HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1001 Commercial Property Insurance

SPONSOR(S): Jobs & Entrepreneurship Council/Richter and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1422

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Insurance	14 Y, 0 N	Callaway/Topp	Overton
2) Jobs & Entrepreneurship Council	14 Y, 0 N, As CS	Callaway/Topp	Thorn
3)			
4)			
5)			

SUMMARY ANALYSIS

"Property insurance," as defined by s. 624.604, F.S., includes insurance covering personal residential risks, commercial residential risks, and commercial nonresidential risks. Personal residential coverage is coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, cooperative unit owner's and similar policies. Commercial residential coverage is coverage provided by condominium association, cooperative association, apartment building and similar policies. Commercial nonresidential coverage is coverage provided by commercial business policies and covers damage to a business property, including damage from windstorm.

Under current law, commercial nonresidential property policies (commercial property) are assessable for deficits in Citizens Property Insurance Corporation (Ctizens), the Florida Hurricane Catastrophe Fund (FHCF), and the Florida Insurance Guaranty Association (FIGA).

The bill creates a new type of commercial property insurance, nonassessable commercial property insurance. Citizens will not be able to assess this policy for its deficits as the policy is exempt from the Citizens' assessment base. Nonassessable commercial policies are not subject to the same rate regulation that assessable commercial policies are. For nonassessable commercial polices, the Office of Insurance Regulation (OIR) is only authorized to disapprove the rate if it is inadequate or contains unfairly discriminatory rating factors. It cannot disapprove the rate because it is excessive or unfairly discriminatory as current law allows.

The bill allows insurers the choice to offer a nonassessable commercial property insurance policy and if the insurer wants to offer this policy the business owner has the choice to purchase it. If a business wants a nonassessable commercial property insurance policy, the policy application and declarations page must disclose in 12-point boldfaced type the policy is subject to limited rate regulation and is not subject to Citizens' assessments. The disclosure must also indicate an assessable policy subject to rate regulation and Citizens' assessments can be purchased.

The bill is effective July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill restricts the grounds which the Office of Insurance Regulation can use to disapprove a commercial nonresidential property insurance rate filing.

Ensure lower taxes: The bill allows insurance companies to sell a commercial nonresidential property insurance policy that cannot be assessed for Citizens Property Insurance Corporation deficits. It also allows business owners to purchase a commercial nonresidential property insurance policy that cannot be assessed for Citizens Property Insurance Corporation deficits.

Safeguard individual liberty: The bill allows insurance companies to sell a commercial nonresidential property insurance policy that cannot be assessed for Citizens Property Insurance Corporation deficits. It also allows business owners to purchase a commercial nonresidential property insurance policy that cannot be assessed for Citizens Property Insurance Corporation deficits.

B. EFFECT OF PROPOSED CHANGES:

"Property insurance," as defined by s. 624.604, F.S., includes insurance covering personal residential risks, commercial residential risks, and commercial nonresidential risks. Personal residential coverage is coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, cooperative unit owner's and similar policies. Commercial residential coverage is coverage provided by condominium association, cooperative association, apartment building and similar policies. Commercial nonresidential coverage is coverage provided by commercial business policies.

Commercial nonresidential property insurance (commercial insurance) is very different in scope and coverage than personal residential and commercial residential insurance. Personal residential and commercial residential insurance covers a policyholder's dwelling or dwelling contents, whereas, commercial property insurance covers a policyholder's business. Commercial property insurance covers damage to a business property, including damage from windstorm.

Commercial property policies span many classes of businesses. For example, shopping malls, manufacturing plants, medical facilities, and small retail businesses are covered under commercial property policies. Properties covered under these policies also differ in construction class. Because commercial property policies can cover dissimilar properties, catastrophe modeling is complex for these properties. In contrast, personal residential property policies cover a more homogeneous class of risks.

Typically, commercial property policies are tailored to coverage, construction, and occupancy of the property. In general, these policies include a wider array of product types, coverage options, and retentions/deductibles than personal residential and commercial residential policies. In fact, most large commercial businesses obtain property insurance with individual risk rates, meaning the rate on the coverage is specifically set for the property insured and is negotiated by the business owner and the insurance company. The rates are not set in accordance with the insurer's rates, rating schedules, rating manuals, and underwriting rules filed with the Office of Insurance Regulation (OIR). Accordingly, rates for these commercial properties are essentially deregulated.

Much of the commercial nonresidential property insurance written in Florida is written through national insurance companies. However, if a commercial property cannot find property coverage in the private market, it can obtain coverage in Citizens Property Insurance Corporation (Citizens), the residual market insurance entity in Florida. Citizens writes commercial nonresidential property insurance in its commercial lines account and its high risk account. Citizens covers commercial nonresidential property located throughout the state, not just commercial property located in coastal areas. As of December

31, 2007, Citizens had 35,397 commercial policies in the high risk account and 1,750 commercial policies in the commercial lines account.[1]

Under current law, commercial property policies are assessable for deficits in Citizens, the Florida Hurricane Catastrophe Fund (FHCF), and the Florida Insurance Guaranty Association (FIGA). FHCF emergency assessments on commercial property are limited to 6 percent per year for one year's hurricanes and 10 percent per year for multiple-year hurricanes. FHCF assessments can be levied for up to 30 years. FIGA assessments on commercial property entail a maximum 2 percent assessment for one year with emergency assessments of up to 2 percent levied for the life of the bonds supporting the assessment.

