HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JEC 07-04 Hurricane Preparedness and Insurance
SPONSOR(S): Jobs & Entrepreneurship Council
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Jobs & Entrepreneurship Council	14 Y, 0 N	Callaway	Thorn
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SUMMARY ANALYSIS

HB 1A (Chapter 2007-1, L.O.F.) was the result of a Special Session called specifically to address the affordability and availability of property insurance in the State of Florida, and to revise the Florida Building Code. The bill contained numerous changes to the insurance laws designed to reduce property insurance rates. This bill amends some of the provisions in HB 1A. Many of the revisions included in this bill are needed to clarify provisions in HB 1A to avoid unintended consequences. Changes are made in the following areas:

- Florida Hurricane Catastrophe Fund
- Insurance Capital Build-Up Incentive Program
- Insurer Surplus Requirements
- Insurer Report Card
- Use and File Rate Filing
- Mitigation Discounts
- Citizens Property Insurance Corporation
- Premium Payment Plans
- Policyholder Notice of Insurance Terms
- Payment of Property Claims
- Coverage Exclusions and Deductibles
- Insurer Loss Reporting
- Florida Insurance Guaranty Association
- Florida Building Code
- Insurer Capital Requirements
- Insurer Multi-Line Discounts

This bill does not have a fiscal impact on state or local government and is effective upon becoming a law unless otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill increases the minimum surplus requirements for certain property insurers, allows mobile home insurers to access surplus notes from the State in a proportionate amount greater than that allowed to other insurers filing for the notes on the same date.

Safeguard Individual Liberty: The bill allows property insurers to reduce mitigation discounts if the mitigation measure installed decreases in effectiveness as it ages, allows property insurers to retain coverage exclusions and hurricane deductible choices electronically or photographically, and delays the effective date of changes to the Florida Building Code relating to the internal pressurization option.

B. EFFECT OF PROPOSED CHANGES:

HB 1A (Chapter 2007-1, L.O.F.) was the result of a Special Session called specifically to address the affordability and availability of property insurance in the State of Florida, and to revise the Florida Building Code. The bill contained numerous changes to the insurance laws designed to reduce property insurance rates. This bill amends some of the provisions in HB 1A. Many of the revisions included in this bill are needed to clarify provisions in HB 1A to avoid unintended consequences.

Florida Hurricane Catastrophe Fund (FHCF or fund or Cat Fund)

HB 1A substantially increased the amount of hurricane losses covered by the Florida Hurricane Catastrophe Fund, which is a tax-exempt state fund administered by the State Board of Administration (SBA). The Cat Fund reimburses insurers for a portion of their residential hurricane losses in exchange for a premium that is much lower than what private reinsurers charge. This results in lower premiums to policyholders and enables a greater number of policies to be written. The Cat Fund helps stabilize the property insurance market, particularly after an active hurricane period, as Florida experienced in 2004 and 2005 that is followed by increased costs and lower availability of private reinsurance.

Currently, Cat Fund coverage is mandatory, but the additional coverage authorized by HB 1A is optional to insurers, and is as follows:

- Residential property insurers can purchase additional coverage above the current maximum limits of the Cat Fund, referred to as Temporary Increase in Coverage Limit options ("TICL"), for the 2007, 2008, and 2009 contract years. The TICL options allow an insurer to purchase additional reinsurance for its share of up to $12 billion, in $1 billion increments, above the current Cat Fund annual limit of $16 billion estimated for 2007 (i.e., up to a total of $28 billion). The SBA may further increase the limits by an additional $4 billion (i.e., up to $32 billion). The TICL coverage will reimburse the insurer for 90 percent, 75 percent, or 45 percent of the insurer's losses above its retention, at the same percentage selected by the insurer for its mandatory Cat Fund coverage. Insurers must pay a premium established by the SBA under the same method for determining "actuarially indicated" premiums for the mandatory Cat Fund coverage, which generally establishes a premium equal to the estimated average annual loss for the coverage purchased. Based on current loss models, this is expected to be a premium equal to about 3 percent of the coverage amount (commonly referred to as a 3 percent "rate-on-line.") These premiums are significantly lower than charged by private reinsurers and are the primary source of premium savings under HB 1A.

- Residential property insurers can purchase additional coverage below each insurer's market share of the Cat Fund retention, referred to as Temporary Emergency Additional Coverage Options ("TEACO"), for the 2007, 2008, and 2009 contract years. For 2007, the Cat Fund retention is estimated to be $6 billion. Currently, each insurer is responsible for paying all hurricane losses up to its share of the retention for each hurricane, except that the retention drops to one-third of the full retention for a third hurricane or more in one year. The TEACO options allow an insurer to select its share of a retention level of $3 billion, $4 billion, or $5 billion, to cover 90 percent, 75 percent, or 45 percent of its losses up to the normal retention for the mandatory Cat Fund coverage. HB 1A established the premiums that insurers must pay for the TEACO options. For the $3 billion retention, the premium is an 85 percent rate-on-line; for the $4 billion retention, the premium is an 80 percent rate-on-line; and for the $5 billion retention, the premium is a 75 percent rate-on-line. The TEACO coverage applies to two hurricanes for each contract year. The TEACO premiums established by HB 1A are priced at near-market levels. Therefore, these coverage options primarily benefit insurers which are unable to obtain reinsurance at these low levels, but are not expected to generate premium savings for most insurers. The relatively high premiums also serve to significantly reduce the risk to the state for the TEACO coverage.

