

# 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: CS/SB 1126

SPONSOR: Banking and Insurance Committee, Senator Posey and others

SUBJECT: Property Insurance Plans

DATE: February 4, 2002 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bill 1126 creates the “Insurance Policy Holder Protection Act” which establishes a policyholder’s right to select and maintain an insurance agent, increases agent commission payments by insurers, and revises agent policy servicing procedures under specified insurance risk apportionment plans. Specifically, the bill provides for the following:

- Creates “consumer choice” protections which apply to insurance risk apportionment plans, depopulation provisions, and the market assistance program;
- Establishes the right of policyholders within the Florida Windstorm Insurance Underwriting Association (FWUA) and the Florida Residential Property and Casualty Joint Underwriting Association (JUA), as well as policyholders in other insurance risk apportionment plans, to select and maintain an insurance agent of their own choosing, which right may not be cancelled by any plan of operation or depopulation program of an insurance risk apportionment plan;
- Modifies the current law provision which disqualifies FWUA and RPCJUA policyholders from remaining in such associations if they receive a take-out offer of coverage by mandating that the provision is subject to the specified “consumer choice” protections;
- Requires that if the FWUA or RPCJUA enter into a contractual agreement under a depopulation or take-out plan, the take-out insurer must pay to the previous agent an amount that is the greater of the insurer’s or association’s usual and customary commission for the policy or, offer to allow the agent to continue servicing the policy for a period of not less than 1 year and pay the agent the greater of the insurer’s or association’s commission. If the agent is either unwilling or unable to accept the offer,

the insurer must still pay the agent the greater of the insurer's or association's commission; and,

- Provides that the area within Port Canaveral (in Brevard County) be eligible for windstorm coverage within the FWUA.

This bill substantially amends the following sections of the Florida Statutes: 627.351 and 627.3511. The bill creates section 627.3517, Florida Statutes.

## II. Present Situation:

### **Florida Windstorm Underwriting Association (FWUA) and the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA)**

Two state-created associations provide property insurance to persons unable to obtain coverage from a private authorized insurer - the Florida Windstorm Underwriting Association (FWUA) and the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA). Both associations are commonly referred to as residual market insurers.<sup>1</sup> These two associations are often called "insurers of last resort" because they offer the last opportunity for persons to obtain insurance coverage.

The *Florida Windstorm Underwriting Association (FWUA)*, created in 1970, provides windstorm and hail coverage for residential and commercial property only in those geographical areas of the state determined by the Department of Insurance as meeting statutory criteria of eligibility (s. 627.351(2), F.S.). In order to obtain coverage for other perils such as fire, theft, and liability, a policyholder must obtain a separate "ex-wind" policy from another insurer. Currently, the FWUA has 414,123 policies representing an exposure of \$98 billion with a probable maximum loss (PML) of \$4.7 billion.<sup>2</sup> Sixty-five percent of the 414,123 policies are located in Dade, Broward, Palm Beach, and Monroe counties.

Coastal areas of 29 of Florida's 35 coastal counties are currently eligible for FWUA coverage, generally within a distance of 1,000 feet from the coast, but in Dade, Broward, and Palm Beach counties, the area east of I-95 is eligible, which extends as far as 5 miles from the coast. The entire area of Monroe County is eligible. Further expansion of eligible areas is currently prohibited. The boundaries of the FWUA directly affect the obligation of private market insurers to provide windstorm coverage. 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.

In May 1999, the FWUA filed a rate increase for its residential property, which was ultimately approved by an arbitration panel at 96 percent. This percentage represents an overall statewide

<sup>1</sup> The "residual market" for insurance is typically a nonprofit state-created mechanism that provides insurance coverage to persons who are insurable but unable to obtain coverage from any of the licensed insurance companies that compose the "voluntary" market." Florida has created residual markets for automobile, medical malpractice, and property insurance. These entities are also referred to as insurance risk apportionment plans under s. 627.351, F.S. The Legislature has also created a residual market mechanism for workers' compensation insurance.

<sup>2</sup> As of December 31, 2001.

average, which is being 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 to policyholders who mitigate their homes. According to representatives with the FWUA, they have not implemented a rate increase for their commercial property for at least 10 years.

