

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Budget Committee

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BILL: SB 1330

INTRODUCER: Senator Hays

SUBJECT: Residential Property Insurance

DATE: April 11, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Burgess</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Betta</u>	<u>Meyer, C.</u>	<u>BC</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

This bill authorizes insurers to use an alternative rate for residential property insurance from the rate approved by the Office of Insurance Regulation (OIR). The alternative rate may not be more than 15 percent above the statewide average rate of the company’s most recently approved standard rate filing. Rate increases for individual policyholders cannot exceed double the proposed alternative rate. The OIR may deny the alternative rate if it is inadequate or it proposes a higher premium based on the policyholder’s race, color, creed, marital status, sex, or national origin. The bill places requirements on insurers seeking to use an alternate rate. The insurer may not purchase Temporary Increase in Coverage Limits (TICL) coverage from the Florida Hurricane Catastrophe Fund (Cat Fund). Effective January 1, 2015, insurers must have the ability to cover its 100-year probable maximum loss (PML) due to a hurricane.

The insurance agent must obtain a signed form acknowledging that the applicant for Citizens Property Insurance Corporation (Citizens) coverage or current Citizens policyholder understands the potential liability for surcharges and assessments of Citizens policyholders. The agent must obtain the signed acknowledgment from all Citizens applicants and all Citizens policyholders prior to the first renewal of a Citizens policy that occurs after the effective date of the bill.

This bill substantially amends sections 627.062 and 627.351, Florida Statutes.

The bill creates section 627.7031, Florida Statutes.

## II. Present Situation:

“Property insurance”<sup>1</sup> includes insurance covering personal lines residential risks, commercial lines residential risks, and commercial nonresidential risks as follows:

- *Personal lines residential coverage*: homeowners’, mobile home owners’, dwelling, tenants’, condominium unit owners’, cooperative unit owner’s and similar policies.
- *Commercial lines residential coverage*: coverage provided by a condominium association, cooperative association, apartment building and similar policies.
- *Commercial nonresidential coverage*: coverage provided by commercial business policies.

Generally, residential property insurance covers a policyholder’s residence, providing reimbursement due to damages sustained by the residence, including windstorm damage. Section 627.4025, F.S., defines “residential coverage” as personal lines residential coverage and commercial lines residential coverage.

### **Rate Regulation for Property, Casualty, and Surety Insurance**

The primary purpose of Part I of ch. 627, F.S., known as the Rating Law, is to ensure that property, casualty, and surety insurance rates are not excessive, inadequate, or unfairly discriminatory and that these standards apply to every property insurance rate.

Section 627.0645, F.S., requires every property insurance company to make a rate filing, which contains the insurer’s proposed rates, with the office each year. The office reviews the rate filing and either approves or disapproves the proposed rates. If an insurer does not want to change its rates one year, instead of a rate filing the insurer may file a certification by an actuary that the existing rate level produces rates which are actuarially sound and which are not inadequate. In determining whether a rate is excessive, inadequate, or unfairly discriminatory, the office uses the following statutory factors.

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, when applicable.
- A reasonable margin for underwriting profit and contingencies.
- Cost of medical services, when applicable.

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<sup>1</sup> Section 624.604, F.S., defines property insurance as insurance on real or personal property of every kind and interest, whether on land, water, or in the air, against loss or damage for any and all hazards and against loss or damage.

- Other relevant factors impacting frequency and severity of claims or expenses.

### **Excess Rates**

Section 627.171, F.S., permits an insurer to use a rate in excess of the insurer's filed rate on a specific risk if the insurer obtains the signed, written consent of the insured prior to the policy inception date. The signed consent form must include the filed rate and the excess rate for the risk insured. An insurer may not use excess rates for more than 5 percent of its personal lines insurance policies written or renewed in each calendar year.

### **Citizens Property Insurance Corporation (Citizens or 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.<sup>2</sup> It is not a private insurance company.<sup>3</sup> Citizens' book of business is divided into three separate accounts:<sup>4</sup>

- **Personal Lines Account (PLA) – Multiperil Policies<sup>5</sup>**  
Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies covering damage to property from windstorm and from other perils.
- **Commercial Lines Account (CLA) – Multiperil Policies**  
Consists of condominium association, apartment building, and homeowners' association policies covering damage to property from windstorm and from other perils.
- **High-Risk Account (HRA) – Wind-only<sup>6</sup> and Multiperil Policies**  
Consists of personal lines wind-only policies, commercial residential wind-only policies, and commercial non-residential wind-only policies issued in limited eligible coastal areas which cover damage to property from windstorm only. Also consists of personal and commercial residential multiperil policies in specified coastal areas (wind-only zones) issued since 2007 which cover damage to property from windstorm and from other perils.