- Eligible residential property insurers can purchase up to $10 million in additional Cat Fund coverage at a level significantly below the normal Cat Fund retention and likely to be lower than the lowest retention ($3 billion) under the TEACO options. The $10 million coverage amount is above a retention equal to 30 percent of the insurer's surplus, as of December 21, 2006. The premium is set at 50 percent of the coverage amount (i.e., $5 million for $10 million coverage). The coverage applies to two hurricanes and is offered only for the 2007 contract year. This is similar to the $10 million coverage that was offered in 2006 to "limited apportionment companies," which are generally insurers with $25 million in surplus or less. HB 1A again made this coverage available, this time to insurers who participated in 2006, limited apportionment companies that began writing property insurance in 2007, and insurers approved to participate in either 2006 or 2007 for the Insurance Capital Build-Up Incentive Program pursuant to s. 215.5595, F.S.

This bill retains the three additional Cat Fund coverage options created by HB 1A, however, it changes the way the TEACO retention is defined and calculated from a TEACO premium to a Cat Fund premium. It also makes a conforming change to the coverage limit under TEACO. This change should allow insurers to better understand how much they are required to pay for the TEACO coverage.

This bill also allows additional insurers to purchase up to $10 million in additional Cat Fund coverage at a level significantly below the normal Cat Fund retention and likely to be lower than the lowest retention under the TEACO options. The bill offers this coverage to insurers who purchased the coverage in 2006, insurers that are limited apportionment companies, and insurers approved to participate in either 2006 or 2007 for the Insurance Capital Build-Up Incentive Program.

Mandatory Rate Filings to Reflect Savings Due to Expanded Cat Fund Coverage

All residential property insurers were required by HB 1A to make a rate filing with the Office of Insurance Regulation (OIR) reflecting the savings or reduction in loss exposure to the insurer due to the expanded Cat Fund coverage provided by the HB 1A. The OIR was required to calculate a presumed factor for use in the required rate filings to reflect the impact to rates of the changes, using generally accepted actuarial techniques and standards. The OIR published the presumed factor on March 1, 2007.

HB 1A required each insurer's rate filing to take into account the presumed factor for any policy written or renewed on or after June 1, 2007, to reflect all expanded Cat Fund coverage options available to the insurer, whether or not the insurer purchases the coverage. Additional costs to the insurer for private reinsurance or loss exposure that duplicated the expanded Cat Fund options could not be factored in the rate. Furthermore, an insurer was not able to obtain a rate increase due to the election of coverage options from the Cat Fund.

This bill provides an exception to the HB1A requirement that each insurer must include savings as set forth by the presumed factor in its presumed factor rate filing. This exception does not require a rate filing reflecting savings associated with the HB 1A changes to the Cat Fund for all insurers who entered into reinsurance contracts prior to January 25, 2007, the effective date of HB 1A. According to some industry representatives, insurers in this situation would not be able to renegotiate their reinsurance contracts in order to take advantage of the reinsurance savings provided in HB 1A. Thus, HB 1A requires insurers to pass savings to policyholders that the insurers may not realize.

Insurance Capital Build-Up Incentive Program

In the 2006 Legislative Session, Senate Bill 1980[1] appropriated $250 million from the General Revenue Fund to the State Board of Administration (SBA) for lending state funds in the form of "surplus notes" to residential property insurers under the following conditions:

- The insurer must contribute new capital to its surplus at least equal to the surplus note and must apply to the SBA by July 1, 2006.
- If the insurer applied after July 1, 2006, but before June 1, 2007, the surplus note was limited to one-half of the new capital contributed by the insurer. No applications were permitted after June 1, 2007.
- The amount of the surplus note could not exceed $25 million or 20 percent of total funds available for the program (resulting in a $50 million cap).
- The combination of surplus, new capital, and the surplus note must be at least $50 million.
- The surplus note must be repayable to the state, with a 20-year term, at the 10-year Treasury Bond interest rate (with interest-only payments for the first 3 years). The Insurance Commissioner must approve the payments on the surplus note, unless he determines the payment would substantially impair the financial condition of the insurer.
- The insurer must meet a minimum writing ratio of net written premiums to surplus of at least 2 to1 for the term of the surplus note, for residential property insurance in Florida covering the peril of wind. (The SBA has allowed flexibility on this requirement, based on its authority to increase the interest rate on the surplus note if the 2 to 1 ratio is not met.)
- The SBA may approve issuance of a surplus note to an applicant, unless the SBA determines that the financial condition of the insurer and its business plan place an unreasonably high level of financial risk to the state of nonpayment in full of the interest and principal.

