

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 2234

SPONSOR: Banking and Insurance Committee and Senator Garcia

SUBJECT: Property Insurance

DATE: April 9, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	FT	_____
4.	_____	_____	AGG	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 2234 creates a new residual market mechanism affording coverage to consumers (homeowners and commercial property owners) who are unable to obtain property insurance coverage from an authorized insurance company in the private market. It provides for the following:

- Creates the “Citizens Property Insurance Corporation” (CITIZENS), by renaming the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) as CITIZENS and by transferring all policies from the Florida Windstorm Underwriting Association (FWUA) to CITIZENS, effective October 1, 2001.
- CITIZENS will offer personal residential and commercial nonresidential full coverage, all perils policies on a statewide basis and will offer wind-only coverage for personal residential and commercial residential and commercial nonresidential risks in current FWUA-eligible areas.
- CITIZENS will offer a coinsurance program with authorized insurers for hurricane coverage within FWUA areas.
- CITIZENS is structured to meet legal criteria to be eligible to be tax exempt from the Internal Revenue Service and thus will be exempt from state corporate income tax and premium tax.
- Insurance Commissioner appoints a 7-member board (3-year terms) to operate CITIZENS.
- The capacity of CITIZENS to pay claims and service debt will be strengthened by using the current assessment mechanism of the FWUA for all three CITIZENS accounts, and by requiring surplus lines policyholders to pay regular and emergency assessments in the same manner as authorized insurers and their policyholders. The Florida Surplus Lines

Office will be responsible for identifying premiums subject to assessments and verifying and collection of assessments.

- The same bonding and borrowing provisions of the current RPCJUA apply to CITIZENS. Also, regular assessments are collected against insurers of up to 10 percent of premium (in each account) or 10 percent of the deficit, whichever is greater. In addition, multi-year emergency assessments may be collected from policyholders up to these same limits.
- Rates: The current RPCJUA rating law applies to CITIZENS, which requires CITIZENS to charge the highest rates in each county, as compared to the average rates in the county charged by the top 20 insurers in the state (or top 5 for mobile home coverage).
- Repeals the provision that a risk is no longer eligible for coverage in the FWUA if an offer of coverage is made by an authorized insurer.
- Specifies that the transfer of policies, assets and obligations from the RPCJUA and the FWUA to CITIZENS will not impact coverage of policies by the Florida Hurricane Catastrophe Fund.
- Provides that the same public records and open meeting exemptions which are currently in place for the RPCJUA apply to CITIZENS.
- Limited apportionment company status for small insurers currently allowed under the FWUA law is also provided for in CITIZENS.
- CITIZENS will operate statewide and will write all perils, full coverage in areas previously served by the RPCJUA and the current FWUA boundaries will remain intact. Although the CITIZENS board is authorized to reduce the boundaries of an area after a public hearing if it is determined that the property market is stable and competitive in that area.
- Furnishes a statement of Legislative intent to preserve the existing financial obligations of the RPCJUA and the FWUA in the newly created CITIZENS.
- Adds a new assessment account covering medical malpractice insurance in the Florida Insurance Guaranty Association to pay claims of insolvent medical malpractice insurers.
- Provides an implementation date of October 1, 2001, but the CITIZENS board, after consultation with the Residential Property Insurance Coordinating Council, is given authority to phase in any provision of the act which does not relate to financing issues.

This bill substantially amends sections 627.351 and 631.55 of the Florida Statutes.

II. Present Situation:

Guaranteeing Availability of Property Insurance through Residual Market Insurers

Two state-created associations provide 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 (JUA) -- both commonly referred to as "residual market" insurers.

The Florida Windstorm Underwriting Association (FWUA)

The FWUA was formed nearly 30 years ago in 1970, under a plan approved by the Department of Insurance as authorized by law, in response to problems of availability of property insurance

in certain coastal areas.¹ The FWUA offers coverage only for windstorm and hail losses, and only in those areas where the department determined that windstorm coverage was unavailable and that certain economic conditions existed. Coverage was initially limited to the coastal areas of eight counties, which was expanded to areas in 23 counties by the time of Hurricane Andrew in 1992, and now includes coastal areas in 29 of Florida's 35 coastal counties. In Dade, Broward, and Palm Beach Counties, the entire area east of Interstate 95 is eligible for FWUA coverage (extending up to 5 miles from the coast) and all of Monroe County (the Keys) is eligible, but in other counties eligibility is typically limited to about 1,000 to 1,500 feet from the coast. By act of the Legislature in 1998, further expansion of the eligible boundaries of the FWUA is now prohibited. The boundaries of the FWUA directly affect the obligation of private market insurers to provide windstorm coverage. 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.

