

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1295 CS                      Citizens Property Insurance Corporation  
**SPONSOR(S):** Sorensen and others  
**TIED BILLS:**                                **IDEN./SIM. BILLS:** SB 2294

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	14 Y, 1 N, w/CS	Cooper	Cooper
2) State Administration Appropriations Committee			
3) Commerce Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

In 2002, the Florida Legislature created Citizens Property Insurance Corporation (Citizens) which is the state's "insurer of last resort" and a property is eligible for coverage with Citizens only if there is no other offer from an authorized insurer. As of January 31, 2005, Citizens provided coverage to 814,081 policyholders, making Citizens the second largest insurer in Florida.

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 policies and commercial non-residential wind-only policies.

In order to assure that Citizens rates are not competitive with the voluntary market, the current law requires that Citizens' rates for its Personal Lines Account be actuarially sound and that its average rates for each county must be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 20 insurers (5 insurers for mobile home coverage) with the greatest direct written premium in the state for that line of business.

For its High Risk Account (wind-only policies in coastal areas), the law more generally requires that Citizens' rates be actuarially sound and not be competitive with approved rates charged by authorized insurers. Pursuant to a process outlined in current statute Citizens has implemented a wind-only rate methodology that uses a variation of the "Top 20" approach mandated for personal residential multi-peril policies.

The bill provides that the current rating requirements would not apply in any county for which OIR determines that a reasonable degree of competition does not exist for personal lines residential policies in the area of that county eligible for wind-only coverage. In such counties, for both accounts, Citizens would be required to charge rates that are actuarially sound and not excessive, inadequate, or unfairly discriminatory and be subject to the rating law that applies to all property and casualty insurers.

The Financial Services Commission is given authority to adopt rules establishing criteria for determining whether a reasonable degree of competition exists for personal lines residential policies. Beginning October 1, 2005, and each 6 months thereafter, OIR must determine and identify those counties for which a reasonable degree of competition does not exist.

The bill does not appear to have a fiscal impact on the public sector but does on the private.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1295a.IN.doc  
**DATE:** 4/6/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

None implicated by the bill.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Joint Select Committee on Hurricane Insurance**

On January 5, 2005, Senate President Tom Lee and House Speaker Allan Bense appointed the Joint Select Committee on Hurricane Insurance (Joint Select Committee). The Joint Select Committee was directed to study all aspects of the property insurance market that promote the availability and affordability of coverage and to focus on three areas of immediate importance:

- Hurricane deductibles, including:
  - the premium impact of the annual hurricane deductible requirement enacted in the 2004 Special Session A<sup>1</sup>, and
  - additional deductible amounts that should be available to consumers and how such changes would affect availability and affordability of coverage.
- The Florida Hurricane Catastrophe Fund (FHCF), to examine the hurricane loss retention that an insurer must pay before it triggers recovery from the FHCF.
- Citizens Property Insurance Corporation (Citizens), including the problems experienced by Citizens in handling claims from the 2004 storms, the potential deficit assessment that may be necessary, and the policy growth of Citizens. The Joint Select Committee was directed to explore options to reduce the size of Citizens and to reduce the potential for assessment, while providing coverage at a fair price to homeowners who have no other option for coverage.

The Joint Select Committee met five times during January and February 2005, heard testimony, and received information and recommendations from the Department of Financial Services (DFS), the Office of Insurance Regulation (OIR), the Office of the Insurance Consumer Advocate, Citizens Property Insurance Corporation, various insurance companies, insurance and agent associations, the Florida Consumer Action Network, and others. The Joint Select Committee also heard presentations on premium mitigation credits and construction techniques from OIR, the Department of Community Affairs, Applied Research Associates, and the Federal Alliance for Safe Homes (FLASH).

The Joint Select Committee issued its report to the President of the Senate and the Speaker of the House of Representatives on February 25, 2005.<sup>2</sup> The report sets forth the Joint Select Committee's findings based on the testimony received and its recommendations for amending current law to increase the affordability and availability of homeowner's insurance. One of the recommendations made by the Joint Select Committee was that the Legislature should begin a complete reexamination and study of the statutory requirements and operation of Citizens Property Insurance Corporation and give specific consideration to, among other issues, whether the rates for Citizens should be based on actuarial soundness rather than compared to rates for other insurers, in areas where a reasonable level of competition does not exist.

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<sup>1</sup> Ch. 2004-480, L.O.F.

<sup>2</sup> A copy of the report can be obtained at: <http://www.flsenate.gov/data/committees/joint/jshi/finalreport.pdf> (last visited March 3, 2005).

