

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1109 Property Insurance

SPONSOR(S): Regulatory Affairs Committee; Insurance & Banking Subcommittee; Wood

TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1672

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Callaway	Cooper
2) Regulatory Affairs Committee	17 Y, 1 N, As CS	Callaway	Hamon

SUMMARY ANALYSIS

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage from licensed insurers. A homeowner cannot buy Citizens' insurance if a licensed insurer offers comparable insurance for a premium 15% or less than the Citizens' premium. A homeowner cannot renew Citizens' insurance if a licensed insurer offers comparable insurance at a premium equal to or less than the Citizens' renewal premium. In 2013, the Legislature created the Citizens Property Insurance Corporation Policyholder Eligibility Clearinghouse Program (Clearinghouse). The Clearinghouse diverts new applicants for personal residential insurance in Citizens and Citizens' renewal policyholders into the private market if a licensed insurer is willing to insure the risk within the Citizens' eligibility premium parameters in current law.

Insurance is obtained from surplus lines insurers when licensed insurers will not insure a risk. Surplus lines insurers currently cannot participate in the Clearinghouse, but the bill allows them to participate starting January 1, 2015. A surplus lines insurer can offer insurance through the Clearinghouse only if the Clearinghouse results in no private market offers for the risk. If a homeowner receives an offer of insurance through the Clearinghouse from a surplus lines insurer with a premium that is 15% or less than the Citizens' premium, the homeowner can still be insured by Citizens if they choose. Likewise, homeowners can choose to have their insurance renewed in Citizens even if they receive an offer of insurance from a surplus lines insurer with a premium that is the same as or less than the Citizens' renewal premium. A surplus lines insurer covering risks through the Clearinghouse must meet enhanced financial requirements than the ones required in current law and must provide additional notifications to policyholders.

The bill requires Citizens to annually report on its borrowing and claims-paying capacity and cash balance.

Generally, the Division of Administrative Hearings (DOAH) is a state agency employing judges to conduct hearings where substantial interests of a person are determined by an agency and where there are disputed issues of material fact. Currently, Citizens' purchasing must comply with the state agency procurement law and protests are decided by the Citizens Board of Governors. The Leon County Circuit Court has subsequent jurisdiction. The bill requires Citizens' protests to be heard by DOAH, rather than the Citizens' Board. The Citizens Board takes final action on the protest. The First District Court of Appeal has subsequent jurisdiction.

Current law requires insurers to provide property insurance discounts for properties with mitigation features. To get the discount, policyholders submit a mitigation form to the insurer substantiating mitigation features. Home inspectors, building code inspectors, contractors, engineers, architects, and any persons determined to be qualified by the insurer can complete a mitigation form. The bill allows the Department of Financial Services (DFS) to deny, suspend, revoke, or refuse to renew a license for an insurance agent, insurance adjuster, customer service representative, service representative, or managing general agent if the agency finds the person directly or indirectly accepted any type of fee for referring a homeowner to an inspection company for a property insurance related home inspection.

The bill has no fiscal impact on local government. The fiscal impact to homeowners, Citizens, and to DOAH is outlined in the Fiscal Analysis.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

As of February 12, 2014, Citizens is the largest property insurer in Florida with over one million policies extending approximately \$315 billion of property coverage to Floridians.¹ Citizens insures over 383,000 residential and commercial policies in Florida's coastal areas and over 600,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas.

Citizens was created by the Legislature in 2002 by the merger of two existing property insurance associations: The Florida Residential Property and Casualty Joint Underwriting Association (FRPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts:

1. Personal Lines Account (PLA) – Multiperil Policies²
Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2. Commercial Lines Account (CLA) – Multiperil Policies
Consists of condominium association, apartment building, homeowner's association policies, and commercial non-residential multiperil policies on property located outside the Coastal Account area; and
3. Coastal Account – Wind-only³ and Multiperil Policies
Consists of wind-only and multiperil policies for personal residential, commercial residential, and commercial non-residential issued in limited eligible coastal areas.

