The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 1422

INTRODUCER: Banking and Insurance Committee and Senator Bennett

SUBJECT: Commercial Property Insurance

DATE: April 1, 2008 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Deffenbaugh	BI	**Fav/CS**
2.			CM	
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

Senate Bill 1422 permits insurers to sell “nonassessable commercial property insurance,” which is not subject to a determination by the Office of Insurance Regulation that the rate is excessive pursuant to s. 627.062, F.S., and is not subject to assessments by Citizens Property Insurance Company. The bill also requires notice to the consumer in the application for nonassessable commercial property insurance and on the declarations page of the policy that the policy is subject to limited rate regulation and not subject to Citizens assessments.

This bill substantially amends the following sections of the Florida Statutes: 627.041, 627.062, and 627.351. The bill creates the following section of the Florida Statutes: 627.7031.

II. Present Situation:

Ratemaking Regulation for Property, Casualty, and Surety Insurance

The Rating Law for property, casualty, and surety insurance is located in Part I of chapter 627, F.S., (ss. 627.011 – 627.311, F.S.). The primary purpose of the Rating Law is to ensure that insurance rates are not excessive, inadequate, or unfairly discriminatory. This is the standard that every insurance rate regulated by this part is held to. Every rate for the classes of insurance that the Rating Law must be submitted by the insurer to the Office of Insurance Regulation, which reviews the rate and either approves or disapproves the rate. Generally, insurers may either choose to submit their rate to the office via a “file and use” method or “use and file” method. In a “file and use” filing, the insurer submits to the OIR their proposed rate at least 90 days before the rate’s effective date and chooses not to implement the rate until it is approved. In a “use and file” filing, the insurer files with the department within 30 days of the rate’s effective date, and if the rate is disapproved may have to refund to policyholders the portion of the rate that is excessive.

In determining whether a rate is excessive, inadequate, or unfairly discriminatory, the office uses the following statutory factors:

- Past and prospective loss experience in Florida and in other jurisdictions;
- Past and prospective expenses;
- Degree of competition to insure the risk;
- Investment income reasonably expected by the insurer;
- Reasonableness of the judgment reflected in the filing;
- Dividends, saving, or unabsorbed premium deposits returned to Florida insureds;
- Adequacy of loss reserves;
- Cost of reinsurance;
- Trend factors, including those for actual losses per insured unit;
- Catastrophe and conflagration hazards, when applicable;
- A reasonable margin for underwriting profit and contingencies;
- Cost of medical services, when applicable; and
- Other relevant factors impacting frequency and severity of claims or expenses.

Commercial Non-Residential Property Insurance
There are three basic types of property insurance that cover structures in Florida:

- Personal Residential – Includes homeowner’s, mobile home owner’s dwelling, tenants, condominium unit owners, cooperative unit owners, and similar policies.
- Commercial Residential – Coverage provided for condominium associations, cooperative associations, apartment buildings, and similar policies.
- Commercial Non-Residential – Coverage provided for commercial businesses.

Commercial non-residential property insurance covers a policyholder’s business, providing reimbursement due to damages sustained by a business property, including windstorm damage. A commercial property policy is usually crafted to take into account the amount of coverage the business needs, the construction type of the business, and the occupancy of the property. Because commercial property policies span many different types of businesses with a great variety of structures (shopping malls, manufacturing plants, medical facilities, and small retail businesses are some examples) there is a wider array of product types and coverage options than are found in the personal residential and commercial residential product lines. Most large commercial businesses obtain insurance with an individual risk rate, meaning the rate on the coverage is specifically set for the property insured and is negotiated by the business owner and the insurer. In this circumstance, the rate is essentially deregulated and is not set in accordance with the insurer’s rates, rating schedules, rating manuals, and underwriting rules filed with the OIR.

Assessments on Commercial Non-Residential Property Insurance
Commercial property insurance policies are currently assessable for deficits in the Florida Hurricane Catastrophe Fund (FHCF), the Florida Insurance Guaranty Association (FIGA), and by Citizens Property Insurance Corporation. The FHCF may levy an emergency assessment of up to 6 percent of premiums for losses arising out of a single contract year, up to 10 percent for losses spanning multiple years. Assessments by the FHCF can be collected over a period of up to 30 years. Assessments from FIGA can be levied up to a maximum 2 percent of the insurer's direct written premium for that year, while emergency assessments of up to 2 percent levied for the life of the bonds supporting the assessment.