Currently, the FWUA operates under a 15-member board, which includes 12 members representing and appointed by various segments of the insurance industry pursuant to the FWUA plan of operation, plus the Insurance Consumer Advocate and two consumer representatives (one appointed by the Insurance Commissioner and one appointed by the Governor). The Department of Insurance must approve the plan of operation of the FWUA. Otherwise, the department generally has the same regulatory powers over the FWUA's premiums and policies as it has with respect to voluntary market insurers.

The *Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA)*, created in 1992 after Hurricane Andrew, provides residential property insurance coverage in all areas of the state, (s. 627.351(6), F.S.).<sup>3</sup> The policies provide coverage for all perils covered under a standard residential policy, subject to certain underwriting requirements. The RPCJUA policies exclude windstorm coverage on property located in an area eligible for windstorm coverage from the FWUA. The JUA operates pursuant to a plan of operation approved by the department, and is governed by a board consisting of seven members representing insurers and six members representing non-insurer interests, including consumers.

As of November 30, 2001, the RPCJUA has a total of 97,472 policies representing an exposure of \$19.1 billion with a probable maximum loss (PML) of \$1.24 billion. Ninety-nine percent of its personal lines residential policies (97,291) are located in Dade, Broward, and Palm Beach counties while 84 percent of its commercial lines residential policies (181) are located in those same three counties.

Claims paid by the FWUA and JUA are funded by premiums paid by their policyholders and, if necessary, assessments on all property insurers in the state and their policyholders. Both associations must purchase a specified amount of reinsurance from the Florida Hurricane Catastrophe Fund and may obtain additional private reinsurance. Either association may borrow, issue bonds, and secure other types of debt financing, and may pledge assessment revenues as security.

RPCJUA premiums are required by law to be set in each county at the highest rates charged by the top 20 insurers in the state. This requirement does not apply to FWUA premiums, which are subject to the same requirements that apply to authorized insurers generally and, as such, rates may not be excessive, inadequate, or unfairly discriminatory. However, legislative intent provides that FWUA rates must not be competitive with voluntary market rates and requires its

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<sup>3</sup> The RPCJUA offers two lines of policies - personal lines residential which applies to homeowners, tenants, condominium unit owners, dwelling fire, and mobile home policies and commercial lines residential which applies to condominium association, apartment building and homeowner association policies.

plan of operation to provide a means of assuring that FWUA rates are reflective of department-approved hurricane rates in the voluntary market.

If necessary to fund losses, both the FWUA and RPCJUA may impose regular assessments against all authorized property insurers, in proportion to their statewide market share of premiums. Regular assessments, in any one-year, may not exceed the greater of 10 percent of the deficit or 10 percent of the prior year's statewide premium for property insurance. Insurers are permitted by law to recoup regular assessments from their policyholders in future rate filings. If the deficit exceeds the maximum amount that can be obtained from regular assessments, all new and renewal property insurance policies in the state are subject to emergency assessments, to be collected by insurers as surcharges paid by their policyholders. Emergency assessments are generally limited to the same amount each year as regular assessments and may be pledged by the board of the FWUA or RPCJUA to secure debt financing necessary to pay claims, which assessments would continue until the debt is satisfied.

### **Reducing the size of the RPCJUA and the FWUA: Depopulation Programs**

The size of the FWUA and the RPCJUA (i.e., the number of policies) affects all Florida property owners. That is because assessments levied on insurance companies and their policyholders provide the funding for these two entities whenever the premiums charged by the FWUA and the RPCJUA are *not sufficient* to pay claims. In an effort to minimize these assessments to all Florida insurance policyholders, both associations have initiated depopulation programs to reduce their size, thus reducing their exposure.

At its peak, the RPCJUA had 937,000 policies in September 1996, making it the second-largest property insurer in Florida behind State Farm. Since that time, the RPCJUA has greatly reduced its size (currently 97,472 policies) by transferring i.e., *depopulating*, as many policies as possible to private insurance companies. To date, insurance companies have removed about 1.2 million policies from the RPCJUA through its depopulation programs.<sup>4</sup> Further, the association, through its *keep-out* programs has kept out over 30,000 policies.<sup>5</sup> In the past two and a half years, Clarendon National Insurance Company has taken out over 81,000 policies and Qualsure Insurance Company has removed about 45,000 policies from the RPCJUA.