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amount, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules, which are approved by the Office of Insurance Regulation (OIR), give flexibility for Citizens to denote some risks as uninsurable based on factors not enumerated in statute, such as age of home, condition and age of roof, vacant property, certain seasonal occupancy, and type of electrical wiring.

Eligibility Based on Premium Amount

Under current law, a homeowner cannot buy insurance in Citizens if an insurer in the private market offers the homeowner insurance for a premium 15 percent or less than the Citizens' premium.⁴ In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage. Thus, a homeowner can buy insurance from Citizens only if the private insurer's premium is more than 15 percent than the Citizens' premium.

¹ <https://www.citizensfla.com/about/bookofbusiness/> (last viewed March 11, 2014).

² A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (<http://www2.iii.org/glossary/>) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

³ A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

⁴ s. 627.351(6)(c)5.a., F.S. Commercial non-residential property is not subject to this eligibility restriction.

Under current law, a homeowner cannot renew insurance in Citizens if an insurer in the private market offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.

Citizens Property Insurance Corporation Policyholder Eligibility Clearinghouse Program

In 2013, the Florida Legislature passed CS/SB 1770⁵ creating s. 627.3518, F.S., which mandated the creation of the Citizens Property Insurance Corporation Policyholder Eligibility Clearinghouse Program (Clearinghouse) for personal residential risks. The Clearinghouse has two purposes:

- to determine if a new or renewal policy is eligible for Citizens coverage and
- to enhance access of new Citizens applicants and existing Citizens policyholders to offers of coverage from authorized insurers.⁶

The Clearinghouse facilitates the diversion of ineligible applicants and existing policyholders from Citizens into the voluntary private insurance market. A risk should not be submitted to the clearinghouse if the insurance agent is aware of an offer of coverage from a private-market insurer with which the agent is appointed that would render the risk ineligible for Citizens. Risks should only be submitted to the clearinghouse if the agent is unaware of any other offers of coverage that make the risk ineligible for coverage with Citizens and the risk meets all of Citizens' regular eligibility requirements.

Citizens launched the personal residential Clearinghouse for new applicants for insurance from Citizens on January 27, 2014.⁷ At launch, four insurers in the private voluntary market participated in the clearinghouse, with another six insurers scheduled to participate starting March 30, 2014.⁸

For a homeowner not already insured by Citizens, but who wants to purchase insurance from Citizens (i.e., a new applicant), the Clearinghouse works as follows:⁹

1. When a new applicant for insurance from Citizens contacts a Citizens-appointed insurance agent for coverage, if the agent is unable to find coverage in the private market for a premium that is 15 percent or less than the Citizens' premium, the agent will enter the risk characteristics of the property to be insured into the Clearinghouse.
2. The Clearinghouse submits the risk to participating insurance companies, which have two days to return an offer of coverage. However, because the Clearinghouse is fully automated, in most cases, results are available immediately.
3. If the Clearinghouse identifies one or more participating insurers willing to write a policy for the applicant at a premium that is no more than 15 percent higher than Citizens' premium for comparable coverage, the applicant will be ineligible for coverage with Citizens. The applicant may purchase coverage from their choice of the participating insurers that extend offers of coverage.¹⁰
4. If no comparable private market offers of coverage are received or the premiums on the offer or offers are over 15 percent higher than the Citizens' premium, the applicant will be eligible for coverage with Citizens, pending underwriting review and approval.

Although the Clearinghouse is not yet operational for Citizens' renewals, once operational, the process will work similarly as that for new applicants for insurance in Citizens. The primary difference is that if the Clearinghouse results in one or more offers of coverage from a participating insurer with a premium that is the same or less than the renewal premium from Citizens, then the policy is ineligible to be

⁵ Ch. 2013- 60, L.O.F.

⁶ s. 627.3518(2), F.S. An authorized insurer is one licensed in Florida.