## **Citizens Property Insurance Corporation**

*General Background*--In 2002, the Florida Legislature created Citizens Property Insurance Corporation (Citizens) which combined the then existing Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens is the state's "insurer of last resort" and a property is eligible for coverage with Citizens only if there is no other offer from an authorized insurer.

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 policies and commercial non-residential wind-only policies.

As of January 31, 2005, Citizens provided coverage to 814,081 policyholders, making Citizens the second largest insurer in Florida. The numbers of policyholders in the three accounts are: PLA -- 354,622; CLA -- 3,650; and HRA -- 455,809. Citizens' projections for the 2005 hurricane season are that the HRA is exposed to a \$7.6 billion probable maximum loss (PML) for a 100-year storm, and the combined PLA/CLA faces an additional \$2 billion 100-year PML.

The High-Risk Account provides windstorm only coverage. Citizens provides coverage in specially designated areas which have been determined to be particularly vulnerable to severe hurricane damage. In these "wind only" zones, private insurers may offer other peril insurance, but are not required to provide windstorm coverage. For the HRA policies in effect on January 31, 2005, Citizens reports \$699 million generated in premiums, representing an exposure of \$133.9 billion. The premiums generated by the HRA policies account for 61 percent of all premiums generated and represents 68 percent of Citizens' total exposure.

In 2004, Citizens' policyholders were impacted by all four hurricanes hitting Florida. Prior to the hurricane season, Citizens had a surplus of about \$1.1 billion for its High Risk Account and \$700 million for the PLA/CLA combined. For the 2004 storms, Citizens losses are currently estimated at about \$2.4 billion, primarily impacting the High Risk Account. Pending final audit results for 2004, Citizens had a surplus of about \$1.3 billion in its HRA and its losses are estimated at \$1.8 billion, resulting in an estimated deficit of \$525 million. This may require about a 7 percent, one-time regular assessment on property insurers to fund this deficit, which the insurer may then recoup from its policyholders. For example, this would be about a \$70 surcharge for a policy with a \$1,000 annual premium.

For its other two accounts, the PLA/CLA combined had an estimated \$602 million in losses in 2004, which can be paid out of its 2004 surplus of about \$700 million, so assessments do not appear to be necessary for these accounts. All of these estimates are still preliminary as losses continue to develop and final audits are completed.

As of March 17, 2005, Citizens reports that 118,408 claims have been filed for the four hurricanes, with Hurricane Frances being responsible for 43 percent of all claims. As of March 17, 2005, Citizens has closed 95 percent of its claims. Citizens has closed 97 percent of the claims from Charley, 96 percent from Frances, 92 percent from Jeanne and 94 percent from Ivan.<sup>3</sup>

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<sup>3</sup> Presentation by Citizens to the Task Force on March 23, 2005 available at [http://www.fldfs.com/GeneralCounsel/Task%20Force%203\\_23\\_05%20.pdf](http://www.fldfs.com/GeneralCounsel/Task%20Force%203_23_05%20.pdf) (last visited on March 27, 2005).

*Rates for Citizens* -- In order to assure that Citizens rates are not competitive with the voluntary market, the current law requires that Citizens' rates for its Personal Lines Account be actuarially sound and that its average rates for each county must be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 20 insurers (5 insurers for mobile home coverage) with the greatest direct written premium in the state for that line of business.<sup>4</sup>

For its High Risk Account (wind-only policies in coastal areas), the law more generally requires that Citizens' rates be actuarially sound and not be competitive with approved rates charged by authorized insurers. However, the law further requires Citizens and OIR to jointly develop a wind-only ratemaking methodology to meet this purpose, for rates effective on or after July 1, 2004, required to be reported to the President of the Senate and Speaker of the House by January 31, 2004.<sup>5</sup> The report was filed and outlined a wind-only rate methodology that uses a variation of the "Top 20" approach mandated for personal residential multi-peril policies.

The requirement for Citizens to charge the highest average rates in a county has been questioned, particularly for those areas where a reasonable degree of competition does not exist. In such areas, consumers may have no option for coverage other than Citizens, arguably making it unnecessary for the law to require an artificially high rate to prevent price shopping, rather than simply requiring rates to be actuarially sound. But, the lack of competition in an area may also indicate that insurers do not perceive current rate levels to be adequate to profitably write coverage. It is also argued that the depleted surplus of Citizens after the 2004 hurricanes and its projected 100-year probable maximum loss of \$7.6 billion for the HRA and \$2 billion for the PLA/CLA, are reasons not to make changes to the current rating requirements for Citizens.

