

Other higher deductibles could be negotiated without limit in the discretion of the insurer and insured.

An individual insured wanting to self-insure for more than the minimum deductible amount in order to reduce premium would be permitted to negotiate a higher deductible.

Coverage restrictions

Dwellings for eligible policyholders could only be insured by the FWUA and the RPCJUA up to a maximum of the first \$500,000, unless the policyholder could not secure coverage from an authorized insurer or surplus lines insurer for that portion over \$500,000. In that event, the FWUA and RPCJUA could cover the full value of the risk.

Commercial residential risks would be covered by the FWUA up to the first \$5 million in risk. If the risk could not be placed with an authorized insurer or a surplus lines insurer rated at least B++ by A.M. Best for that portion of the risk in excess of \$5 million, the full risk could be insured by the FWUA.

The FWUA and RPCJUA would not be able to provide coverage for certain items and would be limited as to others. Neither would be able to cover such items as furs, jewelry and gems, or artwork above \$250. Structures such as pool houses, gazebos, tennis courts, and tiki huts could no longer be covered.

Contents coverage would be limited to 50 percent of the covered residential dwelling limits, contrasted with current FWUA policy of providing unlimited coverage on an actual cash value basis. Contents coverage by the RPCJUA is currently 50 percent of covered residential dwelling.

Coverage for additional living expenses would be limited to 10 percent of the covered residential dwelling limits for both the FWUA and the RPCJUA.

Depopulation

The RPCJUA would be able to continue to pay take out bonuses even though the number of policies-in-force falls below 250,000. The existing limitation would no longer apply. Additionally, the RPCJUA could continue to pay bonuses of up to \$200 per policy and do so for take-outs of at least 5,000 policies.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

Yes. By exempting FWUA from the Corporate Income Tax this bill will reduce General Revenue by \$1.4 million.

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 624.4071, 624.4072, 626.752, 626.916, 627.0629, 627.351, 627.3511, 627.3515, 627.701, F.S. Creates 627.70115, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Corrects a cross-reference in s. 624.4071, F.S.

Section 2. Corrects a cross-reference in s. 624.4072, F.S.

Section 3. Amends s. 626.752, F.S., which requires an insurer that receives more than 24 personal lines risks during a calendar year through brokering to report to the DOI the name, social security number, telephone number, and address of each agent from whom it received the business. The exception from this requirement are any policies the insurer received as the result of a takeout from the RPCJUA. This section would be amended to include any policies being taken out of the FWUA.

Section 4. Amends s. 626.916, F.S., which allows surplus lines agents to charge a fee not to exceed \$25 for each policy certified for export. This amount would be raised to \$50.

Section 5. Amends subsection (1) of s. 627.0629, F.S. As of July 1, 2000, construction techniques would be added to the requirement that rate filings / rate manuals give discounts or credits for the use of fixtures demonstrated to reduce windstorm losses. Creates subsection (11) that would authorize insurers to write residential property insurance policies providing only windstorm coverage.

Section 6. Makes the numerous changes to subsections (2) and (6) of s. 627.351, F.S., relating to the FWUA and the RPCJUA, effective on April 1, 2000.

FWUA

Amends subsection (2) of s. 627.351, F.S., relating to the Florida Windstorm Underwriting Association. New applicants or existing policyholders would only be eligible for coverage by the FWUA if the applicant or policyholder could not obtain a "qualified offer of coverage." A "qualified offer of coverage" would be defined as an offer of coverage obtained from an authorized insurer at approved rates or from a surplus lines insurer rated at least B++ by A.M. Best, or for a personal lines residential risk with policy dwelling limits of less than \$500,000, from an authorized insurer at approved rates.

Coverage of commercial lines residential risks would be limited to \$5 million. If a risk valued at more than \$5 million is unable to obtain coverage from an authorized insurer or a surplus lines insurer rated at least B++ by A.M. Best for that portion exceeding \$5 million, the FWUA could cover the full risk.

The board of the FWUA would be expanded from 15 members to 17 members. Added to the board would be one agent representative appointed by the Insurance Commissioner and one representative of surplus lines insurers designated by the Florida Surplus Lines Association.