The FWUA has grown steadily since Hurricane Andrew (currently 414,123 policies) and has likewise instituted depopulation programs, although not nearly to the degree of the RPCJUA. In July 2001, the FWUA had 58,000 of its policies removed by Atlantic Preferred Insurance Company and, prior to that take-out, Clarendon National Insurance Company assumed 37,312 policies while Qualsure Insurance Company removed 40,465 policies.

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<sup>4</sup> Under the depopulation program, the RPCJUA may provide bonuses or assessment exemptions as incentives to private insurers. The FWUA does not have the authority to provide such incentives.

<sup>5</sup> The depopulation program was created in 1995 as an incentive designed to encourage insurers to take over risks insured by the RPCJUA or to provide coverage for a risk that would otherwise become an applicant for RPCJUA coverage, i.e., keep-out plan (ch. 95-276, L.O.F.; s. 627.3511, F.S.).

### **Offers of Coverage to FWUA and RPCJUA Policyholders from Insurers in the Voluntary Market and Agent Commissions**

Currently, if the FWUA obtains an offer from an authorized insurer to cover a risk at its approved rates under either a standard or basic policy including wind coverage, the risk is no longer eligible for coverage through the FWUA. Upon termination of eligibility, the FWUA must provide written notice to the policyholder and agent of record stating that the FWUA policy must be canceled 60 days after the date of the notice because of the offer of coverage from an authorized insurer.<sup>6</sup> The FWUA only allows its policies to be removed during renewal periods so as to minimize the inconvenience and confusion to the policyholder.

The above offer of coverage procedure also applies to the RPCJUA.<sup>7</sup> However, the impact of this procedure on FWUA policyholders is substantially different than on policyholders within the RPCJUA. Requiring a FWUA policyholder to accept a policy from a take-out insurer forces that policyholder to lose not only their FWUA (wind) policy, but also their ex-wind policy (if the ex-wind insurer is not willing to write the wind), assuming that the policyholder desires to have windstorm coverage or is required to do so under the terms of his or her mortgage. Further, some policyholders may lose multi-policy discounts or have to accept a non-A rated (by A.M Best) carrier. This has a detrimental impact on the ex-wind insurer, as well, which loses the business.

The FWUA currently pays insurance agents commissions (15 percent for commercial and 11 percent for residential policies) for writing policies for the association. Such commissions are paid at the beginning of the policy period for one year and are also paid at the time the policy is renewed. Should the FWUA enter into a contractual agreement with a take-out company, the producing agent of the FWUA is not further compensated and may lose the policy if such agent is not appointed by the take-out insurer.

The RPCJUA also pays agents their full yearly commission at the beginning of each policy period (12.5 percent for commercial and 10 percent for residential policies). Should a policy be removed from the RPCJUA (within the first 30 days of coverage) and the producing agent is not currently appointed by the take-out insurer, then the insurer must either appoint that agent to service the risk or, if the insurer places the coverage with a new agent, that new agent must pay 50 percent of the first year's commission to the producing agent. An exception is provided if the new agent is an employee or exclusive agent of the new insurer, then the new agent must pay a policy fee of \$50 to the producing agent in lieu of splitting the commission.

Under the current agent bonus depopulation procedures of the RPCJUA, should a policy be removed from the association, the producing agent is entitled to retain any unearned commission on the policy and the take-out insurer must pay to that agent an amount equal to the insurer's usual and customary commission for the policy, if the term of the policy is in excess of 6 months, or one half the amount if the policy term is 6 months or less. Alternatively, the take-out insurer may offer to allow the producing agent to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission.

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<sup>6</sup> Ch. 97-55, L.O.F.; s. 627.351(2), F.S.

<sup>7</sup> S. 627.351(6)(c)5a., F.S.

## **The Florida Market Assistance Program**

Created by the Legislature in 1985, the Florida Market Assistance Program (FMAP) is a private non-profit service organization primarily dedicated to helping consumers find property and casualty insurance coverage for both residential and commercial properties from authorized insurers in the private market (s. 627.3515, F.S.). It is funded from annual assessments on property and casualty insurers in Florida. FMAP also assists in depopulating the RPCJUA by providing reports of RPCJUA policies to subscribing insurance agents.