From 2006-2009 over 1.5 million new property insurance policies will be written as a result of the program. The total amount of funds requested from the program is almost $280 million for 14 insurance companies.

Under the program as it existed before HB 1A was enacted, no preferential treatment was given to insurers who agreed to write property insurance for mobile homes, however, these insurers were eligible to participate in the existing program as long as they met the statutory requirements. HB 1A revised the Insurance Capital Build-Up Incentive Program to allow an insurer writing only manufactured housing residential property insurance to qualify for a surplus note of up to $7 million (rather than $25 million), if the insurer's surplus, new capital, and the surplus note total at least $14 million (rather than $50 million). Such an insurer is given priority to receive a surplus note under the program and must meet the premium to surplus ratio provisions of s. 624.4095, F.S.

This bill further amends the Insurance Capital Build-Up Incentive Program as it applies to insurers writing only manufactured housing residential property insurance by allowing those insurers to obtain a surplus note for the full amount of the new capital contributed by the insurer (rather than for 50 percent) if the insurer applies to the State after July 1, 2006 but before June 1, 2007. All other insurers applying after July 1, 2006 but before June 1, 2007 are limited to a surplus note for 50 percent of the new capital contributed.

[1] Ch. 2006-12, L.O.F.

Insurer Surplus Requirements

Prior to HB 1A, a new property and casualty company was required to have $5 million in surplus as to policyholders in order to obtain a certificate of authority and to maintain the greater of $4 million or 10 percent of its total liabilities thereafter.[2] HB 1A maintained this surplus requirement for property and casualty insurers except those new insurers that are a wholly owned subsidiary of an insurer authorized to do business in another state (i.e. pup companies). This bill revises the description of a pup company in HB 1A to ensure the definition only applies to subsidiary companies of an insurer not headquartered in Florida.

For new pup companies, HB 1A increased the minimum surplus requirement from $5 million to $50 million. This bill makes a conforming change requiring a pup insurer that writes property insurance to maintain $50 million in surplus in order to keep its certificate of authority to transact insurance.

Insurer Report Card

Prior to the passage of HB 1A, the Florida Insurance Code did not contain any provision requiring the issuance of a report card or other grade for insurance companies transacting business in Florida. However, the Agency for Health Care Administration published an annual Nursing Home Guide to assist consumers in evaluating nursing home performance that includes information relating to the quality and licensure history of these facilities.[3]

HB 1A required the Insurance Consumer Advocate to provide an annual report card on insurance companies, using a letter grade scale established by the Financial Services Commission. This bill clarifies the insurer report card is only required for personal residential property insurers, rather than all property insurers as HB 1A specified. Personal residential property insurers are those who write property insurance for homeowners, mobile homeowners, tenants, condominium unit owners, and the like. They do not write property insurance for condominium associations, apartment buildings, and the like or commercial buildings.

Use and File Rate Filing

Property and casualty insurers are required to file rates for approval with the Office of Insurance Regulation (OIR) either 90 days before the proposed effective date ("file and use") or 30 days after the rate filing is implemented ("use and file").[4] Under the file and use option, the OIR must finalize its review by issuing a notice of intent to approve or disapprove within 90 days after receipt of the filing; otherwise the filing is deemed approved. Under the "use and file" option, an insurance company may implement the filing prior to approval, but may be ordered by the OIR to refund to the policyholder that portion of the rate found by the OIR to be excessive.

HB 1A made various changes to the property and casualty insurance rating law that generally strengthened the authority of the OIR to approve or disapprove rates. One change was to limit the ability of property and casualty insurers to make "use and file" rate filings.

HB 1A prohibited, through January 1, 2009, property and casualty insurers to file a rate change using the "use and file" method unless the insurer filed for a rate that was less than the insurer's most recent rate approved by the OIR. All filings that did not seek a lower rate were required to be made under the "file and use" procedures that require filing at least 90 days prior to the proposed effective date.

[2] s. 624.407(1)(a), F.S. (2006).
[3] s. 400.191, F.S. (2006).
[4] Ch. 96-194, L.O.F., amending s. 627.062, F.S.

This bill clarifies the HB 1A provision restricting the use of "use and file" rate filings by limiting the restriction to filings for residential property insurance only.[5] As written in HB 1A, the restriction is applied to all property and casualty coverages, such as automobile insurance. This bill also amends the HB 1A provision to allow rate filings made on a "use and file" basis that were made or submitted to the OIR before the effective date of HB 1A (January 25, 2007).

Mitigation Discounts

Section 627.711, F.S., requires an insurer to provide notice to a policyholder of a personal lines residential property insurance policy, at the time of the issuance of the policy and at each renewal, of the availability and the range of each premium discount, credit, other rate differential, or reduction in deductibles for properties where mitigation measures can be or have been installed or implemented.