Each Citizens' account is a separate statutory account and, therefore, has separate calculations of surplus and deficits. By statute, assets of each account may not be comingled or used to fund losses in another account.<sup>7</sup>

In the event Citizens incurs a deficit (its obligations to pay claims exceed its capital plus reinsurance recoveries) it may levy assessments on most of Florida's property and casualty

<sup>2</sup> Voluntary admitted market refers to insurers licensed to transact insurance in Florida.

<sup>3</sup> s. 627.351(6)(a)1., F.S.

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

<sup>5</sup> 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.

<sup>6</sup> A wind-only policy provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

<sup>7</sup> s. 627.351(6)(b)2.b., F.S.

insurance policyholders in a specific sequence set by statute.<sup>8</sup> The three Citizens' accounts calculate deficits and resulting assessment needs independently.

### *Citizens Policyholder Surcharges*<sup>9</sup>

If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15 percent of premium per account for a maximum total of 45 percent. This surcharge is collected over 12 months on all Citizens' policies and collected upon issuance and renewal.

### *Regular Assessments*<sup>10</sup>

Upon the exhaustion of the Citizens policyholder surcharge for a particular account, Citizens may levy a regular assessment of up to 6 percent of premium or 6 percent of the deficit per account, for a maximum total of 18 percent. The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies.<sup>11</sup> Property and casualty insurers with policies subject to the regular assessment provide the assessment to Citizens up front and subsequently recover it from their policyholders at the issuance of a new policy or at renewal of existing policies. Citizens is usually able to collect regular assessment funds within 30 days after levy.

### *Emergency Assessments*<sup>12</sup>

Upon the exhaustion of the Citizens' policyholder surcharge and regular assessment for a particular account, Citizens may levy an emergency assessment of up 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 rectify a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies.<sup>13</sup> Initially, property and casualty insurers with policies subject to the emergency assessment collect the assessment from policyholders at the issuance of a new policy or at renewal of existing policies and then remit the assessments periodically to Citizens. Thus, Citizens will not collect funds raised by an emergency assessment immediately after the assessment is levied, but will collect funds intermittently throughout the collection period as policies are renewed and new policies written.

## **Conclusive Presumptions**

A statutory presumption is conclusive if it prevents a party from proving or disproving the presumed fact. Conclusive presumptions can raise constitutional due process concerns but are permissible in some circumstances. The constitutionality of a conclusive presumption under the due process clause is measured by determining (1) whether the concern of the Legislature was

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<sup>8</sup> s. 627.351(6)(b)3.a.,d., and i., F.S.

<sup>9</sup> s. 627.351(6)(b)3.i., F.S.

<sup>10</sup> s. 627.351(6)(b)3.a. and b., F.S.

<sup>11</sup> The assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

<sup>12</sup> s. 627.351(6)(b)3.d., F.S.

<sup>13</sup> This assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. See s. 627.351(6)(b)3.f., F.S.

reasonably aroused by the possibility of an abuse which it legitimately desired to avoid; (2) whether there was a reasonable basis for a conclusion that the statute would protect against its occurrence; and (3) whether the expense and other difficulties of individual determinations justify the inherent imprecision of a conclusive presumption.<sup>14</sup> Florida insurance statutes contain conclusive presumptions related to selection or rejection of homeowner's law and ordinance coverage,<sup>15</sup> a motor vehicle insurance policyholder's election to purchase uninsured motorist coverage at lower limits than the insured's bodily injury coverage,<sup>16</sup> the assessment liability of the policyholders of a worker's compensation self insurance fund,<sup>17</sup> informed consent of HIV and AIDS testing for insurance purposes,<sup>18</sup> and the possibility that a Citizens Property Insurance Corporation policy could be replaced by a policy from an authorized insurer that does not provide identical coverage.<sup>19</sup>

### III. Effect of Proposed Changes:

**Sections 1 and 2** amend s. 627.062(2)(1), F.S., to authorize insurers to sell residential property insurance policies at an alternative rate that is different than the rate approved by the OIR pursuant to the requirements of the Rating Law. The alternative rate is subject to the following requirements:

- *A 15 Percent Maximum Statewide Rate Increase* – The alternative rate may create a statewide average rate increase of up to 15 percent above the company's most recently approved standard rate filing. Subsequent expedited rate filings may create a statewide average rate increase of up to 15 percent above the previous year's approved expedited rate filing. Because the allowable increase is based on a percentage of the previous year's rates, the annual increase will be compounded over the previous year's rate increase.
- *A Maximum Individual Policyholder Rate Increase of 2 Times the Statewide Increase* – The alternative rate may create a percentage rate increase for an individual policyholder of up to 2 times the statewide average rate increase provided for in the filing. For example, if the rate filing proposes a statewide 14 percent rate increase, the rate increase applicable to an individual policyholder cannot exceed 28 percent.