### **Expanding the Geographical Boundaries of the Florida Windstorm Underwriting Association**

Current law prohibits the expansion of the geographical boundaries of the FWUA.<sup>8</sup> In 1998, the Legislature provided that eligibility within the FWUA would not be extended to any area which was not eligible on March 1, 1997.<sup>9</sup> Prohibiting further expansion of the FWUA mitigates the growth in the number of policies and exposure insured by the FWUA and reduces the potential for unfunded liability. The area within the FWUA consists of coastal areas within 29 of Florida's 35 coastal counties.

Port Canaveral is in Brevard County and consists of 75 buildings which are all commercial property covering a 700 acre area. According to proponents of this bill, the property consists of cargo storage establishments, seafood processing facilities, marine repair shops, and restaurants which have a total assessed value of over \$44 million. Some of the tenants are unable to obtain windstorm insurance according to the proponents. The area within the Port is bordered on the east by the Atlantic Ocean, on the south by the City of Cape Canaveral, on the west by the Banana River and on the north by U.S. Government property.

### **III. Effect of Proposed Changes:**

**Section 1.** Declares that the act may be cited as the "Insurance Policy Holder Protection Act."

**Section 2.** Amends subsection (2) of section 627.351, F.S., relating to the Florida Windstorm Underwriting Association (FWUA), to provide that if a policyholder accepts an offer of coverage through the Florida Market Assistance Program (FMAP), or through a mechanism established by the FWUA, either before the policy is issued by the FWUA or during the first 30 days of coverage by the FWUA, and the producing agent who submitted the policyholder's application of the risk to the FWUA is not currently appointed by the insurer, the insurer must:

- 1) pay the agent, for the first year, an amount that is the *greater* of the insurer's usual and customary commission or a fee equal to the usual and customary commission of the FWUA, or,
- 2) offer the agent to continue servicing the policy for 1 year and offer to pay the agent the *greater* of the insurer's or the FWUA's commission. Should the agent be unwilling or unable to accept the appointment, the new insurer must pay the

<sup>8</sup> Ch. 98-173, L.O.F.; s. 627.351(2), F.S.

<sup>9</sup> Except for petitions for coverage which the Department of Insurance would have a hearing on prior to May 9, 1997.

agent in accordance with 1) above. (Note: the term “unable” is taken to mean an agent who is an exclusive agent or direct writer for an insurance company.)

If the FWUA enters into a contractual agreement for a take-plan after the first 30 days of coverage by the association, the producing agent of the FWUA is allowed to retain any unearned commission on the policy, and the insurer must compensate the agent according to the provisions of 1) and 2) above.

The bill modifies current law which provides that if the FWUA obtains a take-out offer, the policyholder is disqualified from being eligible for coverage through the FWUA. In effect the current law forces policyholders to accept an offer of coverage from an insurer they may not want. Under the bill, this disqualification provisions is subject to the “consumer choice” provision under Section 4. That provision allows policyholders the option to continue coverage through the FWUA subject to their agent being unwilling or unable to be appointed by the take-out insurer.

The bill amends the agent compensation provisions applying to the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) to require the same agent payment procedures, as to policies removed within the first 30 days of coverage by the association, as are mandated above under the provisions of 1) and 2) for the FWUA. The bill also modifies the current law to provide that if the JUA obtains a take-out offer, the JUA policyholder is disqualified from being eligible for coverage from the JUA (this provision is similar to the “disqualification” provision for the FWUA, above).

**Section 3.** Amends s. 627.3511, F.S., relating to agent bonus provisions under the depopulation of the RPCJUA, to increase the compensation for producing agents if an RPCJUA policy is taken out by an insurance company. Specifically, the take-out insurer must either pay the producing agent of the RPCJUA policy for the first year the *greater* of the insurer’s usual and customary commission or a *fee equal to* the usual and customary commission of the RPCJUA, or, in offering to allow the agent to continue servicing the policy (which is the current law), to pay the agent the *greater* of the insurer’s or association’s commission. Should the agent be unwilling or unable to accept appointment by the take-out insurer, then that insurer must pay the agent according to the above provisions. (Note: the term “unable” is taken to mean an agent who is an exclusive agent or direct writer for an insurance company.)