The Citizens assessment structure is complex. When a deficit is incurred in any of the three Citizens accounts (high risk, personal lines, or commercial lines), the board must levy assessments for each account that has a deficit, in the following order as necessary:

1) An immediate assessment of up to 10 percent of premium against all Citizens' nonhomestead policyholders (as defined);
2) If this is insufficient, an additional assessment of up to 10 percent of premium against all Citizens' policyholders (including nonhomestead), collected upon issuance or renewal of a policy;
3) If this is insufficient, a regular assessment against insurers which may be recouped by the insurer in a rate filing from its policyholders, of up to 10 percent of premium for most lines of property and casualty insurance, or 10 percent of the deficit, whichever is greater.
4) Any remaining deficit is funded by a bond issue, funded by multi-year emergency assessments on policyholders of most types of property and casualty insurance, of up to 10 percent of premium, or 10 percent of the deficit, whichever is greater.
5) If a regular assessment is imposed under 3), above, Citizens must make a rate filing to impose a surcharge on Citizens policyholders equal to the average percentage regular assessment imposed on insurers (and recouped from non-Citizens policyholders).

Chapter 2007-1, L.O.F. (HB 1-A) expanded the types of insurance policies and premiums that are subject to assessments to fund deficits of Citizens, previously limited to property insurance premiums. As expanded, the assessment base is substantially the same as that of the Florida Hurricane Catastrophe Fund, which includes all lines of property and casualty insurance, including auto insurance, but not workers' compensation, medical malpractice, or accident and health. This expanded the assessment base four-fold, from about $8.2 billion to approximately $34 billion for regular assessments and $37 billion for emergency assessments. This reduced the percentage assessment that may be imposed in the future by about one-fourth, by spreading it to additional types of insurance, notably auto policies, and helps to support much larger bond issues, if necessary.

III. Effect of Proposed Changes:

Section 1. Amends s. 627.041, F.S., creating definitions for "assessable commercial property insurance" and "nonassessable commercial property insurance." The definitions differ in that "assessable commercial property insurance" is subject to the rate standards of s. 627.062, F.S., and deficit assessments by Citizens, while "nonassessable commercial property insurance" is not subject to the rate standards of s. 627.062, F.S., except for a determination of rate inadequacy or subject to deficit assessments by Citizens.

Section 2. Amends s. 627.062, F.S., the rate standards for insurance. The bill creates a new paragraph (2)(k) and states that:

- Nonassessable commercial property insurance is not subject to a determination that the rate is excessive or unfairly discriminatory.
- However, the OIR may disapprove such a rate as inadequate or for unlawful use of unfairly discriminatory rating factors that are prohibited by Florida law.
- These provisions in this paragraph do not apply to filing for commercial lines residential insurance or assessable commercial property insurance.

Section 3. Amends s. 627.351(6)(b)3f, F.S., to include nonassessable commercial property insurance among the lines of property and casualty insurance that are not subject to assessment by Citizens in the event of a Citizens deficit incurred on or after January 25, 2007. Insurance companies that issue nonassessable commercial property insurance policies are not subject to assessment on the premiums that it writes for nonassessable commercial property insurance policies.

Section 4. Creates s. 627.7031, F.S. The new section:

- Permits insurers offering assessable commercial property insurance to also offer nonassessable commercial property insurance policies.
- States that owners of commercial property may purchase a nonassessable commercial property insurance policy if one is offered by the insurer.
- The application and declarations page for a nonassessable commercial property insurance policy must each contain a disclaimer in 12-point boldfaced type that the insurance is subject to limited rate regulation requirements of Florida law but is not subject to deficit assessments by Citizens, and that a commercial property insurance policy that is subject to rate regulation and deficit assessment by Citizens is available.

Section 5. The act is effective July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Businesses covered by nonassessable commercial insurance policies will be relieved of any assessments for deficits in Citizens, particularly after a major hurricane. Nonassessable policies are likely to have higher premiums than those that are regulated by the OIR, but some businesses may be willing to pay the higher premium in exchange for not being subject to Citizens assessment (though they will still be subject to FCHF and FIGA assessments). The greater cost certainty may also prove attractive for businesses considering opening in Florida, and reduces the negative financial impact on businesses stemming from a Citizens assessment.

The bill will reduce the assessment base of Citizens through the removal of some commercial property insurance policies. If the Citizens assessment base is reduced, then insurance policies that remain in the assessment base will be subject to higher assessment costs than currently. The degree to which the assessment base will be reduced cannot be determined because it is unknown how many businesses will choose to purchase the new nonassessable coverage. Citizens reports that commercial non-residential annual premium was estimated by OIR via a data call in 2006 to both authorized insurers and surplus lines insurers, to be $1.2 billion. However, an October 2007 report from the FHCF estimates that the total direct written premium for commercial property insurance, including surplus lines, to be approximately $3 billion. These estimates represent a range of about 3.5 percent to 8.8 percent of the assessment base, which would not materially affect this base.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on April 1, 2008:
The committee substitute clarifies that nonassessable commercial property insurance is not subject to a regulatory determination that the rate is excessive, but is subject to a determination that it is inadequate or uses an unlawful rating factor.

The CS also clarifies that an insurer must offer an assessable commercial property insurance policy for sale in order to offer the option on a nonassessable policy.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.