⁷ Citizens Property Insurance Corporation, Citizens Statement on Property Insurance Clearinghouse Rollout (January 27, 2014).

<https://www.citizensfla.com/shared/press/articles/141/01.27.2014.pdf> (last viewed on March 19, 2014). At launch, the Clearinghouse is available only for multi-peril homeowner's policies. It is currently not available for mobile homeowners' policies.

⁸ <https://www.citizensfla.com/clearinghouse/?defaultinfo=clearinghouse/Join.cfm> (last viewed March 19, 2014).

⁹ s. 627.351(6)(c)5.a., F.S.

¹⁰ If the new applicant does not want coverage from one of the insurers participating in the Clearinghouse that offered coverage, the applicant can obtain coverage from another insurer in the voluntary or surplus lines market that is willing to insure the risk. The applicant, however, will not be able to obtain insurance from Citizens.

renewed by Citizens. In this circumstance, the renewal applicant may purchase coverage from their choice of the participating insurer or insurers that extend offers of coverage at or below the Citizens' renewal premium.¹¹

Surplus Lines Insurance

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). There are three basic categories of surplus lines risks:

1. specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
2. niche risks for which admitted carriers do not have a filed policy form or rate; and
3. capacity risks which are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code¹² and thus do not obtain a certificate of authority from the OIR to transact insurance in Florida. Rather, surplus lines insurers are "unauthorized" insurers, but are eligible to transact surplus lines insurance under the surplus lines law as "eligible surplus insurers."

The OIR determines whether a surplus lines insurer is "eligible" based on statutory guidelines. Statutory guidelines in current law require surplus lines insurers to have at least \$15 million in surplus and three years of successful operation in their home state.¹³

In addition, surplus lines policies have policyholder notice requirements that are different than those required for policies issued by insurers in the admitted market.¹⁴ Surplus lines policies must have stamped or printed on the face of the policy in at least 14-point, boldface type, the following statement: "SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY."¹⁵

The surplus lines policy must also state: "THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER."¹⁶

For personal lines residential property insured by a surplus lines insurer, current law (s. 626.916(1)(e), F.S.) requires the agent to provide written notice that coverage may be available and less expensive from Citizens, but also explains that Citizens assessments are higher and that Citizens coverage may be less than the property's existing coverage.

Effect of Proposed Changes Relating to the Citizens Clearinghouse

Surplus lines insurers are authorized by the bill to participate in the Citizens Clearinghouse beginning January 1, 2015. A surplus lines insurer must offer similar coverage to that provided by Citizens. Coverage may be offered by a surplus lines insurer only if the risk receives no coverage offers from authorized insurers through the Clearinghouse.

Unlike offers of insurance made to homeowners through the Clearinghouse from Florida licensed insurers, if a homeowner receives an offer of insurance through the Clearinghouse from a surplus lines

¹¹ If the Citizens' renewal policyholder does not want coverage from one of the insurers participating in the Clearinghouse that offered coverage, the policyholder can obtain coverage from another insurer in the voluntary or surplus lines market that is willing to insure the risk. The policyholder, however, will not be able to renew insurance in Citizens.

¹² The Florida Insurance Code is comprised of these chapters in Florida Statutes: chapters 624-632, 634-636, 641-642, 648, and 651.

¹³ Section 626.918(2)(d)1.a., F.S., provides the surplus requirements and s. 626.918(2)(b), F.S., requires three years of operation in the home state.

There are limited exceptions to three year operational requirement. The exceptions are also found in s. 627.918(2)(b), F.S.

¹⁴ The admitted market is the market composed of Florida licensed insurers (i.e., Florida authorized insurers).

¹⁵ s. 626.924(2), F.S.

¹⁶ s. 626.924(1), F.S.

insurer with a premium that is 15 percent or less than the Citizens' premium, the homeowner can still be insured by Citizens if they choose. Likewise, homeowners can choose to have their insurance renewed in Citizens even if they receive an offer of insurance from a surplus lines insurer with a premium that is the same as or less than the Citizens' renewal premium.