Section 627.0629, F.S., requires insurers to include in rate filings actuarially reasonable discounts, credits or other rate differentials, or appropriate reductions in deductibles, for properties where mitigation measures have been installed or implemented. This section also requires a premium notice to specify the amount by which the rate has been adjusted for a policyholder because of mitigation and to specify a maximum possible positive and negative adjustment that are approved for the insurer for mitigation discounts.

This bill requires property insurers to reevaluate mitigation discounts given for a property every 5 years to determine whether the mitigation measure has retained its effectiveness. If the effectiveness of the mitigation measure has decreased with the age of the measure, the bill requires the property insurer to reduce the mitigation discount after it submits a rate filing for the reduction.

Citizens Property Insurance Corporation

HB 1A contained numerous changes to Citizens Property Insurance Corporation (Citizens), the state's "insurer of last resort" which insures property that no other insurer will insure. The requirement, standards, and procedures for establishing rates for Citizens' policyholders were substantially revised, in an attempt to provide immediate rate relief to Citizens' policyholders while establishing a long term rate standard based on actuarial soundness, rather than non-competitiveness or collecting sufficient premium to have reserves and reinsurance to cover a specified probable maximum loss.

Citizens offers three types of property and casualty insurance in three separate accounts: 1) Personal Lines Account (PLA) which covers homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies; 2) Commercial Lines Account (CLA) covering condominium associations, apartment buildings and homeowners associations; and 3) High-Risk Account (HRA) which covers personal lines windstorm-only policies, commercial residential wind-only polices and commercial non-residential wind-only policies.

As of February 28, 2007, Citizens provided coverage to over 1.3 million policyholders, making Citizens the largest insurer in Florida. The number of policyholders in the three accounts are: PLA – 807,399; CLA – 10,029, and HRA – 404,887.[6]

HB 1A expanded eligibility for coverage in Citizens by placing Citizens in more direct competition with the voluntary market by substantially revising the law that made a property ineligible for coverage from Citizens if an offer of coverage was made by an authorized insurer at the authorized insurers' approved rates. As revised, if a *new applicant* to Citizens is offered coverage from an insurer at its approved

[5] Residential property insurance covers homeowners, mobile homeowners, tenants, condominium unit owners, condominium associations, apartment buildings, but not commercial buildings.

[6] http://www.citizensfla.org/Exposure_Prem_Reports.asp (last viewed March 14, 2007).

rate, the property is not eligible for a Citizens' policy, unless the insurer's premium is more than 25 percent greater than the premium for comparable coverage from Citizens. HB 1A, however, did not define "comparable coverage" nor provide any specifics to help insurance agents and Citizens determine if coverage offered to a new applicant to Citizens by an insurer in the voluntary market is "comparable." This bill specifies what elements of a coverage offer from a voluntary market insurer should be compared to the Citizens' coverage to determine if the voluntary market insurer is offering "comparable coverage" under the law.

In order to keep policies out of Citizens, SB 1980, enacted in 2006, added a 10-day waiting period during which a new policy for coverage in Citizens could not be bound. The waiting period is not implemented until July 1, 2007. The waiting period was established to give insurers in the voluntary market a chance to write a policy that was going to be written by Citizens. If an authorized insurer offered coverage during the 10-day waiting period, the Citizens' applicant was deemed ineligible for coverage in Citizens, regardless of whether the authorized insurer appointed the agent who submitted the application for coverage. This bill deletes the 10 day waiting period as the benefits of a 10-day waiting period are substantially reduced after the passage of HB 1A which allows Citizens to write policies even if there is an offer from a private insurer as long as the private insurer's premium is 25 percent more than the Citizens' premium.

HB 1A also required the Florida Market Assistance Plan (FMAP) to develop an electronic database for the purpose of confirming eligibility for coverage in Citizens. Created by the Legislature in 1985, the FMAP is a private non-profit service organization primarily dedicated to helping consumers find property and casualty insurance coverage for residential property from authorized insurers in the private market. Property owners must list their property with the FMAP. Agents will then review the property to see if they can write insurance for it and will contact the property owner if they can write their insurance. The FMAP does not provide insurance quotes or lists of agents and/or companies. The FMAP also assists in depopulating Citizens by providing agents with reports of property insured in Citizens so the agents can review the property information to see if they can place the property with an insurer in the voluntary market.

This bill authorizes insurers or insurance agents to submit information to the FMAP relating to coverage available in the voluntary market for a homeowner applying to Citizens for coverage. If the information provided leads to the homeowner being ineligible for Citizens due to the offer of coverage from an insurer in the voluntary market, then the bill requires that insurer to write the policy for a year.

Premium Payment Plans

Prior to the passage of HB 1A, there was no requirement in the Insurance Code that an insurer writing property insurance offer policyholders the option of an installment payment plan for the payment of premiums. Although not required, there were installment plans authorized and offered for the financing of insurance premiums by insurance agents, insurers, and insurance premium finance companies.

HB 1A required insurers to allow personal lines residential and commercial policyholders to pay premiums on a quarterly or semiannual installment plan. This bill clarifies the minimum payment plan required is quarterly or semiannually to allow insurers to offer monthly ones at their option. The bill also makes a conforming change to the Citizens Property Insurance Corporation statute (s. 627.351(6), F.S.) to give Citizens the option of offering monthly payment plans to its policyholders.

