

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SJR 300

SPONSOR: Senator Silver

SUBJECT: Joint Resolution-Limitation on Windstorm Insurance Rate Increases

DATE: April 4, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Favorable
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Joint Resolution creates section 19 of Article X of the *Florida Constitution* to provide for a limitation on rate increases for windstorm insurance to 3 percent of the rate for the previous year. It would allow the Legislature, by three-fifths vote of the membership of each house, to allow rate increases in excess of this 3 percent limitation.

II. Present Situation:

Constitutional Amendment Process

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the constitution, along with the methods for approval or rejection of proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State or, if pursuant to law enacted by the affirmative vote of three fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing. If the proposed amendment is approved by a vote of the electors, it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.

Windstorm Coverage

The Insurance Code defines “windstorm coverage” as “wind, wind gusts, hail, rain, tornadoes, or cyclones caused by or resulting from a hurricane which results in direct physical loss or damage

to property” (s. 627.4025(2)(b), F.S.). “Hurricane coverage” is defined as coverage for loss or damage caused by the peril of windstorm during a hurricane (s. 627.4025(2)(a), F.S.). Insurance companies may not write a residential property insurance policy without providing windstorm coverage or hurricane coverage (s. 627.0629, F.S.). However, this provision does not apply with respect to risks located in the area eligible for coverage under the Florida Windstorm Underwriting Association (FWUA).

The FWUA, a residual market mechanism formed by the legislature nearly 30 years ago, offers coverage only for windstorm and hail losses in coastal areas in 29 of Florida’s 35 coastal counties. The boundaries of the FWUA directly affect the obligation of private market insurers to provide windstorm coverage. As noted above, outside the 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. Currently, the FWUA has 429,672 policies representing an exposure of \$93.4 billion with a probable maximum loss (PML) of \$5.4 billion.

In May 1999, the FWUA filed a rate increase, which was ultimately approved by an arbitration panel at 96 percent.¹ This percentage represented an overall statewide average, which would be incrementally implemented: the maximum rate increase is capped at 20 percent for the first year, 30 percent for the second year, and 40 percent for each subsequent year. The FWUA is required to apply discounts, thus lowering the amount of premium paid, for loss mitigation retroactively to policyholders who mitigate their homes.

Current Rating Law

All property and casualty insurers authorized to do business in the state are required to file rates for approval with the Department of Insurance (Insurance Commissioner) either 90 days before the proposed effective date (“file and use”) or 30 days after the rate filing is implemented (“use and file”). Under the file and use option, the department may finalize its review by issuing a notice of intent to approve or disapprove within 90 days after receipt of the filing. These notices are “agency action” for purposes of the Administrative Procedure Act, and give the insurer the right to choose an administrative hearing or binding arbitration. Prior to approving or disapproving a rate filing, the department may request additional supporting information for the filing from the insurer, but such a request does not toll the 90-day review period. If the department fails to issue a notice of intent to approve or disapprove within the 90-day review period, the filing is deemed approved. Under the “use and file” option, an insurance company may be ordered by the department to refund a portion of the rate to the policyholder in the form of a credit or refund if it is found to be excessive.

The department may disapprove a rate filing if it determines such rates to be “excessive, inadequate, or unfairly discriminatory.” In making its rating decision, the department must consider, in accordance with generally accepted and reasonable actuarial techniques, various enumerated factors which affect the insurer’s rate filing.

¹ The arbitration panel decision is being challenged by the Department of Insurance.

Moratorium

After Hurricane Andrew, many insurers sought to reduce their exposure to hurricane losses in Florida by non-renewing policies. In response, the Legislature imposed a moratorium on non-renewals, prohibiting insurers from non-renewing any personal lines residential property insurance policies for the purpose of reducing hurricane exposure for a specific period of time. In 1993, the Legislature enacted a 3-year “moratorium phase-out” that limited the number of residential property insurance policies that insurers were permitted to non-renew. In 1996, the Legislature replaced the phase-out with a 3-year “moratorium completion” which ran from June 1, 1996, until June 1, 1999. In 1998, the Legislature again extended the 3-year limitation on termination of residential policies until June 1, 2001 (s. 627.7013 and 627.7014, F.S.).