When a surplus lines insurer makes an offer of coverage through the Clearinghouse, the insurer must provide prominent notice to be signed by the policyholder and kept on file with the surplus lines insurer, that:

- An applicant in the Clearinghouse is not required to accept an offer of coverage from a surplus lines insurer.
- An offer of coverage from a surplus lines insurer does not affect the applicant's eligibility for coverage from Citizens.
- An applicant who accepts an offer of coverage from a surplus lines insurer may submit a new application for coverage to Citizens at any time.
- Surplus lines policies are not covered by the Florida Insurance Guaranty Association.¹⁷
- Rates for surplus lines insurance are not subject to review by the OIR.
- Notice regarding any information required by the OIR.

These notices are in addition to the ones required under current law outlined previously.

A Citizens policyholder who accepts an offer of coverage from a surplus lines insurer and subsequently applies for coverage with Citizens within 36 months of being insured by Citizens will be considered a renewal policy. The rates on such policies will be rated as renewals and thus be subject to the 10 percent limit on annual rate increases. A similar provision is contained in current law for new applicants for insurance in Citizens declared ineligible at renewal for continued insurance in Citizens through the Clearinghouse during the previous 36 months.

Surplus lines insurers participating in the Clearinghouse must meet enhanced financial requirements. The surplus lines insurer must maintain at least a \$50 million surplus on a company or pooled basis, rather than \$15 million. The insurer must also:

- be eligible to offer coverage under Florida's Surplus Lines Law (ss. 626.913-626.937, F.S.);
- have a superior, excellent, exceptional or comparable financial strength rating;
- have the financial ability to cover the insurer's 100-year probable maximum hurricane loss¹⁸ at least twice in a single hurricane season; and
- submit evidence of its reinsurance to the OIR for review.

Annual Reports Required From Citizens Property Insurance Corporation

Current law requires annual reports from Citizens on a variety of issues. By January 15th each year, Citizens must report its loss ratios for residential non-catastrophic losses on statewide average and county basis to the OIR.¹⁹ This information must also be put on Citizens' website. The bill changes the reporting date from January 15th to March 1st to allow Citizens more time to gather, calculate, and report the data from the prior year. Under current law, Citizens only has 15 days to gather, calculate, and report data from the previous calendar year.

Citizens must annually report to the Legislature and the Financial Services Commission²⁰ (FSC) on its aggregate net probable maximum loss,²¹ financing options, and potential assessments by February 1st.²² The report must also include the amount and term of debt needed to be issued by Citizens to support the probable maximum loss reported. The assessment percentage that is needed to support

¹⁷ The Florida Insurance Guaranty Fund is the guaranty association for property and casualty insurance. The Fund ensures policyholders of liquidated property and casualty insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.

¹⁸ A 100-year probable maximum loss is the loss associated with a 1-in-100 year hurricane which has a 1 percent probability of occurring.

¹⁹ s. 627.351(6)(hh), F.S.

²⁰ The Financial Services Commission is comprised of the Governor and Cabinet (s. 20.121(3), F.S.).

²¹ Probable maximum loss is an estimate of maximum dollar value that can be lost under realistic situations.

²² s. 627.35191, F.S.

the debt must also be reported. A similar report is also required to be done by the FSC under current law (s. 627.3519, F.S.). The bill repeals the report to be done by the FSC as it is duplicative of the one required from Citizens in s. 627.35191, F.S. The report required from Citizens by s. 627.35191, F.S., is not changed by the bill and will thus, still be provided to the Legislature and the FSC.

The bill requires Citizens to provide a new annual report. This report is due to the Legislature and the FSC each May. The report must estimate Citizens': 12-month borrowing capacity, claims-paying capacity, and calendar year end balance. In determining these estimates, Citizens must consider that the Florida Hurricane Catastrophe Fund²³ and the Florida Insurance Guaranty Fund may be concurrently issuing debt. The report required by the bill is similar to the one required by current law (s. 627.35191, F.S.) on Citizens' financing options and potential assessments, but not identical.