The FWUA insures homes, mobile homes, condominiums, and apartments, as well as commercial business property. A purchaser of a FWUA policy must also obtain a separate policy from another insurer to cover perils other than windstorm, such as fire, theft, and liability. The FWUA operates pursuant to a plan of operation approved by the department and is governed by a 15-member board of directors, including 12 representatives of member insurers and 3 representatives of consumers, including the department's Insurance Consumer Advocate. The FWUA employs a staff located in Jacksonville to administer its operation.

Rates for FWUA coverage must be filed for approval by the board with the department 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. Unlike the RPCJUA (discussed below), there is no specific statutory requirement that the rates for the FWUA be tied to highest-price insurers. However, 1997 amendments provide legislative intent that FWUA rates not be competitive with voluntary market rates and requires the plan of operation to provide, by January 1, 1999, a means of assuring that FWUA's rates are reflective of department-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 are not sufficient to cover claims payments. 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.

¹ Ch. 70-234, Laws of Florida (s. 626.352, F.S.)

Hurricanes Opal and Erin in 1995 resulted in a \$117 million deficit assessment that was billed by the FWUA to all property insurers. As these insurers have obtained approval for rate filings after paying their assessment, they have included a one-time annual premium surcharge to recoup the assessment, averaging about 4 to 5 percent of the annual premium, which some policyholders have just recently seen in their premium notices.

Like all residential property insurers, the FWUA must buy reinsurance from the Florida Hurricane Catastrophe Fund, which reimburses insurers for a portion of their hurricane losses. In general, this reinsurance provides funding to the FWUA after regular assessments are imposed, but before debt financing and emergency assessments would be necessary.

In 1997, legislation provided that a FWUA policyholder is no longer eligible for coverage with the FWUA if an offer of coverage is made by an authorized insurer to cover the risk at the insurer's approved rates under a policy that includes windstorm coverage. The law states that the FWUA must provide written notice to the policyholder and agent that the FWUA policy will be canceled 60 days after the notice because of the offer of coverage from an authorized insurer. These provisions were modeled on similar provisions in the RPCJUA law. One significant practical difference, however, compared to the situation of an insurer taking a policy out of the RPCJUA, is that requiring a FWUA policyholder to accept a policy from a take-out insurer effectively forces the policyholder to also lose their other perils' policy with a private market insurer, if the take-out insurer is offering full coverage, not just windstorm coverage.

As of March 31, 2001, the FWUA has 429,672 policies representing an exposure of \$93.3 billion with a probable maximum loss (PML) of \$5 billion for a 100-year storm.

Residential Property and Casualty Joint Underwriting Association (RPCJUA)

The legislative enactment of the RPCJUA in Special Session of December 1992 was a direct response to the severe market disruption following Hurricane Andrew.² 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.

The RPCJUA must 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. This requirement was enacted in 1995 and amended in 1996 in an effort to assure that the RPCJUA would be the insurer of last resort, at a time when the RPCJUA was experiencing rapid growth in policies and exposure.

The RPCJUA may impose 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, as previously discussed. It must also obtain reinsurance from the Florida Hurricane Catastrophe Fund at the same level as the FWUA.

² Ch. 92-345, Laws of Florida (s. 627.351, F.S.)

Beginning in 1995, the Legislature, Department of Insurance, and the RPCJUA focused on depopulation of the RPCJUA by encouraging insurers to take policies out of the RPCJUA, including cash bonuses and exemptions from assessments. Presently, the RPCJUA has 68,740 policies representing an exposure of \$11.5 billion with a PML of \$749 million.

Binding Arbitration

Florida's insurance laws require insurers to file property and casualty insurance rates for approval with the department either 90 days before the proposed effective date or 30 days after the rate filing is implemented. Under the latter option, however, the department may order the insurer to refund that portion of the rate determined to be excessive.

If the Department of Insurance disapproves a rate filing, the insurer, including the Florida Windstorm Underwriting Association (FWUA), may either request an administrative hearing under the Administrative Procedures Act (ch. 120, F.S., A.P.A.) or seek binding arbitration (s. 627.062(6), F.S.).