III. Effect of Proposed Changes:

The Joint Resolution creates section 19 of Article X of the *Florida Constitution* to provide for a limitation on rate increases for windstorm insurance to 3 percent of the rate for the previous year. It would allow the Legislature, by three-fifths vote of the membership of each house, to allow rate increases in excess of this limitation. The following statement would be placed on the ballot:

“CONSTITUTIONAL AMENDMENT, ARTICLE X, SECTION 19: RATES FOR WINDSTORM INSURANCE.--Proposing an amendment to the State Constitution to limit rate increases for windstorm insurance to 3 percent of the rate for the previous year and to allow the Legislature, by an extraordinary vote, to allow rate increases in excess of this limit.”

If the Constitutional amendment is adopted, its effect would be to limit windstorm property insurance rate increases to 3 percent of the previous year rates, which may bear no relationship to actuarial soundness or the appropriate projection of anticipated loss from policies to be issued under that rate. Further, it would take the rate-making decision, now lodged with the Insurance Commissioner, and place it with the Legislature (by a three-fifths vote) as to rate increases exceeding the 3 percent limitation. Also, there are no rate-making standards or criteria that the Legislature would have to follow in determining whether or not a rate increase (over 3 percent) would be necessary. (Also, see Constitutional Issues and Economic Impact, below.)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

As noted under Present Situation, the moratorium law limits the number of residential property insurance policies that insurers are permitted to non-renew for the purpose of reducing their hurricane exposure.² Should this joint resolution pass, the net effect of both the moratorium provision, which requires insurers to write certain policies, and this resolution, which arguably deprives insurers a reasonable rate of return, could be challenged as an unconstitutional “regulatory taking.”

This issue was argued before the U.S. Court of Appeals for the Eleventh Circuit in 1998 when the moratorium statute was challenged. The court upheld the facial constitutionality of the moratorium law, but left open the possibility that the statute could be unconstitutional as applied, in the case of *Vesta Fire Ins. Co. v. State of Florida, Department of Insurance*, (141 F.3d 1427). The Court determined that a factual issue existed as to whether or not the moratorium provision was an unconstitutional “regulatory taking.” The Fifth Amendment states, in part “...nor shall private property be taken for public use, without just compensation.” The Court stated that the Supreme Court recognized three factors that must be considered to identify a regulatory taking: (1) the economic impact of the challenged regulation or statute on the plaintiff; (2) the extent to which the regulation interferes with investment-backed expectations; and (3) the nature of the challenged action. The Court held that it was improper for the lower court to grant summary judgment for the State on this issue and remanded the case for evidentiary findings. However, upon remand, the insurer and the State of Florida reached a settlement in this case.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Consumers would benefit because the windstorm portion of their homeowners policy would not dramatically increase unless the Legislature passed legislation implementing an increase of more than 3 percent.

The effect of this bill could result in insurance companies not writing new residential policies and non-renewing residential policies (subject to the moratorium limitation) because insurers may not be able to obtain what they consider to be adequate rates or to obtain a quick resolution as to a rate request which is more than 3 percent. This could have a detrimental impact on consumers of reducing the availability of coverage if insurers are less willing or able to write new policies. As a result, the number of policies within the residual

² This is a 3-year “moratorium phase-out” which is scheduled to expire on June 1, 2001.

market (FWUA and RPCJUA³) could greatly increase. Further, insurers who would write residential coverage could be forced to use their surplus to fund windstorm (hurricane) losses should rate increases, over the specified percentage, not be approved by a three-fifths vote of the Legislature. If an insurer is rendered insolvent, the Florida Insurance Guaranty Association would pay claims, up to certain limits, funded by assessments against authorized property and casualty insurers.

C. Government Sector Impact:

The Legislature, rather than the Insurance Commissioner, would be responsible for determining whether rate increases (exceeding the 3 percent limitation specified in the joint resolution) were necessary.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

³ Florida Residential Property and Casualty Joint Underwriting Association. The RPCJUA, formed in 1992, 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).