FWUA policyholders would be required to assume a greater share of responsibility for association deficits. For calendar year 2000, FWUA policyholders would be subject to a maximum deficit surcharge up to the first \$100 million in deficits incurred if premium revenues and other resources were inadequate to cover losses. Each association policyholder would be required to pay a uniform percentage amount. On average, each policyholder could be subject to a deficit surcharge of roughly \$200, depending on the extent to which premium revenues and other resources are inadequate to pay losses. Beginning in calendar year 2001 and in subsequent years, the maximum deficit surcharge imposed by the FWUA would be \$100 million, less a percentage amount equal to the cumulative

statewide average percentage increase. For example, if the FWUA imposed a rate increase of 15 percent in 2001, the amount of any deficit surcharge imposed by the FWUA could not exceed \$85 million (i.e., 15 percent of \$100 million). Any deficit surcharge imposed by the FWUA would be collected from policyholders upon renewal, and each policyholder of record as of the date the board finds the deficit exists and approves the imposition of the surcharge would be billed for its payment. Any payment due to the association in the form of a deficit surcharge could be deducted from any claims reimbursement due the policyholder. Any amount of the deficit surcharge left unpaid would be collected through regular assessments. Deficit surcharges would not be considered premium and would not be subject to premium taxes, commissions, or fees. However, nonpayment of a deficit surcharge would be treated as failure to pay premium.

Regular assessments levied on insurers would be imposed for any amount over the maximum deficit surcharge for any given year.

Emergency assessments are levied upon member insurers and underwriting associations and are collected from their policyholders. Surplus lines insurers would be included under emergency assessments.

Coverage by the association for china and glassware, jewelry and gems, artwork, and furs would be limited to \$250 per category.

Tiki huts, gazebos, chickees, tennis courts, detached living quarters for domestic employees, hot tubs, pool houses, statuaries, satellite dishes, swimming pools, and similar structures would not be covered by the association.

Contents coverage by the association would be limited to 50 percent of dwelling limits of the residential property.

Additional living expenses would be limited to 10 percent of dwelling limits of the residential property.

Policies issued by the FWUA would be required to state that if the association obtains a qualified offer of coverage, the risk would no longer be eligible for coverage by the FWUA. In both cases, the FWUA would be required to notify the policyholder, the agent of record, and the insurer that provides the underlying coverage. The insurer that provides the underlying coverage would have the right of first refusal to offer windstorm coverage for the risk, and if that insurer refused to offer windstorm coverage, then the FWUA would be able to approve the offer of coverage by the other insurer and nonrenew the windstorm policy.

The FWUA would be required to actively market new policies to authorized insurers for the first 90 days of the new policy. An insurer that makes an offer of coverage to a policyholder within the first 90 days of the policy term may take both the windstorm portion of the risk and the underlying policy prior to the renewal date.

Insurers that remove risks from the FWUA would be required to pay the producing agent an amount equal to the agent's usual commission or allow the producing agent to remain the agent of record for the policy for one year.

The FWUA would be authorized to enter into actuarially sound quota share agreements with authorized insurers to remove risks from the association. Under a quota share agreement, the insurer would collect all of the premium associated with a risk and retain a certain percentage of the risk. The FWUA would only be authorized to enter in such agreements if the association could prove that a quota share agreement would reduce the likelihood of any deficit surcharge and assessment and also reduce the amount of any deficit surcharge and assessment.

The section providing immunity to board members of the FWUA would be conformed to that of the RPCJUA. Like the RPCJUA, the FWUA would not be considered a state agency, board, or commission, but would be considered a political subdivision of the state, and for purposes of the state corporate income tax, exempt. The FWUA estimates its 1998 corporate income taxes to be \$2.25 million.

RPCJUA

Subsection (6) of s. 627.351, F.S., relating to the RPCJUA, would also be amended.

Emergency assessments are levied upon member insurers and underwriting associations and are collected from their policyholders. Surplus lines insurers would be included under emergency assessments.

The 13 member board of the RPCJUA would be expanded to 15 members. The two new members of the board would be a representative of a surplus lines insurer designated by Florida Surplus Lines Association and an agent representative appointed by the Insurance Commissioner.

A risk would be ineligible for coverage by the RPCJUA if the risk obtains a "qualified offer of coverage." A "qualified offer of coverage" would be defined as an offer of coverage obtained from an authorized insurer at approved rates or from a surplus lines insurer rated at least B++ by A.M. Best, or, for a personal lines residential risk with policy dwelling limits of less than \$500,000, from an authorized insurer at approved rates.

A commercial lines residential risk would be ineligible for coverage by the RPCJUA if it obtains an offer of coverage from either an authorized insurer at approved rates or a surplus lines insurer rated at least B++ by A.M. Best.

Coverage by the RPCJUA for china and glassware, jewelry and gems, artwork, and furs would be limited to \$250.

Tiki huts, gazebos, chickees, tennis courts, detached living quarters for domestic employees, hot tubs, pool houses, statuaries, satellite dishes, swimming pools, and similar structures would not be covered by the RPCJUA.

Contents coverage by the RPCJUA would be limited to 50 percent of the covered residential dwelling limits. This would codify current practice by the RPCJUA.

