HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1223 Citizens Property Insurance Corporation
SPONSOR(S): Hays
TIED BILLS: **IDEN./SIM. BILLS:** SB 2366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Insurance	(ref. removed)	Callaway	Overton
2) Jobs & Entrepreneurship Council		Callaway	Thorn
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

The bill creates "The Citizens Property Insurance Corporation Liquidation Task Force" (Task Force) to analyze and compile data for development of a business plan to liquidate Citizen's assets by January 31, 2012. The Task Force must also organize data it compiles into a business strategy for Citizens that is to be reviewed by the Governor and the Legislative presiding officers. The bill specifies the membership, the appointing entities, and the term of the Task Force. It requires the Task Force to report on its activities to the Governor and Legislative presiding officers by January 31, 2008. The bill delineates the areas in which the Task Force must make recommendations on in its report.

The bill provides an appropriation of $250,000 in nonrecurring funds from the General Revenue Fund.

The bill is effective "upon becoming a law."

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill creates "The Citizens Property Insurance Corporation Liquidation Task Force" comprised of members of the House and Senate, representatives of insurers, and non-insurer representatives.

B. EFFECT OF PROPOSED CHANGES:

<u>Citizens Property Insurance Corporation (Citizens)</u>

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 operates under the direction of an 8-member Board of Governors. The Governor, Chief Financial Officer, the Senate President, and the Speaker of the House of Representatives each appoint two members of the Board who serve for 3-year terms.[1]

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.[2]

HB 1A[3] enacted during the 2007 Special Session was enacted, in part, to address the increased property insurance costs for Florida's residents. To effectuate this purpose, the bill contained numerous changes to Citizens to control or reduce the premiums charged by Citizens.

Eligibility for Coverage in Citizens

Except as outlined below, property that is unable to find property insurance coverage in the private market is able to obtain property insurance in Citizens. HB 1A expanded eligibility for residential coverage in Citizens in two primary ways. First, it deleted the provision added in 2006 (SB 1980) that nonhomestead property, as defined, is ineligible for coverage from Citizens, effective March 1, 2007, unless the property owner submits certification from an agent that coverage has been rejected by at least three surplus lines insurers and one authorized insurer.

Second, HB 1A placed 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 rate, the property is not eligible

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[1] s. 627.351(6)(c)4., F.S. (2006).
[2] http://www.citizensfla.org/Exposure_Prem_Reports.asp (last viewed March 14, 2007).
[3] Ch. 2007-1, L.O.F.

for a Citizens' policy, unless the insurer's premium is more than 25 percent greater than the premium for comparable coverage from Citizens. However, a *policyholder* of Citizens remains eligible for coverage regardless of any offer of coverage from a private market insurer. This allows a policyholder to choose to stay in Citizens and to reject any "take-out" offers from the voluntary market. But, the voluntary market may continue to "keep out" policies from Citizens, provided the premium is no more than 25 percent greater than Citizens' premium.

The Citizens' eligibility restrictions for homes insured for $1 million or more were not changed by HB 1A. In this regard, beginning July 1, 2008, homes insured for $1 million or more are ineligible for coverage in Citizens.[4] Homes insured for $1 million or more by Citizens before July 1, 2008 can remain in Citizens for another 3 years if the homeowner annually gets three declinations of coverage from surplus lines insurers and one from an authorized insurer. However, such property can only be covered in the high-risk account and will be considered "non-homestead property." By June 30, 2011, Citizens will not insure any home insured for $1 million or more.

In addition, starting January 1, 2009, all newly constructed buildings within 500 feet landward or seaward of the Coastal Construction Control Line will be ineligible for coverage in Citizens. The Coastal Construction Control Line Program, authorized by the Legislature and administered by the Department of Environmental Protection, prohibits new construction within a certain distance from the water line in order to protect beaches and dunes. Buildings between 500 feet and 2,500 feet from the landward side of the Line must be built to the "code plus" building standard developed by the Florida Building Commission in order to be eligible for property insurance in Citizens. However, if the "code plus" building standard is not developed by January 1, 2009, the buildings must be built to the Miami-Dade Building Code.

The eligibility changes coupled with the rating law changes enumerated below place Citizens in a more competitive role with the private market meaning Citizens may increase its policy growth at an even greater pace, at least for the near future.

Deficits and Assessments
HB 1A substantially expanded the types of insurance policies and premiums that are subject to assessments to fund deficits of Citizens. Prior to the passage of HB 1A, the Citizens' assessment base was limited to property insurance premiums. As expanded by HB 1A, the assessment base is substantially the same as that of the Florida Hurricane Catastrophe Fund, which includes all lines of property and casualty insurance, including auto insurance, but not workers' compensation or accident and health. HB 1A also exempted medical malpractice premiums from the Citizens' assessment base (but the same exemption from the Florida Hurricane Catastrophe Fund assessments is scheduled for repeal in 2007). HB 1A's assessment base change expands the Citizens' assessment base four-fold, from about $8.2 billion to $35 billion (based on 2006 premiums). Accordingly, this reduces the percentage assessment that may be imposed in Citizens in the future by about one-fourth, by spreading it to additional types of insurance, notably auto policies. The expanded assessment base will also support a much larger bond issue, if necessary, and is expected to improve the bond rating and lower the cost of borrowing for Citizens.