The alternative rate filing process does not alter the insurer's responsibility to file all materials that are required under the rating law and administrative rule. However, the rate filing will be subject to only a limited review by the OIR. Under current law, a rate shall not be excessive, inadequate, or unfairly discriminatory. The bill instead utilizes the following rate standard:

- *Excessive Rates* – The authorization of a 15 percent rate increase implicitly prevents the office from denying the rate as excessive unless the proposed alternative rate causes more than a 15 percent statewide rate increase or an increase to an individual policyholder that is more than double the statewide average increase.

<sup>14</sup> Hall v. Recchi America, Inc., 671 So.2d 197, 200 (Fla 1<sup>st</sup> DCA 1996)

<sup>15</sup> Section 627.7011(2), F.S.

<sup>16</sup> Section 627.727(1), F.S.

<sup>17</sup> Section 440.585, F.S.

<sup>18</sup> Section 627.429, F.S.

<sup>19</sup> Section 627.351(6)(c)11., F.S.

- *Inadequate Rates* – The OIR may disapprove the alternative rate if it is inadequate. The office’s authority to deny an inadequate rate is not altered in the alternative rate review process.
- *Unfairly Discriminatory Rates* – The alternative rate review process limits the prohibition against “unfairly discriminatory” rates in s. 627.062(2)(b), F.S. Under current law, a determination that a rate is “unfairly discriminatory” is based on an actuarial determination that the rate does not bear a reasonable relationship to the expected loss and expense experience of a risk or group of risks or fails to account for a risk management program. Under the alternative rate-filing process, the examination of whether a rate is “unfairly discriminatory” is altered and uses a different standard. The alternative rate is unfairly discriminatory and must be disapproved if it proposes a higher premium based on the policyholder’s race, color, creed, marital status, sex, or national origin. The OIR may direct the insurer to submit a new rate filing that does use the prohibited factor.

Other statutory provisions related to the alternative rate filing process include:

- *Separate Rate Filing* – The rate must be filed with the OIR as a separate filing.
- *Excess Rate Calculation Inapplicable* – Policies which are subject to this rate provision are not counted in the calculation of excess rates under s. 627.171, F.S.
- *Insurer Must Cover the 100-Year PML (Effective Jan. 1, 2015)* – Effective January 1, 2015, the insurer must include with the expedited filing a statement that the insurer has (or intends to have) the ability to cover its 100-year PML through a combination of surplus, Florida Hurricane Catastrophe Fund coverage, reinsurance, and reinsurance equivalents. The insurer must subsequently provide a certification to the OIR by July 31<sup>st</sup> that it can cover the 100-year PML. If the insurer fails to maintain resources sufficient to cover the 100-year PML, the expedited rate filing is void and shall be replaced by the insurer’s rates that were effective when the expedited rate was filed. The insurer must give the policyholder a refund or premium discount in the amount of excess premium collected to pursuant to the voided rate.

**Section 3** amends s. 627.736(6)(c), F.S., relating to statutory standards for the Citizen’s Property Insurance Corporation plan of operation, to require that the insurance agent obtain a signed form acknowledging that the applicant for Citizens coverage or current Citizens policyholder understands the potential liability for surcharges and assessments of Citizens policyholders. The agent must obtain the signed acknowledgment from all Citizens applicants and all Citizens policyholders prior to the first renewal of a Citizens policy that occurs after the effective date of the bill. The acknowledgment form states that the policyholder understands that:

- Citizens policyholders are subject to Citizens policyholder surcharges if the corporation sustains a deficit.
- The policyholder surcharges could be as high as 15 percent of premium in each of three Citizens accounts, or a different amount established by the Legislature.
- The policyholder may be subject to emergency assessments to the same extent as policyholders of other insurance companies.

Citizens must maintain a signed copy of the acknowledgement form. A signed acknowledgment form creates a conclusive presumption the policyholder understood and accepted the surcharge and assessment liability placed on Citizens policyholders.

