

**STORAGE NAME:** h1643a.in.doc  
**DATE:** April 20, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
INSURANCE  
ANALYSIS**

**BILL #:** HB 1643  
**RELATING TO:** Insurance risk apportionment plans  
**SPONSOR(S):** Representative(s) Goodlette and Bennett  
**TIED BILL(S):**

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

- (1) INSURANCE YEAS 12 NAYS 0
- (2) FISCAL POLICY & RESOURCES
- (3) COUNCIL FOR COMPETITIVE COMMERCE
- (4)
- (5)

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I. SUMMARY:

Currently, there exist two state-created associations providing property insurance to persons unable to obtain coverage from an authorized insurer: the Florida Windstorm Underwriting Association (FWUA) and the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA). These associations comprise what is known as the "residual market" for property insurance.

HB 1643 would create the Citizens Property Insurance Corporation by renaming the Florida Residential Property and Casualty Joint Underwriting Association as the Citizens Property Insurance Corporation and transferring all policies from the Florida Windstorm Underwriting Association to the Citizens Property Insurance Corporation effective October 1, 2001. Citizens Property Insurance Corporation would offer residential and commercial property insurance coverage.

The rates for all policies issued by the Corporation would be subject to the rate standards currently set forth in statute for the RPCJUA; that is, they must be no lower than the average rates charged by the insurer having the highest average rates among the top 20 insurers with the greatest total direct written premium in the state for that particular line of insurance. The Corporation would not have the option of arbitration in a disputed rate filing.

The governing board of the Corporation would be composed of a board of governors consisting of 7 members appointed by the Insurance Commissioner to serve 3-year terms. The Insurance Commissioner also would designate the board chair.

Surplus lines insurers would be made subject to assessments to fund the deficits of the Corporation.

The Citizens Property Insurance Corporation would be exempt from the state corporate income tax and premium tax.

This bill would take effect on July 1, 2001.

**On April 20, 2001, the Committee on Insurance adopted an amendment that is traveling with the bill. See Section VI. for an explanation.**

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes  No  N/A

Policyholders who currently receive the windstorm-only portion of their property insurance coverage through the FWUA would be required to obtain the underlying portion of their policy through the Citizens Property Insurance Corporation.

2. Lower Taxes Yes  No  N/A

The Citizens Property Insurance Corporation would be exempt from state corporate income tax and premium taxes.

3. Individual Freedom Yes  No  N/A

Policyholders who currently receive the windstorm-only portion of their property insurance coverage through the FWUA would be required to obtain the underlying portion of their policy through the Citizens Property Insurance Corporation.

4. Personal Responsibility Yes  No  N/A

5. Family Empowerment Yes  No  N/A

B. PRESENT SITUATION:

There are two state-created associations providing property insurance to persons unable to obtain coverage from an authorized insurer: the Florida Windstorm Underwriting Association (FWUA) and the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA). These associations comprise what is known as the "residual market" for property insurance.

**The Florida Windstorm Underwriting Association (FWUA)**

The FWUA was created by the Legislature in 1970 in response to problems of availability of property insurance in certain coastal areas. The FWUA offers coverage only for windstorm and hail losses, and only in those areas where the Department of Insurance determines that windstorm coverage is unavailable and certain economic conditions exist. Coverage was initially limited to the coastal areas of eight counties. By the time of Hurricane Andrew in 1992, the FWUA had expanded to areas in 23 counties. Coastal areas in 29 of Florida's 35 coastal counties are now included in the FWUA.<sup>1</sup> In Dade, Broward, and Palm Beach Counties, the entire area east of Interstate 95 is eligible for FWUA coverage and all of Monroe County is eligible, but in other counties eligibility is typically limited to about 1,000 to 1,500 feet from the coast. In 1998, the Legislature prohibited further expansion of the eligible boundaries of the FWUA. Outside of FWUA eligible areas, insurers must include windstorm coverage in every residential property insurance policy they write. Inside FWUA areas, insurers are free to write policies that exclude windstorm coverage.

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<sup>1</sup> Counties eligible for coverage through the FWUA include parts of Bay, Brevard, Broward Charlotte, Collier, Dade, Duval, Escambia, Flagler, Franklin, Gulf, Hernando, Indian River, Lee, Levy, Manatee, Monroe, Nassau, Okaloosa, Palm Beach, Pasco, Pinellas, St. Lucie, Santa Rosa, Sarasota, Volusia, Wakulla, and Walton, and all of Monroe county.

The FWUA insures homes, mobile homes, condominiums, and apartments, as well as commercial business property. FWUA policyholders also must obtain a separate policy from another insurer to cover perils other than windstorm, such as fire, theft, and liability. As of March 31, 2001, the FWUA had 429,672 policies in force, representing exposures of \$93.3 billion.