In 2008 and later, if a deficit is incurred in any Citizens' account, the board must levy an immediate assessment on each non-homestead property[5] of up to 10 percent of the premium. If this is insufficient

[4] s. 627.351(6)(a)5., F.S. (2006).
[5] Property that is not homestead property as defined in s. 627.351(6) is "nonhomestead property." The definition of "homestead property" in s. 627.351(6) is more expansive than the definition used for ad valorem tax purposes.

Section 627.351(6)(a)4. defines "homestead property" as: a) a property granted a homestead tax exemption under ch. 196, F.S., b) property for which the owner has a written lease with a renter for a term of at least 7 months and which is insured by Citizens for $200,000 or less; c) an owner occupied mobile home permanently affixed to real property, owned by a Florida resident, and either granted a homestead tax exemption or, if the owner does not own the land, for which the owner certifies that the mobile home is his principal place of residence; d) tenants coverage; e) commercial lines residential property; f) any county, district, or municipal to eliminate the deficit, the board must levy an additional assessment against all Citizens' policyholders (including non-homestead policyholders), collected upon renewal, of up to 10 percent of premium. Any remaining deficit is funded by regular and emergency assessments, either recouped from, or directly paid by, non-Citizens' policyholders of property insurance. The regular assessment against insurers can still be imposed as soon as a deficit is determined, but must be reduced by the amounts estimated to be collected from the two 10 percent surcharges.[6]

Prior to the 2004 hurricane season, Citizens had a surplus of about $1.1 billion for its High Risk Account and $700 million for the PLA/CLA combined. Citizens' claims losses related to the 2004 hurricane season amounted to more than $2.4 billion, depleting its entire surplus in the High Risk Account. Thus, Citizens incurred a $516 million deficit in the HRA. The other two accounts (PLA and CLA) did not incur deficits. The $516 million deficit translated into statewide average 6.8% assessment on all non-Citizens insured homeowners in Florida. However, Citizens policyholders paid a 6.8% assessment, a "market equalization surcharge," upon renewal of their policy.

Due to the 2004 losses and deficit, Citizens started the 2005 hurricane season with no surplus in the HRA. Because this account sustained losses again in 2005 as a result of the 2005 hurricanes, as well as worsening loss development for the 2004 hurricanes (which are booked to the 2005 financial statements), Citizens incurred a deficit for the second year in a row. Citizens started the 2005 hurricane season with an estimated $162 million surplus in the PLA and $25.7 million surplus in the CLA.[7] For 2005, Citizens deficit was almost $1.8 billion. In the 2006 Legislative Session, the Legislature appropriated $715 million to defray the Citizens' deficit associated with the 2005 hurricanes, making the deficit amount passed on to property owners in Florida over $887 million. To cover the deficit, all owners of property insurance in Florida are required to pay an assessment of 1.4% of their premium for 10 years.[8]

Rates

HB 1A substantially revised the requirements, standards, and procedures for establishing rates for Citizens' policies in an attempt to provide immediate rate relief to Citizens' policyholders while establishing a long term rate standard based on actuarial soundness, rather than focusing on non-competitiveness or collecting sufficient premium to have reserves and reinsurance to cover a specified probable maximum loss. The changes required that Citizens' rates be actuarially sound and subject to s. 627.062, F.S., which prohibits rates that are excessive, inadequate, or unfairly discriminatory, and specifies factors for the Office of Insurance Regulation (OIR) to consider in making this determination. The bill retained the requirement that after the public hurricane loss model has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, that model shall serve as the minimum benchmark for determining Citizens' windstorm rates.

HB 1A requires Citizens to make a new rate filing, using the actuarially sound rate standard, effective January 1, 2008. Although the term "actuarially sound" does not have a precise definition, particularly when applied to a residual market insurer that depends on assessments for financing, the term generally means a rate that will cover expected losses. When applied to windstorm losses, this means a rate sufficient to cover average annual expected losses, based on hurricane loss projection models. The OIR will determine whether the rate filed by Citizens is "actuarially sound" and will determine what components Citizens is allowed to include in its "actuarially sound" rates.[9]

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hospital; not-for-profit hospital; or continuing care retirement community that is certified under ch. 651, F.S., and receives an ad valorem tax exemption under ch. 196, F.S.

[6] s. 627.351(6)(b)3.i., F.S. (2006).

[7] Personal communication from a representative of Citizens on file with the Insurance Committee.