In 1996, the law was amended to allow insurers to request binding arbitration of a rate filing as an alternative to an administrative hearing. After the department issues a notice of intent to disapprove a rate filing, the insurer may request arbitration before a panel of three arbitrators. The panel is chosen as follows: one is selected by the insurer, one by the Department, and the third is chosen by the two other arbitrators. An arbitrator must be certified by the American Arbitration Association and may not be the employee of any insurance company or insurance regulator. The procedures outlined in the Arbitration Code (chapter 682, F.S.) are applied to rate arbitration and the costs of arbitration are paid by the insurer. The decision of the panel, which must be made within 90 days, constitutes the final approval of a rate filing.

There is no appeal per se of the panel's decision to a higher court, as there would be under the APA. However, either party to the arbitration proceeding may apply to the circuit court to vacate or modify the panel's decision under limited conditions. In general, grounds for vacating include corruption or fraud, evident partiality by a neutral arbitrator, and action beyond the arbitrators' powers or jurisdiction. Grounds for modification include miscalculations, errors as to form, and actions on matters not submitted for arbitration. Upon initiation of arbitration, the insurer waives all rights to challenge the action of the Department of Insurance under the APA or any other law; however, these rights are restored to the insurer if the arbitrators fail to act within 90 days after initiation of arbitration.

Florida Insurance Guaranty Association

Hurricane Andrew resulted in the insolvency of ten insurers. The Florida Insurance Guaranty Association (FIGA), which began operation in 1972, is required to pay claims of insolvent insurers, up to a limit of \$300,000 per claim with a \$100 deductible (Ch. 631, Part II, F.S.). However, after Andrew, FIGA estimated that it would experience a shortfall of about \$500 million. FIGA had a cash balance of \$50 million and could collect an additional \$63 million by assessing property and casualty insurers up to 2% of written premium for the prior year. This

clearly posed an emergency, given thousands of policyholders waiting for claims payments, many without roofs over their heads.

The Legislature convened a special session in December 1992, and authorized the issuance of \$500 million in municipal bonds to fund the FIGA shortfall. To fund the bonds, the Legislature authorized FIGA to impose a special assessment on property and casualty insurers of up to 2% of premiums, in addition to the regular 2% assessment. Insurers were allowed to pass the assessments on to policyholders through premium increases. (Ch. 92-345, L.O.F.)

FIGA ultimately paid over \$499 million in Andrew-related claims. The 2% special assessment was levied for 4 years from 1993 through 1996, plus a partial amount in early 1997, collecting \$374.3 million. In addition, FIGA levied regular assessments at the maximum 2% rate in 1992 (\$63 million), 2% in 1993 (\$68 million), and 0.75% assessment in 1994, and allocated most of these revenues to Andrew-related claims. Since then, FIGA has levied a 0.125% assessment in 1996 and a 0.125% assessment in 1997. No assessments have been collected since 1997.

The current law still limits FIGA assessments in any one year to 2% of net written premiums for the prior year. The law divides FIGA into three accounts and limits assessments to the premiums written in each account. One account covers auto physical damage claims and a separate account covers auto liability insurance claims. The third account covers “all other” property and casualty lines. A fourth account previously established for workers’ compensation, was transferred by 1997 legislation to a new guaranty association. As of February 28, 2001, FIGA had a balance of \$79 million in its “all other” account, received from the estates of liquidated insurers and earned on investments. Assessing insurers in this account based on premiums for 1999 (the most current year available) of \$6 billion, at the maximum 2% rate, could collect an additional \$122 million. FIGA may also borrow from the two auto insurance accounts which have a combined balance of \$28 million.

Florida’s guaranty fund law is typical of other states’ guaranty fund laws. Thirty-seven (37) states, including Florida, cap assessments at 2% of premium, 13 states cap assessments at 1% of premium, and one state caps at 1.5%. Florida is one of 34 states that divide their property and casualty guaranty funds into separate accounts and limit assessments to the lines of insurance within those accounts. The other 17 states have only one account for property and casualty insurance which provides a broader assessment base. No state has an account for medical malpractice. New York is the only state that collects assessments at the 2% rate each year, whether or not insolvencies have occurred. This enables the New York fund to build its cash reserves and provides greater assurance that all claims will be covered. However, on occasion, the New York Legislature has “raided” the fund by making appropriations for other purposes.

