

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1329 Citizens Property Insurance Corporation

**SPONSOR(S):** Oliva and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1612

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Callaway	Cooper
2) Regulatory Affairs Committee			

### 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 in the voluntary admitted market. As of January 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies extending approximately \$418 billion of property coverage to Floridians.

There are various types of adjusters: public adjusters, independent adjusters, company employee adjusters, and catastrophe or emergency adjusters. A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim filed against an insurer. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims. Public adjusters operate independently and are not affiliated with any insurer, however, independent and company employee adjusters work for insurers. Public adjusters are typically paid a percentage of the claim payment or settlement, meaning the policyholder's claim payment or settlement amount is reduced by the public adjuster's fee. Independent and company employee adjusters do not charge policyholders a fee for adjusting the claim. The public adjuster fee percentage is usually negotiated between the public adjuster and the policyholder. However, in residential property and condominium unit owner property claims, the maximum public adjuster fee is set by law as follows:

*Initial Claims:* For initial residential and condominium unit owner property insurance claims, public adjusters are paid a maximum of 10% of the claim payment for claims resulting from a declaration of a state of emergency (i.e., claims from a hurricane) if the initial claim is made in the year after the declaration. For claims made after this time, public adjusters are paid a maximum of 20% of the claim payment. Public adjusters are paid a maximum of 20% of a claim payment for initial residential and condominium unit owner property insurance claims not resulting from hurricanes.

*Reopened or Supplemental Claims:* The public adjuster fee for reopened or supplemental claims on residential and condominium unit owner property insurance policies cannot exceed 20% of the claim payment obtained on the reopened or supplemental claim. Unlike initial claims, there is no difference in the fee restriction for reopened or supplemental claims based on whether or not the claim resulting from a hurricane.

*Claims Filed Against Citizens:* For all claims against Citizens, a public adjuster representing a Citizens' policyholder is paid a maximum fee of 10% of the additional claim amount paid over the amount originally offered by Citizens. This fee restriction applies to initial claims resulting from hurricanes, initial claims not resulting from hurricanes, and reopened or supplemental claims.

The bill repeals current law limiting the public adjuster fee for claims filed against Citizens. Thus, public adjusters representing Citizens' policyholders will be paid the same fee on initial and reopened or supplemental claims as those representing non-Citizens' policyholders.

The bill has no fiscal impact on state or local governments. Public adjusters representing Citizens' policyholders will receive higher fees than under current law, but not higher than those given public adjusters currently representing non-Citizens' policyholders. Citizens' policyholders could receive a smaller claim payment or settlement than under current law because the public adjuster fee is typically taken out of the claim payment or settlement and the fee allowed by the bill is higher than the fee allowed under current law. The bill is effective July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background of 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 January 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies extending approximately \$418 billion of property coverage to Floridians.<sup>1</sup> Citizens insures over 444,000 residential and commercial policies in Florida's coastal areas and over 835,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas. As of June 30, 2012, Citizens represented approximately 23 percent of the residential property admitted market based on number of policies.<sup>2</sup>

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). The FRPCJUA provided full-coverage personal and commercial residential property policies in all counties of Florida while the FWUA provided personal and commercial residential property wind-only coverage in designated territories.

Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts within the corporation:

1. Personal Lines Account (PLA) – Multiperil Policies<sup>3</sup>  
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-only<sup>4</sup> 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.

A major eligibility requirement for insurance in Citizens provided in current law is a 15 percent premium restriction. This restriction prevents a homeowner from buying 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.<sup>5</sup> 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.

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<sup>1</sup> <https://www.citizensfla.com/> (last viewed February 22, 2013).

<sup>2</sup> "Florida Property Insurance Market Analysis and Recommendations," presentation to the Senate Committee on Banking and Insurance by Locke Burt, Chairman and President, Security First Insurance Company, dated February 6, 2013. Data based on the OIR QUASR Report. Citizens represents over 21% of the market based on total insured value and 20% of the homeowner's residential market based on 2011 written premium. (See "Principle-Based Reforms for Florida's Property Insurance Market," presentation to the Senate Committee on Banking and Insurance by Kevin M. McCarty, Insurance Commissioner, Florida Office of Insurance Regulation, dated January 16, 2013.).