The FWUA operates pursuant to a plan of operation approved by the Department of Insurance and is governed by a 15-member board of directors, including 12 representatives of the insurance industry and 3 representatives of consumers, including the Insurance Consumer Advocate.

Rates for FWUA coverage must be filed for approval by Department of Insurance and are subject to the same rating laws that apply to other residential property insurers. Rates may not be excessive, inadequate, or unfairly discriminatory, based on a variety of factors. In 1997, the Legislature required the plan of operation to provide, by January 1, 1999, a means of assuring that FWUA's rates are "reflective" of approved hurricane rates in the voluntary market.

The FWUA is authorized to assess all Florida property insurers and their policyholders to fund a deficit if premiums and other financial resources are not sufficient to cover claims. Regular assessments may be made against property insurers, up to 10 percent of the FWUA's deficit, or 10 percent of property insurance premiums in the state, whichever is greater. Insurers may later recoup these assessments from their policyholders after getting a rate filing approved. If the deficit exceeds the maximum regular assessment, emergency assessments may be imposed on all new and renewal property insurance policies in the state, also limited to the greater of 10 percent of the deficit, or 10 percent of the prior year's statewide premium for property insurance. Unlike regular assessments, which an insurer must initially pay out of its own funds, insurers merely collect and remit emergency assessments as policies are written and renewed. An insurer can obtain credits against regular assessments by voluntary writings in FWUA-eligible areas, but not credits against emergency assessments. The board of the FWUA may pledge emergency assessments to secure debt financing.

The policies issued by the FWUA are subject to the premium tax. Additionally, the income of the FWUA is subject to the federal income tax and the bonds issued by the FWUA are not tax exempt.

The assessment base of the FWUA is \$4.6 billion. Since Hurricane Andrew in 1992, the FWUA has levied regular assessments 5 times: in 1992 for \$16.2 million; in 1993 for \$3.2 million; in 1995 for \$117 million; and in 1998 for \$100 million. The FWUA has never levied an emergency assessment.

The FWUA has an average annual expected hurricane loss of \$318 million and a 100-year probable maximum loss of \$5.4 billion. The FWUA currently has \$300 million cash on hand.

### **Residential Property and Casualty Joint Underwriting Association (RPCJUA)**

The Legislature created the RPCJUA in 1992 in response to the severe market disruption following Hurricane Andrew. The RPCJUA provides residential property insurance statewide, insuring all perils covered under a standard residential policy (except in FWUA-eligible areas, where a RPCJUA policy excludes windstorm coverage). The RPCJUA operates pursuant to a plan of operation approved by the department and is governed by a 13-member board, including 7 members representing insurers and 6 members representing consumers and other noninsurer interests.

In 1995, the Legislature required the RPCJUA to charge the same rates charged by the insurer with the highest rates in the county, among the top twenty insurers in the state by premium volume.

The RPCJUA may levy regular and emergency assessments to fund deficits and may pledge emergency assessments to secure debt financing, under the same limitations that apply to the FWUA. The assessment base of the RPCJUA is \$4.6 billion. The RPCJUA has levied assessments in 1994 for \$17.7 million, and in 1995, for \$22.8 million. The RPCJUA has never levied an emergency assessment.

Beginning in 1995, the Legislature, the Department of Insurance, and the RPCJUA addressed depopulation of the RPCJUA by encouraging insurers to take policies out of the RPCJUA, including the award of cash bonuses and assessments exemptions.

Presently, the RPCJUA has 68,740 policies representing an exposure of \$11.5 billion with a PML of \$749 million.

**C. EFFECT OF PROPOSED CHANGES:**

HB 1643 would amend s. 627.351(6), F.S., relating to insurance risk apportionment plans. The bill would create the "Citizens Property Insurance Corporation" (Corporation) as a public benefits corporation.

HB 1643 would rename the Residential Property and Casualty Joint Underwriting Association (RPCJUA) as the Citizens Property Insurance Corporation, effective July 1, 2001, to provide residential and commercial property insurance for applicants who are in good faith entitled, but are unable, to procure insurance through the voluntary market.

The Corporation would be governed by a board of governors consisting of 7 members appointed by the Insurance Commissioner to serve 3-year terms. The Insurance Commissioner also would designate the board chair.

Unlike voluntary market insurers, the Corporation would not be required to hold a certificate of authority. The Corporation also would be exempt from state corporate income tax and the premium tax. The Corporation would not be required to participate as a member of the Florida Insurance Guaranty Association, but would be required to pay assessments pledged by the association for bonds for deficits.

The Corporation would be required to offer personal residential lines policies and commercial lines residential policies providing full coverage; dwelling fire policies providing limited coverage; and commercial nonresidential property policies providing wind-only in current FWUA areas.