III. Effect of Proposed Changes:

Section 1. Amends s. 627.351(6), F.S., relating to insurance risk apportionment plans, to provide for the following:

1. Creates the “Citizens Property Insurance Corporation” (CITIZENS) and recites findings of Legislative purpose in creating CITIZENS. Specifically, the Legislature finds that:

- actual and threatened catastrophic losses to property in Florida from hurricanes have caused insurers to be unwilling or unable to provide property insurance coverage to the extent sought and needed;
 - it is in the public interest to assist in assuring that property in the state is insured to facilitate reconstruction of damaged or destroyed property to avoid negative effects resulting to public health, safety and welfare;
 - it is necessary, therefore, to provide insurance to applicants who are entitled to procure insurance through the voluntary market, but are unable to do so;
 - such insurance be provided through an entity organized to achieve efficiencies and economies to fulfill this public purpose.
2. Renames the Residential Property and Casualty Joint Underwriting Association (RPCJUA) as CITIZENS, effective October 1, 2001, which will provide insurance and coinsurance for residential and commercial property for applicants who are in good faith entitled, but are unable, to procure insurance through the voluntary market.
 3. Assessable Insurers: are those subject to assessment by the CITIZENS, as insurers authorized to write one or more “subject lines of business and insurers writing one or more subject lines of business pursuant to part VIII of Chapter 626 (surplus lines insurers.) “Subject lines of business” is defined as: “insurance on real or personal property, as defined in s. 624.604, including insurance for fire, industrial fire, allied lines, farm owners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, including liability coverage on all such insurance but 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.
 4. CITIZENS will be divided into three accounts:
 - **personal lines account:** for personal residential policies issued by CITIZENS or the RPCJUA and renewed by CITIZENS 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 CITIZENS or by the RPCJUA and renewed by CITIZENS 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 CITIZENS or transferred to it on risks that are located in FWUA areas. The high risk account also includes coinsurance of eligible risks.

The three accounts may be merged into a single account after financing obligations are no longer outstanding. For federal income tax purposes, the bill specifically states that no part of the income of CITIZENS may inure to the benefit of any private citizen, and declares that the revenues of CITIZENS are necessary to meet the requirements set forth in the documents authorizing the issuance of bonds by CITIZENS.
 5. The bill creates a role for the Florida Surplus Lines Service Office to play in the collection of any assessment levied by CITIZENS to pay covered losses. If CITIZENS levies an assessment, such assessment will be collected from the surplus lines

policyholder by the surplus lines agent, who will forward the assessment to the Florida Surplus Lines Service Office which will send the funds to CITIZENS.

6. CITIZENS must offer:
 - Personal residential and commercial nonresidential full coverage, all perils policies on a statewide basis;
 - Commercial nonresidential property wind-only policies in current FWUA areas; and
 - Personal residential and commercial residential wind-only policies in current FWUA areas.
7. Within the current FWUA areas, CITIZENS must adopt a coinsurance program whereby CITIZENS enters into a coinsurance agreement with an authorized insurer to coinsure "hurricane coverage" as that term is defined in s. 627.4025(2)(a) for "eligible risks," i.e., those risks located in current FWUA areas. (Coinsurance specifically means an agreement between CITIZENS and an authorized insurer wherein each is severally responsible for a specified percentage of the hurricane coverage for an eligible risk.)
8. The hurricane coverage coinsurance agreements offered by CITIZENS:
 - must provide coinsurance options of 80 percent and 50 percent;
 - may be established at different levels by CITIZENS' Board, not to exceed 80 percent, if necessary to maximize participation in coinsurance agreements;
 - must be approved by the Department;
 - must provide for separate reporting to the Florida Hurricane Catastrophe Fund of coinsured eligible risks by the insurer and CITIZENS in a form and in the manner required by the Florida Hurricane Catastrophe Fund
 - provide that the rates for coinsurance coverage be calculated by multiplying the ratio of the latest approved Insurance Services Office hurricane loss costs to the latest approved Insurance Services Office total loss costs by the Corporation's then-current rates.
9. CITIZENS is specifically authorized to reduce areas of eligible risks, with Department approval, if, after a public hearing, and the Corporation finds the voluntary market is stable and competitive.
10. For federal income tax purposes, the Corporation is authorized, but not required, to seek judicial validation of its bonds or other indebtedness under chapter 75.
11. CITIZENS shall be governed by a Board of Governors:
 - Consisting of seven people;
 - Appointed by the Insurance Commissioner (one designated by the Insurance Commissioner as the Chair);
 - Serving three year terms at the pleasure of the Insurance Commissioner.
 - The legislation requires that the Insurance Commissioner appoint the members of the board of governors by July 1, 2001, to permit the board to coordinate with the

existing Residential Property Insurance Market Coordinating Council between then and October 1, 2001, on appropriate implementation, organizational operational and financial matters relating to formation of CITIZENS. CITIZENS is given the specific authority, after consultation with the Residential Property Insurance Market Coordinating Council, to phase in any provision of the act which does not relate to financing issues.