**Section 4.** Creates s. 627.3517, F.S., entitled “Consumer Choice,” to provide that no provisions of ss. 627.351, 627.3511, or s. 627.3515<sup>10</sup> shall be construed to impair the right of any insurance risk apportionment plan policyholder, upon receipt of any keep-out or take-out offer, to retain his or her current agent, so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise authorized to place business with such plan.

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<sup>10</sup> The insurance risk apportionment plans under s. 627.351 refer to the six joint underwriting associations which include the FWUA and the RPCJUA. Of the other four associations, two are not currently operating (Casualty Insurance Risk Apportionment Plan, applies to political subdivisions in the state, and the Property and Casualty Insurance Risk Apportionment Plan); and two are operating, but have no current depopulation programs (Motor Vehicle Insurance Risk Apportionment Plan and the Medical Malpractice Insurance Risk Apportionment Plan). Section 627.3511 refers to the RPCJUA depopulation statute and s. 627.3515 applies to the Florida Market Assistance Program.

Provides that this right can't be canceled or compromised by any rule, plan of operation, or depopulation plan of any insurance risk apportionment plan, including plans described under s. 627.351, s. 627.3511, or s. 627.3515. It provides that if a policyholder's agent is unable or unwilling to be appointed by the take-out insurer, the policy holder is not disqualified from participating in the insurance risk apportionment plan because of an offer of coverage in the voluntary market. It further provides that any plan of operation or depopulation of the FWUA or the JUA is subject to the agent commission payment provisions of the bill. It also authorizes the Department of Insurance to adopt rules to cause insurance risk apportionment plans or market assistance plans to demonstrate their plans of operation to not interfere with the rights created under this section.

**Section 5.** Provides that the act will take effect upon becoming a law.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Policyholders within the FWUA and the RPCJUA will benefit under the provisions of this bill because they will be allowed to select and maintain their insurance agent and have the choice to stay within the FWUA and RPCJUA, (subject to their agent's decision) even though an offer of coverage is made by a private insurer.

Insurance agents will benefit under this bill because their commissions will increase when policies such agents service are taken out of the residual markets, i.e., the FWUA and the RPCJUA. Further, agents can affect the decision as to whether or not the policy they service is allowed to be taken out of the residual market by choosing not to be appointed by the take-out carrier.



Certain insurance companies (i.e., those companies which have exclusive agent arrangements such as State Farm Insurance Company)<sup>11</sup> will benefit under the provisions of this bill. Since exclusive agents would be unable to be appointed by the take-out company, a policyholder, who wished to retain his or her agent, would not be disqualified from continuing to participate in the residual market, i.e., either the FWUA or the JUA, and the insurer, for whom the exclusive agent works, would continue to provide coverage.

Take-out insurance companies will now have to pay yearly commissions to producing agents in order to take-out policies from the FWUA and will have to increase the commissions they currently pay agents under the RPCJUA take-out procedures mandated under this bill.

It is difficult to determine the fiscal impact of the bill on the plan of operation and the depopulation procedures of either the FWUA or the RPCJUA. However, according to representatives with both associations, depopulation efforts may be greatly hindered since FWUA and RPCJUA policyholders will not be disqualified from staying within their respective associations even though they receive a take-out offer (and their agent is either unwilling or unable to be appointed with the take-out insurer). Should the residual market continue to expand and a hurricane occur, ultimately the deficits of both the FWUA and the RPCJUA will grow and their assessments on all Florida policyholders would increase.

RPCJUA representatives state that both Clarendon and Qualsure have current keep-out agreements with the association to keep-out a total of 15,000 policies. According to these representatives, such agreements may be difficult to implement under the provisions of the bill which allow policyholders the option to stay within the RPCJUA under specified circumstances.

**C. Government Sector Impact:**

There may be some costs to the Department of Insurance to promulgate rules under the consumer choice provisions of the bill (Section 4), as well as to monitor insurance risk apportionment plans.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>11</sup> Exclusive or captive agents represent only one company and may not work for another insurer.

**VIII. Amendments:**

None.

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

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