Policyholder Notice of Insurance Terms

The premium notice for a residential property insurance policy must specify the amount of the premium that is for windstorm coverage.[7] For homeowners policies, insurers must also provide a comprehensive

[7] s. 627.0629(4), F.S. (2006).

checklist of coverage on a form adopted by the Financial Services Commission and an outline of coverage.[8] The outline of coverage must include a description of the principal benefits and coverage and an itemization of the applicable premium. The outline must also include a description of the credit or surcharge plan that is being applied and the reason why the policy is being surcharged or is receiving a credit. The checklist must include discounts applied to the premium.

Current law also allows Citizens Property Insurance Corporation, the Florida Hurricane Catastrophe Fund, and the Florida Insurance Guaranty Association to assess certain Florida policyholders if any of these entities incurs a deficit.[9] The population of policyholders assessed (i.e. assessment base) is different for each entity, however, all three entities can assess Florida policyholders that do not participate in the entity. Insurers are allowed but not required (due to the law being silent) to itemize in the premium renewal notice the amounts recouped for assessments by Citizens, the Florida Hurricane Catastrophe Fund, or the Florida Insurance Guaranty Association.

HB 1A required insurers to specify on the premium renewal notice the:

- Amount of any assessment by the Florida Hurricane Catastrophe Fund, Citizens Property Insurance Corporation, and the Florida Insurance Guaranty Association; and the full name of the assessing authority.
- Amount of premium change due to a change in rate or coverage.
- Combinations of discounts, credits, rate differentials, or reductions in deductibles, for windstorm mitigation.

However, HB 1A erroneously placed the premium renewal notice requirements in the auto insurance part of the Insurance Code. Thus, the above-enumerated premium notice requirements were only required for automobile insurance premium renewals. This bill transfers the premium renewal notice requirements of HB 1A to a different section of law so that the requirements are only required on the property insurance renewal notice. It also requires the premium renewal notice requirements to only be made for residential property polices.

Payment of Property Claims

Prior to the passage of HB 1A, there was no time frame in which property insurers were required to pay property claims. Accordingly, HB 1A required property insurers to pay or deny a claim within 90 days of the receipt of notice of the claim, unless the failure to pay the claim is caused by factors beyond the control of the insurer that reasonably prevent payment. It also made a violation of the 90 day period a violation of the Insurance Code.

This bill limits the application of the 90-day pay or deny provision to residential property claims only, rather than all property claims. Further, it begins the 90-day pay or deny period at the insurer's receipt of a "proof of loss" from the policyholder, rather than at the insurer's notice of a claim. Finally, the bill revises language in HB 1A stating a violation of the 90-day pay or deny provision was a violation of the Insurance Code by specifying that a violation is a regulatory action under the Insurance Code only.

[8] s. 627.4143(3), F.S. (2006).
[9] See ss. 627.351(6)(b), 215.555(6)(b), 631.55(1), F.S. (2006).

Coverage Exclusions and Deductibles

HB 1A included three provisions that allow policyholders to significantly reduce their windstorm coverage and to assume the risk of loss, in exchange for a lower premium. These provisions were not available to property insurance policyholders prior to the passage of HB 1A. The options are:

- **Exclusion of Windstorm Coverage:** Require insurers to make available to policyholders the option to exclude windstorm coverage, if the policyholder personally writes a statement that he/she does not want such coverage and provides documentation of approval by any mortgage or lien holder. This provision applies to residential property insurance policies which includes personal lines residential and commercial lines residential policies.

- **Elimination of Maximum Hurricane Deductible:** Eliminate maximum allowable deductibles, but require a written statement by the policyholder and approval by a mortgage or lien holder if the deductible is in excess of 10 percent for a home valued at less than $500,000. Insurers are still required to offer annual hurricane deductibles of 2 percent, 5 percent, and 10 percent of policy limits, with certain exceptions. HB 1A allowed, but did not require, the offer of a greater than 10 percent deductible.

- **Exclusion of Contents Coverage**: Require insurers to make available to policyholders the option to exclude coverage for contents, if the policyholder personally writes a statement that he/she does not want such coverage.

This bill makes changes to the options provided in HB 1A as follows:

- **Exclusion of Windstorm Coverage:** This bill requires all residential property insurers (e.g. insurers writing property insurance for homeowners, mobile homeowners, condominium associations, and apartment buildings) to offer windstorm coverage to the policyholder, but allows only personal lines residential policies (e.g. policies covering homeowners, mobile homeowners) to exclude windstorm. In other words, commercial lines residential property policies (e.g. policies covering condominium associations and apartment buildings) and commercial property policies (policies covering commercial buildings) cannot exclude windstorm coverage. Also, if a policyholder elects to exclude windstorm coverage, this bill requires the exclusion to apply during the whole policy term. This precludes a policyholder from rejecting windstorm coverage during the policy term. The bill also allows insurers to keep an electronic or photographic copy of the policyholder's handwritten declination of windstorm coverage.