Additional living expenses would be limited to 10 percent of the covered residential dwelling limits. This change would codify current practice by the RPCJUA.

The market assistance plan for the placement of residential property risks would be placed under the RPCJUA. Currently, the board of the RPCJUA serves as the board for the market assistance plan.

Section 7. Amends s. 627.3511, F.S., relating to the depopulation of the RPCJUA.

The amount of the bonus that the RPCJUA would be authorized to pay would be raised from \$100 to no more than \$200 for each personal residential policy that an insurer removes from the RPCJUA. An insurer would be required to remove at least 5,000 policies from the RPCJUA to qualify for the bonus. According to the RPCJUA, a larger bonus would be required as an incentive to take policies out of the high risk areas. As of January 1999, the RPCJUA had a total of 215,030 policies, 198,289 of which were in Dade, Broward, Palm Beach and Monroe counties.

The DOI is allowed 120 days to disapprove in writing a take-out plan approved by the board. After 120 days, a take-out plan would be deemed approved. The DOI could disapprove the plan based on the following:

- ◆ If the insurer lacks the capacity to absorb the risks;
- ◆ The plan does not serve to reduce the exposure or the average annual expected hurricane loss of the RPCJUA;
- ◆ Coverage for those risks exists in the voluntary market; or
- ◆ The bonus promotes new capital being allocated by the insurer.

An insurer that removes 5,000 or more policies, rather than the current 50,000 or more, from the RPCJUA would be exempt from regular assessments of the RPCJUA on those policies for three years.

The language that limited the RPCJUA's ability to pay take-out bonuses after its total policy count fell below 250,000 would be eliminated. As of January 1999, the policy count of the RPCJUA was

215,030. This would authorize the RPCJUA to pay bonuses to companies as the policy count continues to shrink.

Section 8. Amends s. 627.3515, F.S., relating to the market assistance plan. The DOI would be authorized to adopt a market assistance plan for nonresidential property insurance and casualty insurance. Market assistance for residential property assistance would be offered by the RPCJUA. A seven member board appointed by the Insurance Commissioner would govern the market assistance plan.

Section 9. Amends s. 627.4025, F.S., to clarify that hurricane coverage is coverage for losses occurring in counties in which the National Hurricane Center has declared a hurricane warning or has sustained hurricane force winds.

Section 10. Amends s. 627.701, F.S., relating to deductibles. The minimum hurricane deductible the FWUA and the RPCJUA could offer would be 5 percent for a personal lines residential risk with policy dwelling limits of \$500,000 or more. The minimum deductible the FWUA and the RPCJUA could offer commercial lines residential risks would be 5 percent in lieu of the 3 percent deductible currently required. The FWUA could not offer a deductible of less than 5 percent for nonresidential commercial property risks.

Section 11. Authorized insurers would be authorized to offer supplemental residential property insurance products. These policies would reimburse expenses not covered by a residential property insurance policy. A supplemental residential property insurance policy would be prohibited from duplicating the coverage provided in another policy issued to the insured.

Section 12. Repeals subsection (8) of s. 627.701, F.S., which permits an insurer to offer a hurricane deductible of 5 percent to a condominium association or cooperative association or offering a hurricane deductible of 10 percent for a commercial lines residential policy, if they also offer a hurricane deductible of 3 percent.

Section 13. Provides an effective date of October 1, 1999, unless otherwise provided for.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

The General Revenue Fund would be reduced by approximately \$1.4 million beginning in fiscal year 2000-01 as the result of the FWUA being made exempt from the state corporate income tax.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

If the FWUA incurs a deficit due to inadequate premium and lack of other resources to pay claims, FWUA policyholders would be responsible for a maximum deficit surcharge of up to \$100 million.

2. Direct Private Sector Benefits:

The amount of the regular assessments paid by insurers and passed through to non-FWUA policyholders could be reduced by a maximum of \$100 million.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

It is estimated that the General Revenue Fund would be reduced by approximately \$1.4 million beginning in fiscal year 2000-01 as the result of the FWUA being made exempt from the state corporate income tax. This estimate is based on a \$2.2 million dollar reduction in Corporate Income Tax and a \$0.8 million dollar increase in the Insurance Premium Tax.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

VI. COMMENTS:

N/A

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

One amendment was adopted by the Committee on Finance and Taxation. The amendment removed the language granting FWUA an exemption from the corporate income tax. This amendment removed the fiscal impact of the bill.

VIII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Meredith Woodrum Snowden

Stephen Hogge

AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Staff Director:

Kama D.S. Monroe, Esq.

Alan Johansen

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Meredith Woodrum Snowden

Stephen Hogge