The Division of Administrative Hearings & Protests Relating to Procurement Against Citizens

The Division of Administrative Hearings (DOAH) is a state agency that employs full-time Administrative Law Judges to conduct hearings in most cases in which the substantial interests of a person are determined by an agency and which involve a disputed issue of material fact.²⁴ When a state agency proposes to take some action that is adverse to a person, the affected person is normally entitled to request an administrative hearing to determine the matter.²⁵ Requests for hearings are initially made to the appropriate state agency.²⁶ If the case does not involve disputed facts, the agency itself will conduct a proceeding and subsequently render a decision.²⁷ If the request for hearing indicates that the affected person disputes facts upon which the proposed action is based, the agency ordinarily refers the case to DOAH for a hearing.²⁸

DOAH provides a hearing conducted by an independent and neutral Administrative Law Judge who thereafter enters a Recommendation or Final Order, which is provided to the state agency and the parties in the case. In the case of a Recommended Order, the agency reviews the Order and issues a final decision which usually adopts the Judge's factual findings, but may under certain circumstances reject or modify certain legal conclusions of the Judge or the recommended penalty, if any. If the final decision is adverse to the non-agency party, an appeal may be taken within a limited time to a District Court of Appeal.²⁹

Legislation enacted in 2013³⁰ required Citizens' purchase of commodities and contractual services to comply with s. 287.057, F.S., which governs the purchase of commodities and contractual services by state agencies. The law makes Citizens an "agency" for purposes of s. 287.057, F.S., with one limited exception.³¹ The executive director of Citizens is the "agency head," except for bid protests where the Citizens' Board of Governors³² (Board) is the "agency head."³³ For protests relating to solicitations or contract awards, the law specifies the protest must be decided by the Board at the board meeting after Citizens tries to resolve the protest by mutual agreement. Once the Board decides the protest, the Circuit Court of Leon County has jurisdiction for any further legal proceedings.

²³ The Florida Hurricane Catastrophe Fund is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers. The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

²⁴ Ch. 120, F.S.

²⁵ s. 120.68(1), F.S.

²⁶ See Uniform Rule 28-106.201(2).

²⁷ s. 120.57(2), F.S.

²⁸ s. 120.57(1), F.S.

²⁹ s. 120.68(2)(a), F.S.

³⁰ Ch. 2013, 60, L.O.F.

³¹ s. 627.351(6)(e)1., F.S.

³² Citizens operates under the direction of a nine member Board of Governors (Board). The Governor, Chief Financial Officer, Senate President, and Speaker of the House of Representatives each appoint two members of the Board, with one member appointed chair by the Chief Financial Officer. Board members serve three year staggered terms. At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. The board members are not Citizens' employees and are not paid. There is also a consumer representative on the Board that is appointed by the Governor.

³³ s. 627.351(6)(e)1.b., F.S.

The bill removes the authority for the Citizens' Board to decide protests relating to solicitations or contract awards and requires those protests to be heard by DOAH instead. DOAH is required to do a recommended order on the protest and the Citizens' Board, as the "agency head" must consider the recommended order in a public meeting and take final action on the protest. Once the Board takes final action, the bill gives the First District Court of Appeal, rather than Leon County Circuit Court, jurisdiction for any further legal proceeding.

Mitigation Discounts

Current law requires insurers to provide mitigation credits, discounts, other rate differentials, or reductions in deductibles (mitigation discounts) to reduce residential property insurance premiums for properties with mitigation features.³⁴

Section 627.711, F.S., requires insurers to clearly notify an applicant for or policyholder of a personal lines residential property insurance policy of the availability and range of each premium discount, credit, other rate differential, or reduction in deductibles, for wind mitigation. The notice must be provided when the policy is issued and renewed and provided on a form developed by the OIR.

