

**STORAGE NAME:** h0773a.in.doc  
**DATE:** April 20, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
INSURANCE  
ANALYSIS**

**BILL #:** HB 773  
**RELATING TO:** Florida Windstorm Underwriting Association  
**SPONSOR(S):** Representative(s) Sorensen  
**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) INSURANCE YEAS 11 NAYS 0
  - (2) FISCAL POLICY & RESOURCES
  - (3) COUNCIL FOR COMPETITIVE COMMERCE
  - (4)
  - (5)
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**I. SUMMARY:**

The Legislature created the Florida Windstorm Underwriting Association (FWUA) in 1970 as the insurer of last resort for the peril of windstorm. The FWUA does not insure against losses from the perils of fire, theft, or flood.

If property eligible for coverage by the FWUA is located in a Special Flood Hazard Area, as defined by the National Flood Insurance Program (NFIP), the FWUA requires the policyholder to obtain flood insurance through the NFIP.

Under HB 773, the FWUA would be prohibited from requiring policyholders to obtain flood insurance as a precondition of eligibility for windstorm coverage by the FWUA. The FWUA would be permitted to discount policy premiums for policyholders who have flood insurance coverage.

**On April 20, 2001, the Committee on Insurance adopted two amendments that are traveling with the bill. See Section VI. for explanations.**

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

The insurance availability problems resulting from Hurricane Andrew in 1992 increased Floridians' reliance on state-created residual market entities. These insurers of last resort provide insurance coverage to an applicant unable, after making a good faith effort, to procure coverage from an authorized insurance company in the "voluntary" market. Two entities, the Florida Windstorm Underwriting Association (FWUA) and the Residential Property and Casualty Joint Underwriting Association (RPCJUA), form the "residual market" for property insurance.

**Florida Windstorm Underwriting Association (FWUA)**

The Legislature created the FWUA in 1970 as the insurer of last resort for the peril of windstorm. "Windstorm" is defined by Florida law as "wind, wind gusts, hail, rain, tornadoes, or cyclones caused by a hurricane which results in direct physical loss or property damage."<sup>1</sup>

The FWUA does not insure against losses from the perils of fire, theft, or flood. The National Flood Insurance Program (NFIP) defines "flood" as a "general and temporary condition of partial or complete inundation of normally dry land area from overflow of inland or tidal waters or from the unusual and rapid accumulation or runoff of surface waters from any source."

As provided in statute, to be eligible for windstorm coverage by the FWUA, the property must be located within the geographic boundaries of the FWUA, and the policyholder or applicant must be unable to procure windstorm coverage through the voluntary market.

When premium revenues and other resources are insufficient to pay claims, the FWUA board must levy assessments against property insurers in proportion to their market share. Insurers are permitted to pass these regular assessments on to their policyholders and recover them as an operating expense through the rate making process. Since 1995, the FWUA has levied assessments 3 times.

After losses incurred from Hurricane Opal in the fall of 1995, the FWUA adopted a policy, as part of its Manual of Rates, Rules, and Procedures, requiring flood insurance for properties located in

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<sup>1</sup> s. 627.4025, F.S.

Special Flood Hazard Areas defined by the NFIP.<sup>2</sup> This underwriting requirement became effective in June 1996. The NFIP, administered by the Federal Emergency Management Agency (FEMA), provides flood insurance for properties located in participating communities.

The FWUA contends that most of the \$151.9 million in losses incurred as the result of Hurricane Opal were due to flood, not windstorm. Damages from Hurricane Opal generated litigation over claims involving a determination of whether the damage was caused by windstorm or flood. Some FWUA policyholders who experienced flood damages due to Hurricane Opal and were not covered by the NFIP, sought to establish claims under FWUA policies. The FWUA levied a regular assessment of \$84 million on property insurers in the state to pay for losses.

According to the FWUA, as of March 19, 2001, approximately 52 percent (225,663) of total FWUA policyholders are required to have flood insurance. Of those policyholders required to carry flood insurance, 60 percent (136,331) of the properties are located in Dade, Broward, Palm Beach and Monroe counties.

**C. EFFECT OF PROPOSED CHANGES:**

The FWUA would be prohibited from requiring policyholders to obtain flood insurance as a precondition of eligibility for windstorm coverage by the FWUA. The FWUA would be permitted to discount policy premiums for policyholders with flood insurance coverage.

**D. SECTION-BY-SECTION ANALYSIS:**

This section need be completed only in the discretion of the Committee.

**III. 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

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<sup>2</sup> Federal regulations prohibit lending institutions from making, extending or renewing any loan for properties located in Special Flood Hazard Areas, unless those properties are covered by flood insurance. Similarly, the RPCJUA requires properties located in Special Flood Hazard Areas to carry flood insurance.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As the result of the prohibition, incidences of litigation involving a determination of whether damages are caused by windstorm or flood could increase. The FWUA could be forced to pay claims when it is unable to clearly prove the damage is flood related. This could cause the FWUA to levy assessments on voluntary market property insurers in the state to pay for flood-related losses. Insurers are allowed to pass the costs of the assessments on to their policyholders who are not insured by the FWUA.

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 20, 2001, the Committee on Insurance adopted two amendments to HB 773, which are traveling with the bill.

Amendment 1 would permit the Commissioner of Insurance to veto the determination of the arbitration panel of an FWUA rate filing.

Amendment 2 would expressly require meetings of FWUA boards or committees to be open to the public and noticed pursuant to the open meetings law (s. 286.011, F.S.).

**STORAGE NAME:** h0773a.in.doc

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**PAGE:** 5

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

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Meredith Woodrum Snowden

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Stephen T. Hogge