**Sections 4 and 5** create s. 627.7031, F.S., to provide requirements for using the expedited residential property insurance rate filing option. Insurers may write residential property insurance policies at rates approved pursuant to the expedited rate filing process, subject to the following requirements:

- *No Cat Fund TICL Coverage* – The insurer may not purchase TICL coverage from the Cat Fund.
- *Disclosure That the Policy is not Subject to Full Rate Regulation* – Insurers must provide new applicants and current insureds prior to policy renewal with written notice that: (1) the rate for the policy is not subject to full rate regulation by the OIR and may be higher than rates approved by the office; (2) Coverage subject to full rate regulation may be otherwise available from private market insurers or Citizens; (3) the insured should discuss policy options with an agent who can provide a Citizens quote; and (4) the OIR’s website at [www.shopandcomparerates.com](http://www.shopandcomparerates.com) has more information about insurance choices that are available.
- *Provide Applicants and Current Policyholders with a Citizens Premium Estimate* – An applicant or current policyholder must be provided a Citizens premium estimate for similar coverage prior to the effective date of the new policy or, if the policy existed prior to this bill becoming law, prior to the first renewal that uses a rate approved via the expedited rate filing process.
- *Written Acknowledgement of Disclosures* – The applicant or insured must sign a written acknowledgment that: (1) The insured has reviewed the required disclosures and premium comparison; (2) The insured understands that the rate is not subject to full rate regulation by the OIR and may be higher than rates approved by the office; (3) The insured understands that residential property insurance policies subject to full rate regulation may be available through Citizens; and (4) The insured understands that the OIR website [www.shopandcomparerates.com](http://www.shopandcomparerates.com) contains residential property insurance rate comparison information.
- *The Insurance Policy Cannot Exclude Hurricane Coverage* – Policies that exclude hurricane or windstorm coverage cannot charge rates approved via the expedited rate filing process.
- *Citizens Take-Out Policies Not Eligible if Subject to Rate Arrangement* – A rate approved via the expedited rate filing process may not be applied to policies removed from Citizens by a private carrier if the policy is subject to a consent decree, agreement, understanding, or other arrangement between the insurer and the OIR relating to rates or policy premiums.
- *Insurer Must Be Able to Cover the 100-Year PML (Effective Jan. 1, 2015)* – Effective January 1, 2015, in order to sell policies using rates approved by the expedited rate filing process, the insurer must have the ability to cover its 100-year PML through a combination of surplus, Florida Hurricane Catastrophe Fund coverage, reinsurance, and reinsurance equivalents. The probable maximum loss must be determined using a hurricane model approved by the Florida Commission on Hurricane Loss Projection Methodology.

**Section 6** provides that the bill is effective upon becoming a law, except as otherwise provided. Sections 2 and 5 of the bill are effective January 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Property insurance policies with rates different than an insurer's filed rates are likely to have higher premiums than the insurer's previously filed rate. Some homeowners may be willing to pay the higher premium in exchange for obtaining a policy from a particular insurer. However, some insurers may actually choose to implement an alternative rate that is lower than its actuarially indicated rate in order to take advantage of the expedited rate review process created by the bill. The bill establishes maximum limits on the amount an insurer may increase its rates over a period of years. Because the allowable increase is based on a percentage of the previous year's rates, the annual increase will be compounded over the previous year's rate increase.

The number of policies in Citizens may increase as a result of this bill. If property insurance premiums increase and if such increases make the premiums for a policy higher than a comparable policy from Citizens, then some policyholders may opt to cancel their existing property policy and obtain a policy from Citizens due to the premium difference in the policies. The actual number of policies that may move from the voluntary market to Citizens cannot be calculated.

The bill may incentivize insurance companies in the private market to write multi-peril policies<sup>20</sup> currently written by Citizens. If insurers determine it is advantageous for their

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<sup>20</sup> 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.

company to write these policies at rates different than their filed rates, then these companies will write multi-peril policies currently written by Citizens. However, the policyholder would have to choose to move from Citizens to the private market insurer.

The bill may also incentivize insurance companies in the private market to assume the wind coverage on wind-only policies<sup>21</sup> currently written by Citizens. If insurers charge rates different than their filed rates and determine it is advantageous for the company to write the wind portion of policies currently in Citizens as wind-only policies, then some of the wind-only policies could be written by the private market. The policyholder would have to choose to move from Citizens to the private market insurer.

**C. Government Sector Impact:**

The Office of Insurance Regulation indicates that implementation of the provisions of this bill will not result in a fiscal impact to the office.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>21</sup> 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 is available in a separate policy.