  Also, the bill allows the exclusion to apply to windstorm coverage or hurricane coverage, depending on whether the property insurance policy offers these coverages separately. In other words, if a property insurance policy only offers windstorm coverage and the policyholder elects to exclude windstorm, then that policyholder has excluded coverage from hurricanes and all other wind events (tornadoes, tropical storms, etc.). But, if a property insurance policy offers windstorm and hurricane coverage separately or divides its windstorm coverage between hurricane coverage and windstorm coverage (which will cover all wind events other than hurricane) and the policyholder elects to exclude hurricane coverage, then that policyholder is still covered for other wind events but not hurricanes.

- **Elimination of Maximum Hurricane Deductible:** This bill clarifies that if the policyholder chooses a hurricane deductible over 10%, that the deductible is the deductible for the term of the policy. In other words, the policyholder can only change the deductible at policy renewal. The bill also allows insurers to keep an electronic or photographic copy of the policyholder's handwritten hurricane deductible choice.

- **Exclusion of Contents Coverage:** This bill precludes a policyholder from rejecting contents coverage during the policy term. Accordingly, if a policyholder elects to exclude contents coverage, the bill requires the exclusion to apply during the whole policy term. The bill allows insurers to keep an electronic or photographic copy of the policyholder's handwritten declination of contents coverage.

Insurer Loss Reporting

HB 1A authorized the OIR to require property insurers to report data on hurricane claims to the OIR. Data to be reported included:

1. Number of claims.
2. Amount of claim payments made.
3. Number and amount of total-loss claims.
4. Amount and percentage of losses covered by reinsurance or other loss-transfer agreements.
5. Amount of losses covered under specified deductibles.
6. Claims and payments for specified insured values.
7. Claims and payments for specified dollar values.
8. Claims and payments for specified types of construction or mitigation features.
9. Claims and payments for policies under specified underwriting criteria.
10. Claims and payments for contents, additional living expense, and other specified coverages.
11. Claims and payments by county for the information specified in this section.
12. Any other data that the office requires.

HB 1A did not provide any specifications or limitations regarding when the OIR could require the property insurers to report hurricane claims data. This bill specifies the hurricane claims reporting authorized in HB 1A is to be requested by the OIR only at the end of hurricane season.

Florida Insurance Guaranty Association

Florida operates several insurance guaranty funds to ensure policyholders are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law. A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance carrier. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums to policyholders. The Florida Insurance Guaranty Association (FIGA) is responsible for claims of residential and commercial property insurance, automobile insurance, and liability insurance, among others.

Provisions relating to FIGA, which was created in 1970, are contained in part II of chapter 631, F.S. The law directs FIGA to pay any eligible claim of more than $100 and less than $300,000, less any applicable deductible, with a few specified exceptions (s. 631.57, F.S.). Funds available to FIGA are the result of an annual assessment of up to 2 percent of each specified insurer's net direct written premiums for the previous year.

Senate Bill 1980, passed in the 2006 Legislative Session, authorized FIGA to impose a 2 percent emergency assessment (in addition to the 2 percent annual assessment) against its member insurers to fund FIGA obligations resulting from insurer insolvencies created by hurricane claims caused by the 2004 and 2005 hurricanes. HB 1A clarified the Legislature's intent of the 2006 law (SB 1980). The clarification authorized the FIGA to use an emergency assessment of up to 2 percent of premium either

to directly pay the covered claims of insolvent insurers or to utilize such emergency assessment proceeds to retired the indebtedness of bonds. This bill further clarifies the Legislature's intent in HB 1A that FIGA can use the emergency assessment to pay the claims of all insolvent insurers' claims, if the insurer became insolvent due to claims from a hurricane.

Florida Building Code

The Florida Building Code establishes minimum safety standards for the design and construction of buildings. The first edition of the code replaced all local codes in Florida on March 1, 2002. The Florida Building Code undergoes major updates every three years, while also being subject to amendment each year. The Florida Building Commission is charged with updating and amending the Florida Building Code, often by incorporating updates made to the various source building codes that constitute the Florida code. The code contains design and construction enhancements targeted at preventing hurricane damage. Enforcement of the Florida Building Code is carried out by local governments.

HB 1A required the Florida Building Commission to amend the Florida Building Code by July 1, 2007, to adopt the wind-borne-debris protection requirements of the International Building Code (2006) and the International Residential Code (2006) within the wind-borne-debris region (120 mph+) as defined by those codes. These codes require openings, such as windows and doors, to be protected by shutters, wind resistant glass, or other approved methods. These requirements did not apply to the High Velocity Hurricane Zone, which has similar or stronger requirements under the Miami-Dade building code. The legislation also prohibited amendments or modifications that diminish provisions related to wind resistance or water intrusion. However, the commission was allowed to amend such provisions to enhance those requirements. The Florida Building Commission was also directed to develop voluntary "Code-Plus" guidelines for increasing the hurricane resistance of buildings that may be modeled on the Miami-Dade building code.