12. The bill prohibits the FWUA, on or after July 1, 2001, from entering into an agreement with an authorized insurer to remove policies from the FWUA. Similarly, the bill prohibits the CITIZENS, during the period of October 1, 2001 to December 31, 2001, from entering into an agreement with an insurer to remove any policy transferred to the CITIZENS from the FWUA. CITIZENS is authorized to extend such period if necessary and appropriate to effective implementation of the Act.
13. At the expiration of such period, if a policy is taken out of CITIZENS by an insurer, whether by assumption, midterm cancellation or at renewal, or kept out of CITIZENS, the insurer must:
 - Pay to the producing agent, for one year, the greater of the insurer's usual and customary commission and that of CITIZENS; 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 CITIZENS.
 - If the agent is unable or unwilling to accept appointment by the new insurer, the new insurer must pay the agent the greater of its usual and customary commission and that of the Corporation.
14. Limited Apportionment Status: with respect to the high risk account, any assessable insurer with a surplus as to policyholders of \$20 million or less writing 25 percent or more of its total countrywide property insurance premiums in Florida may petition the Department of Insurance, within the first 90 days of each calendar year, to qualify as a "limited apportionment corporation." As such, the limited apportionment corporations, are *not required* to participate in any assessment, within the high risk account, which exceeds \$50 million after payment of available high risk account funds in any calendar year. However, such limited apportionment corporations must collect from its policyholders any emergency assessment imposed. Further, if the department determines that any regular assessment will result in impairment of the surplus of a limited apportionment corporation, the department may direct that all or part of such assessment is deferred. But, there will be no deferment with respect to emergency assessments collected from policyholders. Also, CITIZENS must appoint as its licensed agents only those agents who also hold an appointment with an insurer who is authorized to write personal residential property coverage, commercial residential or commercial nonresidential property coverage within Florida.
15. Rates: the rates for personal lines residential wind-only policies issued by the CITIZENS must be calculated by multiplying the ratio of the latest approved Insurance Services

- Office wind-only loss costs to the latest approved Insurance Services Office total loss costs by the then-current rates of CITIZENS.
16. Deletes the arbitration provision for CITIZENS: the effect of this provision is that the administrative hearing procedure under ch. 120, F.S., would be the only avenue to litigate rate filing disputes with the department.
 17. For federal income tax purposes and to secure the ability to issued tax exempt bonds, the legislation exempts CITIZENS from payment of the state premium tax, but requires the collection by CITIZENS of a “premium tax equivalent” to augment the financial resources of CITIZENS available to carry outs its public purpose.
 18. The bill also exempts CITIZENS from payment of corporate income tax, and provides, due to CITIZENS public purpose, that any bonds issued by CITIZENS, their transfer, and the income there from, including any profit made, shall be free from taxation of every kind by the state and its political subdivisions.
 19. CITIZENS is subject to continuing oversight by the Department and is required to file quarterly statements of financial condition with the Department, as well as annual and audited statements of financial condition, and exposure and other reports as required by the Department. However, CITIZENS is not required to hold a certificate of authority from the Department, nor is it required to participate as a member insurer of the Florida Insurance Guaranty Association (FIGA). CITIZENS is nonetheless required to pay assessments pledged by FIGA to secure bonds issued or other indebtedness incurred to pay claims arising from insurer insolvencies resulting from hurricane losses.
 20. The bill provides, that, effective October 1, 2001:
 - all policies of the RPCJUA shall become policies of CITIZENS;
 - all obligations, rights, assets and liabilities of the RPCJUA and the FWUA, including bonds, notes and debt obligations, and the financing documents related thereto, shall become those of CITIZENS.
 - all policies of the FWUA are transferred to CITIZENS and become policies of CITIZENS;
 - any new applicant for insurance coverage who would otherwise have been eligible for coverage in the FWUA is eligible for coverage with CITIZENS
 - the transfer of FWUA policies, obligations, and assets to CITIZENS and the renaming of the RPCJUA as CITIZENS shall in no way affect coverage of those policies provided by the Florida Hurricane Catastrophe Fund.
 21. Public Records/Open meetings: records of CITIZENS will have the same public records exempt status as for the RPCJUA. Meetings of CITIZENS are subject to the Sunshine Law in the same fashion as the RPCJUA.
 22. The bill contains a statement of legislative intent that recognizes the existence of financing arrangements entered into by the FWUA and the RPCJUA, and provides that nothing in the legislation should be no construed to compromise, diminish or interfere with the rights of creditors under such financing arrangements.

