

STORAGE NAME: h0477z.in

DATE: May 8, 2000

**\*\*FAILED TO PASS THE LEGISLATURE\*\***

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
INSURANCE  
FINAL ANALYSIS**

**BILL #:** HB 477

**RELATING TO:** Windstorm Underwriting Association

**SPONSOR(S):** Representatives Cosgrove and Greenstein

**TIED BILL(S):**

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

- (1) INSURANCE YEAS 6 NAYS 9
  - (2) FINANCIAL SERVICES
  - (3) COMMUNITY AFFAIRS
  - (4) GENERAL GOVERNMENT APPROPRIATIONS
  - (5)
- 

**I. SUMMARY:**

The Legislature created the Florida Windstorm Underwriting Association (FWUA) in 1970 as the insurer of last resort for the peril of windstorm.

HB 477 would make the following changes to the FWUA:

- ◆ revise the membership of the board of directors;
- ◆ restrict the coverage offered by the FWUA to hurricane only;
- ◆ require the FWUA to offer policyholders the choice of replacement cost or actual cash value for covered losses, and restricts the amount of the rate charged by the FWUA;
- ◆ require the FWUA to offer certain premium credits; and
- ◆ prohibit an FWUA-eligible area from being eligible for coverage for more than 2 consecutive years. Areas could apply for redetermination by the Insurance Commissioner.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The insurance availability problems resulting from Hurricane Andrew in 1992 increased Floridians' reliance on state-created residual market entities. These insurers of last resort provide insurance coverage to an applicant unable, after making a good faith effort, to procure coverage from an authorized insurance company in the "voluntary" market. Two entities, the Florida Windstorm Underwriting Association (FWUA) and the Residential Property and Casualty Joint Underwriting Association (RPCJUA), form the "residual market" for property insurance.

Covered Perils

The Legislature created the FWUA in 1970 as the insurer of last resort for the peril of windstorm. "Windstorm" is defined in s. 627.4025, F.S., as "wind, wind gusts, hail, rain, tornadoes, or cyclones caused by a hurricane which results in direct physical loss or property damage." "Hurricane" also is defined as a storm system that has been declared a hurricane by the National Hurricane Center of the National Weather Service. Additionally, "hurricane coverage" is defined as coverage for loss or damage caused by windstorm during a hurricane.

Since its creation, the FWUA has paid a total of \$442 million in claims due to hurricane damages and \$81.5 million in claims due to damages from windstorm, other than hurricane. In 1999, the FWUA paid \$32.6 million in claims due to hurricane damages and \$5.1 million in claims due to windstorm damage, other than hurricane.

Deductibles

Florida law requires the FWUA to offer certain minimum and maximum deductibles that apply to the peril of "hurricane." The FWUA offers a separate deductible for the peril of wind, other than hurricane. If an insured property sustains damage during a hurricane, the hurricane deductible would apply, and if an insured property sustains damage during a tropical storm, the wind deductible would apply.

Eligibility for Coverage

As provided in statute, to be eligible for windstorm coverage by the FWUA, the property must be located within the geographic boundaries of the FWUA, and the policyholder or applicant must be unable to procure windstorm coverage through the voluntary market. Additionally, certain policyholders whose properties are located in Special Flood Hazard

Areas, as defined by the National Flood Insurance Program, are required to carry flood insurance as a precondition of eligibility for windstorm coverage by the FWUA.

Board of Directors

The FWUA operates under a fifteen member board of directors which includes the Insurance Consumer Advocate, one consumer representative appointed by the Insurance Commissioner, one consumer representative appointed by the Governor, and twelve members appointed by the insurance industry.

Coverages

The FWUA's standard windstorm policy offers replacement cost coverage for the covered building and any appurtenant structures (i.e., garages). The FWUA offers actual cash value for contents coverage.

Eligible areas

An area of the state is eligible for coverage by the FWUA, if it is deemed eligible by the Department of Insurance (DOI), which uses the following criteria to determine eligibility:

- ◆ economic growth and development is being stifled due to the lack of availability of windstorm insurance;
- ◆ the area has adopted and is enforcing the State Minimum Building Codes for new construction; and
- ◆ extending FWUA coverage in the area would implement and further the policies and objectives set forth in state law.

C. EFFECT OF PROPOSED CHANGES:

HB 477 would make a number of changes to s. 627.351(2), F.S., which governs the FWUA.

Covered Perils

FWUA coverage would be narrowed from the peril of windstorm to the peril of hurricane. FWUA policyholders would have to obtain coverage for the peril of windstorm (e.g., tornadoes) from an insurer other than the FWUA. The FWUA would have to determine whether damages were caused the peril of windstorm or the peril of hurricane.

Board of Directors

The composition of the board would be amended. While the Insurance Consumer Advocate would remain on the board, the twelve members appointed by the insurance industry would be narrowed to six. The Insurance Commissioner and the Governor would appoint 4 consumer representatives each.

Coverages

Policyholders would be offered a choice of actual cash value or replacement costs for all covered losses. Policyholders would not be required to pay more than the approved rate of the voluntary market insurer with the highest percentage of market share (i.e., State Farm).

The FWUA would be required to grant credits against premiums to policyholders who:

- ◆ carry flood insurance,

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- ◆ carry windstorm insurance,
- ◆ mitigate the losses from damage resulting from a hurricane.

Eligible Areas

Beginning October 1, 2000, no area or county would be eligible for hurricane coverage from the FWUA for more than 2 consecutive years. An area or county that wishes to remain eligible for coverage by the FWUA would be required to petition the DOI to redetermine eligibility.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. 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:

Restricting the FWUA to coverage for the peril of hurricane could reduce the amount and frequency of claims. In the past 30 years, the FWUA has paid \$81.5 million in claims for the peril of windstorm, other than hurricane, as compared to \$442 million in claims for the peril of hurricane. In 1999, the FWUA paid \$32.6 million in claims due to hurricane damages and \$5.1 million in claims due to windstorm damages, other than hurricane.

D. FISCAL COMMENTS:

None

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The line between the peril of windstorm and the peril of hurricane is not always clear, and this could raise the questions of whether certain damages were caused by the peril of hurricane or the peril of windstorm *caused* by hurricane and whether the FWUA should pay certain claims.

It is unclear whether the FWUA could charge the approved rate of the voluntary market insurer with the highest percentage of market share for replacement costs or actual cash value. For example, if the insurer with highest percentage market share charges a rate for hurricane insurance with replacement cost coverage of \$100 and \$50 for hurricane insurance with actual cash value coverage. It is unclear which rate the FWUA would be required to follow.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

**COMMITTEE ON INSURANCE:**

Prepared by:

Staff Director:

Meredith Woodrum Snowden

Stephen Hogge

**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON INSURANCE:**

Prepared by:

Staff Director:

Meredith Woodrum Snowden

Stephen Hogge