The building code changes in HB 1A had two primary effects: 1) They eliminated the so-called "Panhandle exemption" that had previously exempted certain areas within the wind-borne debris region from that region's wind-borne debris protection requirements. 2) They eliminated the internal pressurization option for buildings in the wind-borne-debris region. This is an option that allows a structure to be built without meeting the opening protection requirements, if the structure is built to withstand internal pressure if an opening is breached, by having stronger roof to wall, wall to floor, and floor to foundation attachments. However this option was already scheduled to be eliminated at the next triennial update of the Florida Building Code, expected to be adopted in October, 2008, because the 2006 version of the International Code had eliminated this option. The internal pressure option has been criticized as not adequately protecting the contents of the home or human safety.

HB 1A required local jurisdictions to immediately enforce the wind-borne debris protection requirements upon the effective date of the act pending adoption by the Florida Building Commission. The act did not expressly state whether that meant such requirements were to be applied to building permits issued or permit applications filed on or after the effective date of the act. HB 1A became effective on January 25, 2007.

With the requirement in HB 1A that local jurisdictions immediately begin enforcement of the change deleting the internal pressurization option, questions arose from local building officials regarding how to enforce the new requirements of the building code. One issue raised was whether to apply the new requirements to permit applications received or approved before the effective date of the bill. Section 553.73(6), F.S., states that "the edition of the Florida Building Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit and any extension granted to the permit."

From research conducted by committee staff, it appears that most jurisdictions began enforcing the new building code requirements immediately, or were in the process of beginning enforcement shortly after the passage of HB 1A. However, in some jurisdictions the requirements were not being enforced,

with such jurisdictions being unaware of the deletion of the internal design option or applying a different interpretation of its effective date. Occasional variations were found in how local jurisdictions chose to enforce the new requirements. For instance, Nassau County permits applications received between January 26, 2007 and July 1, 2007 that were designed using the internal pressurization option to be approved if accompanied by a signed and sealed affidavit from the designer stating that the structure was undergoing design prior to January 26, 2007.

The immediate removal of the internal pressurization option has created some ongoing difficulties for some homeowners who were in the often lengthy process of having a new home built. Committee staff received reports of homeowners who had undergone the expense of having a home designed pursuant to the internal pressurization option, but had not submitted their plan to the local building official to receive a permit prior to the deletion of the internal pressurization option. That homeowner potentially faced the additional cost of having the home redesigned, and perhaps the need to change the terms of the financial loan being used to finance the construction.

The Windstorm Mitigation Study Committee (appointed pursuant to House Bill 1A) recommended the Legislature consider a glitch bill to reasonably postpone changes to the Florida Building Code implemented in HB 1A.[10]

This bill provides that the internal design (i.e., internal pressurization) option provided in Section 1609.1.4.1, in the Florida Building Code shall remain in effect until June 1, 2007, for a building permit application made prior to that date. As a result, the elimination of the internal pressurization option will apply to building permit applications made on or after June 1, 2007.

In addition, the internal design option change provided in this bill is effective upon becoming law and applies retroactively to January 25, 2007, (the effective date of chapter 2007-1, L.O.F.). The bill applies to any actions taken on any building permit affected by Section 9 of Chapter 2007-1, L.O.F., including any actions, legal or ministerial, pertaining to the issuance, revocation or modifications of any building permit initiated, issued, or pending before, on, or after January 25, 2007. Therefore, building code officials are held harmless for any actions taken with regard to building permits issued on or after January 25, 2007, that approved plans that continued to use the internal pressurization option, rather than the opening protection requirements.

The bill provides that if the retroactivity of any provision of the building code section of the bill or its retroactive application to any person or circumstance is held invalid, the invalidity does not affect the retroactivity or retroactive application of other provisions of the act.

C. SECTION DIRECTORY:

Section 1: Amends s. 163.01, relating to Florida Interlocal Cooperation Act of 1969 to correct a cross-reference.

Section 2: Amends s. 215.555 (4) and (16) relating to the Florida Hurricane Catastrophe Fund.

Section 3: Amends s. 215.5595(2) relating to the Insurance Capital Build-Up Incentive Program.

Section 4: Amends s. 624.407(1) relating to capital funds required of new insurers.

Section 5: Amends s. 624.408(1) relating to minimum surplus amounts for new and existing insurers.

Section 6: Amends s. 627.0613(4) relating to the report card for personal residential property insurers.

[10] 2007 Windstorm Study Committee Report to the Florida Legislature, dated March 6, 2007. Available at http://www.windstormmitigationstudycommittee.org/images/WindstormMitigationStudyCommitteeReport.pdf (last viewed March 19, 2007).

Section 7: Amends s. 627.062(2) relating to rate standards.

Section 8: Amends s. 627.0629(1) relating to rate filings for residential property insurance.

Section 9: Amends s. 627.0655 relating to premium discounts for multi-line policies.

Section 10: Amends s. 627.351(6) relating to Citizens Property Insurance Corporation.