Typically, policyholders are responsible for substantiating to their insurers the insured property has mitigation features. Policyholders submit a completed uniform mitigation verification inspection form to the insurer to substantiate mitigation features. All insurers must use the uniform mitigation verification inspection form developed by rule by the Financial Services Commission (FSC).³⁵ The current version of the form was approved by the FSC in 2012 and recognizes the Florida Building Code adopted in 2001³⁶ or later and the South Florida Building Code³⁷ adopted in 1994.³⁸

Insurers must accept mitigation forms prepared by home inspectors, building code inspectors, contractors, engineers, and architects and may accept forms prepared by persons determined to be qualified by the insurer to prepare the form. Insurers can require mitigation forms provided to the insurer by mitigation inspectors or mitigation inspection companies to be independently verified for quality assurance purposes before accepting the mitigation form as valid. The insurer must pay for the independent verification.³⁹ At their expense, insurers can also independently verify, for quality assurance purposes, mitigation forms submitted by policyholders or insurance agents.

The bill allows the DFS to deny, suspend, revoke, or refuse to renew a license for an insurance agent, insurance adjuster, customer service representative, service representative, or managing general agent if the agency finds the person directly or indirectly accepted any type of fee for referring a homeowner to an inspection company for a property insurance related home inspection.

B. SECTION DIRECTORY:

Section 1: Amends. s. 626.621, F.S., relating to grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.

Section 2: Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

³⁴ s. 627.0629(1)(a), F.S. Mitigation features are construction techniques used or items purchased and installed by a property owner to protect a structure against windstorm damage and loss. (e.g., hurricane shutters, hip roof, specified roof covering).

³⁵ The Financial Services Commission is comprised of the Governor and Cabinet (s. 20.121(3), F.S.). The form is adopted by Rule 69O-170.0155, F.A.C.

³⁶ Building permit application date of 3/1/2002 or later. The Florida Building Code is adopted every three years by the Florida Building Commission located in the Florida Department of Business & Professional Regulation.

³⁷ The South Florida Building Code was first adopted by Miami-Dade County on December 31, 1957. In 1976, Broward County adopted a local referendum making the South Florida Building Code, Broward County Edition, a county-wide standard and incorporated the Code into the county charter. (<http://www.broward.org/CODEAPPEALS/Pages/HistorySouthFloridaBuildingCode.aspx>) (last viewed March 11, 2014). The 1994 South Florida Building Code applies to building permit application dates starting 9/1/94 in Miami-Dade and Broward Counties. The South Florida Building Code, however, was superseded by the 2001 Florida Building Code. Currently local governments can adopt amendments to the technical provisions in the statewide code to apply solely to the local jurisdiction as long as the amendments are more stringent than the code (s. 553.73(4)(b), F.S.).

³⁸ Information about the form adopted in 2012 is available at <http://www.floir.com/sections/pandc/productreview/uniformmitigationform.aspx> (last viewed March 11, 2014).

³⁹ s. 627.711(8), F.S.

Section 3: Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.

Section 4: Repeals s. 627.3519, F.S., relating to annual report of aggregate net probable maximum losses, financing options, and potential assessments.

Section 5: Amends s. 627.35191, F.S., relating to annual report of aggregate net probable maximum losses, financing options, and potential assessments.

Section 6: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DOAH will receive payment from Citizens for their expenses associated with hearing Citizens protests relating to solicitations or contract awards, although the net fiscal impact of this payment should be zero as the payment received from Citizens should equal DOAH's expenses associated with each protest determined by DOAH.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The number of policies obtaining insurance in Citizens and the number of policies renewing insurance in Citizens could decline because the bill authorizes a new kind of insurer (i.e., a surplus lines insurer) to participate in the Clearinghouse. The precise impact on the policy count of Citizens due to participation in the Clearinghouse by surplus lines insurers is unknown for several reasons. First, it is unknown how many surplus lines insurers will choose to participate in the Clearinghouse or how many offers of coverage these insurers will make through the Clearinghouse. Also, because a new applicant for Citizens' insurance or a Citizens' renewal policyholder can decline coverage offered by a surplus lines insurer under any circumstance and obtain or renew coverage in Citizens, the number of policies that will be prevented from initially being insured by Citizens or renewed by Citizens is indeterminate. However, any decline in the number of policies in Citizens will lower Citizens' exposure which in turn lowers the likelihood and amount of assessments levied by Citizens against Citizens' and non-Citizens' policyholders.⁴⁰