Effective October 1, 2001, the policies of the Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association would be transferred to the Corporation. These policies would be divided into the following three accounts:

*Personal lines account:* for personal residential policies issued by the Corporation or the Residential Property and Casualty Joint Underwriting Association and renewed by the Corporation on risks not located within the areas eligible for coverage in the FWUA area as that area was defined on January 1, 2001;

*Commercial lines account:* for commercial residential policies issued by the Corporation or by the Residential Property and Casualty Joint Underwriting Association and renewed by the Corporation on risks not located within areas eligible for coverage in the FWUA; and,

*High risk lines account:* for personal residential, commercial residential and commercial nonresidential property policies issued by the Corporation or transferred to it on risks that are located in FWUA areas.

The three accounts could be merged into a single account after financing obligations entered into by the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association are no longer outstanding.

All authorized insurers, including surplus lines insurers, in the state writing "subject lines of business" in the state would be required to participate in the corporation. "Subject lines of insurance" would be defined as "insurance on real or personal property, as defined in s. 624.604, including, but not limited to, insurance for fire, industrial fire, allied lines, farm owners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and liability coverage on all such insurance, excluding inland marine as defined in s. 624.607(3) and excluding vehicle insurance as defined in s. 624.605(1) other than insurance on mobile homes used as permanent dwellings."

If any of the accounts established by the Corporation experiences a deficit, insurers participating in the Corporation would be subject to regular assessments.

The Florida Surplus Lines Service Office would be required to collect emergency assessments levied on participating surplus lines insurers by the Corporation to pay covered losses.

The rates for all policies issued by the Corporation would be subject to the rate standards currently set forth in statute for the RPCJUA; that is, they must be no lower than the average rates charged by the insurer having the highest average rates among the top 20 insurers with the greatest total direct written premium in the state for that particular line of insurance. The Corporation would not have the option of arbitration in a disputed rate filing. Additionally, the Corporation no longer would be required to file its rates on a use and file basis.

When the Corporation enters into a take-out plan with a voluntary market insurer, the insurer would be required to

- Pay to the producing agent, for one year, the greater of the insurer's usual and customary commission and that of the Corporation; or
- Offer to allow the producing agent to continue to service the policy for at least one year and pay the agent the greater of the insurer's usual and customary commission and that of the Corporation.

If the agent were unable or unwilling to accept appointment by the new insurer, the new insurer would be required to pay the agent the greater of its usual and customary commission and that of the Corporation.

Limited apportionment company status for small insurers currently allowed under the FWUA law would be transferred to the high-risk account of the Corporation.

**D. SECTION-BY-SECTION ANALYSIS:**

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Citizens Property Insurance Company would be exempt from the state premium tax and the state corporate income tax. The FWUA paid \$4.3 million in premium taxes for 2000.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Offering residual market property insurance through a single corporation could lower administrative costs.

Policyholders that have policies issued through the FWUA and, therefore, are included in the high-risk account of the Corporation could experience higher property insurance rates since the entire policy would be written at residual market rates.

Policyholders currently in the FWUA would be issued one, rather than two, policies.

D. FISCAL COMMENTS:

N/A

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:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 20, 2001, the Committee on Insurance adopted an amendment to HB 1643. The amendment would make the following changes to the bill:

This amendment would make a number of changes to HB 1643, as follows:

- Surplus lines insurance policyholders, rather than surplus lines insurers, would be subject to regular deficit assessments. Surplus lines agents would be required to collect both regular and emergency assessments from the assessable insureds.
- The plan of operation of the Corporation would be required to include a coinsurance program, whereby the Corporation and voluntary market insurers would enter into risk sharing agreements. The voluntary market insurer would offer an "all other perils" policy, while the Corporation would offer coinsurance of either 90 percent or 50 percent. Coinsurance would be subject to certain rate standards.
- The rates for wind-only personal lines residential policies would be required to be actuarially sound and not competitive with the rates of voluntary market insurers.
- The Corporation would be exempt from the premium tax, but would collect an amount equal to the premium tax to augment the financial resources of the Corporation.
- The Corporation would be required to file quarterly and annual financial statements with the Department of Insurance.
- The Florida Windstorm Underwriting Association would be prohibited from entering into any takeout agreements after July 1, 2001.
- The transfer of policies, assets, and liabilities from the FWUA and the RPCJUA to the Corporation would occur on January 1, 2002.
- The Florida Insurance Guaranty Fund would be divided into an additional fourth account relating to medical malpractice.
- The board of directors of the Corporation would be amended to include 9 members. The members of the board would be 4 Insurance Consumer Advocates appointed under s. 627.0613, a representative of a financial institution involved in residential mortgage lending in the

**STORAGE NAME:** h1643a.in.doc

**DATE:** April 20, 2001

**PAGE:** 8

association's eligible areas; a realtor engaged in the sale of residential property in FWUA-eligible areas; a representative with expertise in the State Minimum Building Codes and coastal construction; a policyholder; and a property and casualty insurance agent.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

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Meredith Woodrum Snowden

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Stephen T. Hogge