Section 11: Amends s. 627.3511(4) relating to depopulation of Citizens Property Insurance Corporation to correct a cross-reference.

Section 12: Amends s. 627.3515(3) relating to market assistance plans.

Section 13: Amends s. 627.3517 relating to consumer choice.

Section 14: Amends s. 627.4035(1) relating to insurance premium payment plans.

Section 15: Amends s. 627.4133(7) relating to notices of cancellation, nonrenewal, or renewal premium.

Section 16: Amends s. 627.701(4) relating to property insurance deductibles.

Section 17: Amends s. 627.70131 relating to an insurer's payment or denial of property claims.

Section 18: Amends s. 627.712 relating to required residential hurricane coverage.

Section 19: Amends s. 627.713 relating to reports of hurricane loss data.

Section 20: Amends s. 627.7277 deleting subsection (4) and (5) regarding disclosure on premium renewal notices.

Section 21: Amends s. 631.57(3) relating to the Florida Insurance Guaranty Association.

Section 22: Creates an unnumbered section relating to the Florida Building Code.

Section 23: Creates an unnumbered section relating to insurer rate filings.

Section 24: Provides an effective date of July 1, 2007 or as otherwise provided.

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:

Florida Building Code - Change to the Internal Design Option

Reinstating the internal design option until June 1, 2007 should economically benefit parties who had their structures designed in accordance with that option, but had yet to submit a building permit application. The cost of adding shutters or other opening protections is more expensive than the costs associated with internal pressure design features, which made such option attractive to most homebuilders and buyers. The delay also provides the manufacturers of opening protections such as shutters additional time to increase product to meet the higher demand for products necessitated by the statutory change. Additionally, the delay should allow local building officials more than sufficient notice to familiarize themselves with the pending deletion of the internal pressurization option and begin enforcing the new code requirements with greater uniformity statewide on June 1. However, reinstating the internal pressurization option until June 1, 2007 will result in additional structures being built to that standard in Florida without opening protections. Such structures are more likely to incur damage to their interior because of wind-borne debris puncturing the structure's envelope (i.e. debris crashing through a window).

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:

Florida Building Code - Retroactive Application of Change to Internal Design Option

The Florida Supreme Court has stated that a statute may be retroactively applied only when the Legislature provides clear evidence of legislative intent to apply the statute retrospectively, and when such application is constitutionally permissible. The retroactive application of a statute is invalid when it impairs vested rights, creates new obligations, or imposes new penalties.[11] This bill does not place new obligations on a party seeking to have a new structure built, nor does it impose any new penalties. On the contrary, it extends an additional option to such parties of having a structure built pursuant to the internal design standard. The impairment of a vested right does not appear to be implicated either, as this bill does not take away from a party "an immediate right of present enjoyment, or a present fixed

[11] *Metropolitan Dade County v. Chase Federal Housing Corp.*, 434 So.2d 494 (Fla.1999).

right of future enjoyment."[12] All parties may design structures using internal design, or in accordance with wind-borne debris protection standard.

B. RULE-MAKING AUTHORITY:

The bill provides authority for the Financial Services Commission to adopt rules to implement the bill's provision requiring property insurers to specify certain charges on the premium renewal notice.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

None required as this bill is a proposed council bill.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 22, 2007, the Jobs and Entrepreneurship Council heard the bill, adopted seven amendments, and reported the bill favorably. The amendments made the following changes to the bill:

- Corrected a scrivener's error for a cross-reference contained in HB 1A.
- Allowed additional insurers to access a $10 million layer of coverage in the Florida Hurricane Catastrophe Fund.
- Changed the definition of "pup company" in HB 1A to ensure the definition only applies to subsidiary companies of an insurer not headquartered in Florida. The change was made in the statutory provision requiring newly formed pup companies to maintain $50 million in surplus and in the provision setting forth the amount of surplus existing pup companies have to keep on hand in order to maintain their certificate of authority.
- Clarified that before insurers can reduce mitigation discounts due to the age of mitigation measure decreasing its effectiveness the insurer must make a rate filing to OIR for the reduction.
- Clarified the multi-line discount insurers may give to policyholders only applies if the policyholder purchases two or more insurance policies from the same insurer or insurer group.
- Clarified the disclosures required on premium renewal notices are only required for residential property renewal notices.
- Clarified all residential property insurers (homeowners, mobile homeowners, condominium associations, apartment buildings) must offer windstorm coverage to the policyholders but only personal lines residential property owners (homeowners, mobile homeowners but not condominium associations or apartment buildings) can exclude windstorm coverage.

The staff analysis was updated to reflect these changes.

[12] *Clausell v. Hobart Corp*., 515 So.2d 1275, 1276 (Fla. 1987). To be vested, a right must be more than an expectation based on the continuance of an existing law. See *Clausell* at 515 So.2d at 1276; *Div. of Workers' Comp. Bureau of Crimes Comp. v. Brevda,* 420 So.2d 887, 891 (Fla. 1st DCA 1982).