The Insurance Consumer Advocate believes the Legislature should consider amending the statutory requirement that Citizens' rates be above the voluntary market and consider whether actuarial soundness, alone, is a more appropriate means for establishing rates.<sup>6</sup> According to his testimony, many of the Citizens' policyholders he has talked with did not "shop their way into Citizens coverage." Rather, they became Citizens' policyholders because they had no other choice in residential insurance coverage. Thus, the Consumer Advocate believes these policyholders should not be forced to pay an insurance premium set to keep them out of Citizens when in actuality they were forced in to Citizens by the market.

### **Changes Proposed by the Bill**

The bill changes the way Citizens sets rates for its Personal Lines Account and High Risk Account. Under current law, rates for Citizens cannot be competitive with the private market and the bill provides an exception to this requirement for property located in counties for which OIR determines that a reasonable degree of competition does not exist.

For the Personal Lines Account, Citizens must currently charge the highest average rates in the county compared to the 20 insurers with the greatest written premium in the state. This requirement would no longer apply in any county for which OIR determines that a reasonable degree of competition does not exist for personal lines policies.

Regarding the High Risk Account, Citizens is also currently required to ensure that its rates for personal lines policies in the High-Risk Account are not competitive with the private market. The current rating plan utilizes a variation of the "top 20" rating comparison used for the Personal Lines Account. The bill changes current law by providing that this requirement would not apply in any county for which OIR determines that a reasonable degree of competition does not exist for personal lines residential policies

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<sup>4</sup> s. 627.351(6)(d)2., F.S. (2004).

<sup>5</sup> s. 627.351(6)(d)3., F.S. (2004).

<sup>6</sup> Written testimony submitted by the Insurance Consumer Advocate to the Joint Select Committee on Hurricane Insurance on January 14, 2005 on file with the Insurance Committee.

in the area of that county eligible for wind-only coverage. In such counties, for both accounts, Citizens would be required to charge rates that re actuarially sound and not excessive, inadequate, or unfairly discriminatory and be subject to the rating law that applies to all property and casualty insurers.

The Financial Services Commission is given authority to adopt rules establishing criteria for determining whether a reasonable degree of competition exists for personal lines residential policies. Beginning October 1, 2005, and each 6 months thereafter, OIR must determine and identify those counties for which a reasonable degree of competition does not exist.

C. SECTION DIRECTORY:

Section 1. Amends s. 627.351, F.S., to revise criteria for rates for coverage provided by Citizens.

Section 2. Provides an effective date of July 1, 2005.

## 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:

There is an unknown impact on rates resulting from requiring Citizens to charge actuarially sound rates, rather than the highest average rates in the county compared to the top 20 insurers. Citizens reports that this will not necessarily lower rates, and could even increase rates in certain areas. By using the current top 20 rating formula, Citizens has reportedly not necessarily charged a rate as high as the actuarially indicated rate in all areas. It is also unknown which counties or areas would be impacted by this bill. But, OIR reports that as of June 30, 2004, Citizens writes 93 percent of the total policies in Monroe County that include wind coverage and writes 48 percent of the total policies in Dade County that include wind coverage. Because this includes policies being renewed, it may understate the lack of competition for new policies.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On April 6, 2005, the Insurance Committee adopted a strike everything amendment to HB 1295. The bill, as originally filed, amended current intent language regarding rate setting by Citizens. It maintained the statement that it is the intent of the Legislature that the rates for coverage provided by the corporation be actuarially sound, and not competitive with approved rates charged in the admitted voluntary market, so that the corporation functions as a residual market mechanism to provide insurance only when the insurance cannot be procured in the voluntary market, but it added the declaration that the rates are to be "as determined by the corporation, but no higher than actuarially sound."

Rep. Sorensen's strike everything amendment contained the following features:

- It changes the way Citizens sets rates for its Personal Lines Account and High Risk Account.
- For the Personal Lines Account, Citizens must currently charge the highest average rates in the county compared to the 20 insurers with the greatest written premium in the state. This requirement would no longer apply in any county for which OIR determines that a reasonable degree of competition does not exist for personal lines policies.
- The amendment changes current law by providing that the rating requirement for the High Risk Account would not apply in any county for which OIR determines that a reasonable degree of competition does not exist for personal lines residential policies in the area of that county eligible for wind-only coverage. In such counties, for both accounts, Citizens would be required to charge rates that are actuarially sound and not excessive, inadequate, or unfairly discriminatory and be subject to the rating law that applies to all property and casualty insurers.

- The Financial Services Commission is given authority to adopt rules establishing criteria for determining whether a reasonable degree of competition exists for personal lines residential policies.
- Beginning October 1, 2005, and each 6 months thereafter, OIR must determine and identify those counties for which a reasonable degree of competition does not exist.

This staff analysis addresses the bill with the amendment incorporated as a CS.

Note: HB 1937, a committee bill by the Insurance Committee, contains the same provisions of this bill.