⁴⁰ In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute. If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders (Citizens Policyholder Assessment) of up to 15 percent of premium per account in deficit, for a maximum total of 45 percent. If the Coastal Account incurs a deficit that the levy of a Citizens Policyholder Assessment does not cure, then Citizens may levy another assessment, a regular assessment, of up to 2 percent of premium or 2 percent of the remaining deficit in the Coastal Account. The regular assessment is levied on virtually all property and casualty policies in the state, but not on Citizens' policies. The assessment is also not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. If the PLA or CLA incurs a deficit that a Citizens Policyholder Assessment levy does not cure, then Citizens may levy another assessment, an emergency assessment, to cure the deficit. An emergency assessment may also be levied for deficits in the Coastal Account that a Citizens Policyholder Assessment and regular assessment do not

Homeowners insured by Citizens that choose to be insured by a surplus lines insurer through the Clearinghouse are no longer subject to a maximum 45 percent assessment levied by Citizens against its policyholders.⁴¹ In addition, these homeowners may obtain property insurance with more coverage from the surplus lines insurer.⁴²

Citizens will incur additional costs to pay DOAH for their expenses associated with determining protests relating to solicitations and contract awards. Currently, the Citizens Board determines bid protests at regularly scheduled board meetings, so any additional cost to Citizens for the determination by their Board is minimal.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2014, the Insurance & Banking Subcommittee heard a proposed committee substitute and reported it favorably. The committee substitute did not retain any provision of the originally filed version of the bill. The committee substitute added the following provisions to the bill:

- Allowed surplus lines insurers to participate in the Citizens' Clearinghouse starting January 1, 2015.
- Specified financial requirements for surplus lines insurers participating in the Clearinghouse.
- Required specified notices to the homeowner about surplus lines insurance offered through the Clearinghouse.

cure. Emergency assessments are limited to 10 percent of premium or 10 percent of the deficit per account, for a maximum total of 30 percent. This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies. However, this assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

⁴¹ In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute. If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders (Citizens Policyholder Assessment) of up to 15 percent of premium per account in deficit, for a maximum total of 45 percent.

⁴² In recent years, Citizens has significantly reduced coverages and reduced the policy limits on certain coverage. For example, Citizens no longer insures screen enclosures or carports. And, Citizens has a 10 percent mandatory sinkhole deductible and a policy limit for personal liability of \$100,000, instead of \$300,000. Some insurers in the private market have made coverage reductions similar to some of the ones made by Citizens, but no private insurer has made all of the reductions Citizens has made.

- Allowed a homeowner to be eligible for insurance from Citizens if a surplus lines insurer offers insurance to the homeowner through the Clearinghouse.
- Required an annual report from Citizens on 12-month borrowing capacity, claims-paying capacity, and calendar year end balance.
- Removed the authority for the Citizens' Board to decide protests relating to solicitations or contract awards and requires those protests to be heard by DOAH instead.

On April 10, 2014, the Regulatory Affairs Committee heard the bill, adopted one amendment, and reported the bill favorably with a committee substitute. The amendment adopted allowed the DFS to deny, suspend, revoke or refuse to renew a license for an insurance agent, adjuster, customer service representative, service representative, or managing general agent if it finds the person directly or indirectly accepted any type of fee for referring a homeowner to an inspection company for a property insurance related home inspection.

The staff analysis was updated to reflect the committee substitute.