Section 2. Amends s. 631.55, relating the Florida Insurance Guaranty Association (FIGA), to provide that a medical malpractice claims account be added to the three current administrative and assessment accounts within FIGA. The three accounts are: auto physical damage claims, auto liability claims, and all other property and casualty claims. By creating a new medical malpractice account, this provision would have the effect of reducing the amount available to pay homeowner claims in the “all other account.” Estimates provided by FIGA for 1999 (current year available) are that the medical malpractice account would reduce the amount currently available in the all other account from \$122 million down to \$113 million. Also, estimates by FIGA for this same period for premiums as to the medical malpractice account are \$425 million, and, at the maximum 2 percent rate, FIGA could collect \$8.5 million to pay medical malpractice claims.

Section 3. Amends s. 627.351, F.S., to repeal the provisions which provide that a risk is no longer eligible for coverage in the FWUA if an offer of coverage is made by an authorized insurer. This “forcible takeout” provision sometimes resulted in the “takeout” insured having to pay a higher homeowners premium, change insurance agents or adjusters, lose multi-policy discounts on other coverages, e.g., auto, and possibly not being able to obtain personal articles floaters and other coverages.

Section 4. Provides for an effective date of October 1, 2001, except that two provisions, one relating to the appointment of the board of governors of CITIZENS and, one prohibiting takeouts or keepouts, become effective June 1, 2001.

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:

The bill provides that CITIZENS is exempt from the corporate income tax and the state premium tax and is not required to obtain a certificate of authority. Further, CITIZENS is established to be under greater control by the state, and as such, these measures along with other provisions may enhance CITIZENS potential for a favorable IRS tax ruling as to its tax exempt status.

B. Private Sector Impact:

There should be some economies of scale achieved under one entity (CITIZENS) and thus lower administrative costs as opposed to the current two board structure (RPCJUA and the FWUA). A policyholder will be able to obtain from CITIZENS personal residential or commercial nonresidential full coverage no matter where such policyholder resides in the state or where their commercial establishment is located. Insurers who participate in the coinsurance program with CITIZENS will benefit because their hurricane risk in eligible areas, e.g., current FWUA areas, will be reduced depending on the specified percentage of the insurance coverage.

Critics of the CITIZENS concept point out that the current residual market mechanism (RPCJUA and FWUA) is not seriously flawed and that progress has been made in reducing the size of the residual market. The current administration of the RPCJUA and FWUA appears to be working well and has the confidence of the insurance market.

The effect on bonding capacity is uncertain: It appears that the bonding capacity is unchanged during the time that CITIZENS maintains the current accounts of the FWUA and RPCJUA as segregated accounts. But, after current financial obligations are satisfied, CITIZENS may utilize one account, which would appear to reduce bonding capacity. This is because both the RPCJUA and the FWUA can now assess up to 10 percent of premium for each of the subject lines of business, which together equates to 20 percent of premium for residential property insurance policies. With a single account, the maximum assessment would be 10% of this premium base. (But, assessments may also be as great as 10 percent of the deficit, which would grow proportionately, in theory.)

By creating a new medical malpractice assessment account within FIGA, this provision would have the effect of reducing the amount available to pay homeowner claims in the "all other account." Estimates provided by FIGA for 1999 (current year available) are that the medical malpractice account would reduce the amount currently available in the all other account from \$122 million down to \$113 million. Estimates by FIGA for this same period for premiums as to the medical malpractice account are \$425 million, and, at the maximum 2 percent rate, FIGA could collect \$8.5 million to pay medical malpractice claims.

C. Government Sector Impact:

Unknown.

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.