The amount of Citizens' assessments paid by commercial businesses varies depending on whether the business is insured by Citizens or insured by a private insurer. If a commercial policy is insured by Citizens and Citizens incurs a deficit, the policy can be assessed up to 30 percent of premium (10 percent per Citizens' account) for one year as part of the nonhomestead assessment. If the monies collected from the nonhomestead assessment are not sufficient to eliminate the deficit, the policies insured by Citizens can be assessed another 30 percent of premium (10 percent per Citizens' account) for one year as part of the Citizens policyholder assessment. If a deficit still remains, a Citizens policyholder surcharge[2] is levied by Citizens and commercial businesses insured with Citizens must pay up to another 30 percent for this surcharge for one year (10 percent per Citizens' account). If a deficit remains, then an emergency assessment is levied. This assessment amount is up to 30 percent (10 percent per Citizens' account) and can be levied for multiple years. Commercial businesses insured by Citizens must pay this assessment too.

Commercial businesses not insured by Citizens would pay substantially less in assessments than those insured by Citizens. Businesses not insured by Citizens are only assessed the Citizens' regular and emergency assessments. The Citizens regular assessment of up to 30 percent (10 percent per Citizens account) is levied against all non-Citizens policyholders if the nonhomestead assessment and Citizens policyholder assessment do not raise enough funds to defray the deficit.[3] It is levied in tandem with the Citizens policyholder surcharge, meaning all Citizens policyholders and all non-Citizens policyholders are charged. If the regular assessment and Citizens policyholder surcharge do not raise enough funds to defray the deficit, then an emergency assessment is levied, as described above.

Prior to the passage of HB 1A[4] in 2007 the Citizens assessment base was limited to property insurance premiums. Commercial property was included in the assessment base and thus able to be assessed by Citizens in the event of a deficit. HB 1A substantially expanded the types of insurance policies and premiums subject to assessments to fund deficits of Citizens. The expanded assessment base includes all the former lines of business and adds the casualty lines, most notably, the automobile line. The assessment base amount was expanded four-fold, from about $8.2 billion to $34 billion for regular assessments and $37 billion for emergency assessments.

The bill creates a new type of commercial property insurance, nonassessable commercial property insurance. Citizens will not be able to assess this policy for its deficits as the policy is exempt from the Citizens' assessment base. Nonassessable commercial policies are not subject to the same rate regulation that assessable commercial policies are. For nonassessable commercial polices, the Office of Insurance Regulation (OIR) is only authorized to disapprove the rate if it is inadequate or contains

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[1] Information obtained from Citizens Property Insurance Corporation's presentation to the Committee on Insurance March 14, 2008.

[2] The Citizens policyholder surcharge is levied against all Citizens policyholders in tandem with the levy of a regular assessment against non-Citizens policyholders.

[3] The assessment is levied against all admitted and surplus lines property and casualty policies. For policyholders of admitted carriers, the regular assessment is levied against the carrier, which may recoup it from its policyholders. Insurance agents collect the regular assessment directly from the surplus lines policyholders.

[4] Ch. 2007-1, L.O.F.

unfairly discriminatory rating factors. It cannot disapprove the rate because it is excessive or unfairly discriminatory as current law allows.

The bill allows insurers the choice to offer a nonassessable commercial property insurance policy and if the insurer wants to offer this policy the business owner has the choice to purchase it. If a business wants a nonassessable commercial property insurance policy, the policy application and declarations page must disclose in 12-point boldfaced type the policy is subject to limited rate regulation and is not subject to Citizens' assessments. The disclosure must also indicate an assessable policy subject to rate regulation and Citizens' assessments can be purchased.

C. SECTION DIRECTORY:

Section 1: Amends s. 627.041 adding definitions of "assessable commercial property insurance" and "nonassessable commercial property insurance."

Section 2: Amends s. 627.062 relating to rate standards.

Section 3: Amends s. 627.351 relating to Citizens Property Insurance Corporation.

Section 4: Creates s. 627.7031 relating to commercial property insurance.

Section 5: Provides an effective date of July 1, 2008.

II. 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:

The direct economic impact of the bill on the private sector is indeterminate since the rates of the nonassessable commercial property insurance policies is unknown and number of consumers who would chose these policies in unknown. To the extent that businesses purchase the nonassessable commercial property insurance policies, Citizens' assessment base will be decreased. To the extent Citizens' assessment base is decreased, the remaining assessment base will have to pay higher assessments in the event of deficit causing an assessment by Citizens.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2008, the Committee on Insurance heard the bill, adopted one amendment, and reported the bill favorably. The amendment made a technical correction relating to the lines of insurance the deregulation provision in the bill applied to and clarified the OIR can disapprove a rate filing if the filing proposes inadequate rates or uses rating factors prohibited under current law.

On April 1, 2008, the Jobs and Entrepreneurship Council heard the bill, adopted two amendments, and reported the bill favorably with a council substitute. The amendments adopted were technical and clarified the Office of Insurance Regulation can disapprove rates for nonassessable commercial property insurance policies if the rates are inadequate or use discriminatory rating factors. The staff analysis was updated to reflect the council substitute.