[8] The assessment is applied to policies issued or renewed on or after July 1, 2007. In addition, the assessment percentage rate may change annually, depending on the previous years collections and fluctuations to the direct written premium base. *See* 2005 Citizens Property Insurance Corporation Emergency Assessment presentation available at http://www.citizensfla.org/index.asp.

[9] It unclear whether any additional amount beyond average annual loss should be included in Citizens' rate to collect an imputed "cost of capital" that would reduce Citizens' reliance on assessments. It is also not clear if the term "actuarially sound" encompasses charging an amount in excess of annual average loss to build towards financing a probable maximum loss for a specified period, such

HB 1A required the OIR to annually establish Citizens' rates within 45 days after Citizens files recommended rates, and prohibited Citizens from legally challenging the OIR determination. In addition, for one year (2007), HB 1A froze Citizens' rates to those that were in effect on December 31, 2006, resulting in immediate premium reductions for Citizens' policyholders. During the one year rate freeze, Citizens is still able to make rate filings which reduces rates further during the year; they are just not allowed to increase rates.

Task Force on Citizens Property Insurance Claims Handling and Resolution
HB 1A created the Task Force on Citizens Property Insurance Claims Handling and Resolution (Citizens' Claims Handling Task Force). The Citizens' Claims Handling Task Force is in existence until the end of the 2006-2008 legislative biennium and is directed to study issues relating to how Citizens currently handles, adjusts, and disposes of its claims in order to recommend improvement in such. It is required to report two times to the Legislature, the Governor, and the Chief Financial Officer on its findings. The first report, due July 1, 2007, must provide findings and recommendations about how Citizens' can dispose of still-open claims from the 2004 and 2005 hurricane season. The second report, due July 1, 2008, must provide findings and recommendations about how Citizens can more efficiently and timely handle, adjust, and dispose of future claims. The Citizens' Claims Handling Task Force has not met yet as all the appointments have not been made by the appointing entities.

Proposed Changes

The bill creates "The Citizens Property Insurance Corporation Liquidation Task Force" (Task Force). The Task Force's charge is to analyze and compile data pertinent to developing a business plan to liquidate Citizen's assets by January 31, 2012. It must also organize data it compiles into a business strategy for Citizens. The business strategy is to be reviewed by the Governor and the Legislative presiding officers.

The bill delineates specific areas the Task Force must provide recommendations on in its report to the Governor and Legislative presiding officers required by January 31, 2008. The Task Force is required to hold meetings, take testimony, and conduct research to fulfill its charge.

The bill specifies the membership of the 15 member Task Force:

- Three members of the House of Representatives appointed by the House Speaker;
- Three members of the Senate appointed by the Senate President;
- Three members appointed by the Governor, none of which can be affiliated with insurers; and
- Six members representing private sector insurers (three appointed by the House Speaker, three appointed by the Senate President).

The bill specifies when the appointing entities must make the Task Force appointments (30 days after the effective date of the bill), when the Task Force must convene its first meeting (within one month of appointment of all Task Force members), and when the Task Force expires (no later than 60 calendar days after report submission). The bill does not allow Task Force members to receive compensation for service but allows them to receive state-allowed per diem. The Task Force is allowed to employ consultants and administrative staff.

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as a 50 or 100 year storm. (Even though Citizens would be subject to a rate standard substantially the same as for voluntary market property insurers, Citizens is not subject to the same solvency requirements such as minimum surplus, restrictions on premium writings, or having surplus and reinsurance to cover a 100-year probable maximum loss.)

C. SECTION DIRECTORY:

Section 1: Creates “The Citizens Property Insurance Corporation Liquidation Task Force,” provides membership, provides duties, requires reporting, and provides expiration of the Task Force.

Section 2: Provides for a nonrecurring appropriation of $250,000 from the General Revenue Fund for implementation of the bill.

Section 3: Provides the bill is effective “upon becoming a law.”

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill provides an appropriation of $250,000 in nonrecurring funds from the General Revenue Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In its review of the bill, the OIR noted "the charges to the Task Force could be enhanced with a specific mandate to evaluate the impact of liquidation on current financing agreements held by Citizens and an evaluation of the need for a successor 'market of last resort' organization to provide policies in instances where applicants in good faith are entitled to, but unable to procure coverage or for areas in which economic growth and development is being deterred or otherwise stifled by the lack of available coverage, mortgages are in default, and/or financial institutions are unable to make loans because of the lack of available insurance."

D. STATEMENT OF THE SPONSOR

This bill provides for a long-term solution to the property insurance risk that is currently borne by the people of Florida. The transition of Citizens Property Insurance Corporation into a mutual insurance company will appropriately shift this risk onto individual policy owners in a manner that will allow for the cost of their premiums to be commensurate with the risk imposed by their property. The disclosure by the Chief Financial Officer of the risks imposed to Floridians will keep our taxpayers adequately informed of the economic conditions imposed by hurricane exposure on an annual basis.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.