<sup>3</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>4</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 are available in a separate policy.

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

## **Citizens' Financial Resources to Pay Claims<sup>6</sup>**

Citizens' financial resources include both resources typically available to private insurance companies and resources uniquely available to Citizens as a governmental entity with the statutory authority to levy assessments in the event of a deficit in Citizens' financial resources. Like typical private insurance companies, Citizens' financial resources include:

- insurance premiums;
- investment income;
- accumulated surplus;
- reimbursements from the Florida Hurricane Catastrophe Fund due to Citizens' purchase of reinsurance from the Florida Hurricane Catastrophe Fund; and
- reimbursements from private reinsurance companies if Citizens purchases private reinsurance.

Financial resources unique to Citizens include: Citizens Policyholder Surcharges, regular assessments, and emergency assessments.

Citizens projects the corporation will have \$6.2 billion in surplus to pay claims during the 2012 hurricane season. In addition, Citizens could be reimbursed \$6.9 billion for claims it pays by the Florida Hurricane Catastrophe Fund and \$1.5 billion from private reinsurers claims paid in the Coastal Account. Thus, the maximum amount Citizens has to pay claims without levying assessments for the 2012 hurricane season is approximately \$14.6 billion.<sup>7</sup>

As of January 31, 2013, Citizens' total exposure is over \$418 billion. Citizens estimates the 1-in-100 year hurricane would cost almost \$24 billion.<sup>8</sup> The \$9.4 billion difference between Citizens' resources to pay claims (\$14.6 billion) and its 1-in-100 year exposure (\$24 billion) would be covered by assessments levied by Citizens on its own policyholders and on policyholders of most property and casualty insurance.

## **Assessments Levied by Citizens**

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.<sup>9</sup> The three Citizens' accounts calculate deficits and resulting assessment needs independently. The three types of assessments Citizens can levy are:

1. Citizens Policyholder Assessments,
2. Regular Assessments, and
3. Emergency Assessments.

### **Citizens Policyholder Assessments**

If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15 percent of premium per account in deficit, for a maximum total of 45 percent.

### **Regular Assessments**

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

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<sup>6</sup> All Citizens' projections about claims paying capacity for the 2012 hurricane season are found in meeting materials from Citizens presented at the Insurance & Banking Subcommittee meeting held on January 15, 2013. Citizens has not finalized its plan of finance for risk transfer and liquidity for 2013, although it has approval from their governing board to seek risk transfer of \$1.75 billion for 2013 for the Coastal Account with the risk transfer methods of continuation of 2012 capital market transactions and private reinsurance, replacement of 2012 traditional reinsurance, and new capital market transactions. The board also approved a \$600 million pre-event liquidity financing program for the Coastal Account. No risk transfer methods were requested or approved for the PLA and CLA due to the significant amount of surplus in these accounts. (See meeting materials from the Citizens' Board of Governors meeting on February 14, 2013, available at [https://www.citizensfla.com/about/mDetails\\_boardmtgs.cfm?event=504&when=Past](https://www.citizensfla.com/about/mDetails_boardmtgs.cfm?event=504&when=Past) (last viewed February 22, 2013)).

<sup>7</sup> Citizens has also issued \$5.1 billion in pre-event bonds to create additional liquidity to pay claims during the 2012 hurricane season. If these funds are used to pay claims during the 2012 hurricane season, then monies drawn must be repaid and assessments will likely be levied by Citizens to provide funds for repayment. Thus, pre-event bonding is not included in this calculation of the amount of funds Citizens has to pay claims because this calculation is the amount available to pay claims without assessing policyholders.

<sup>8</sup> A 1-in-100 year hurricane has a 1 percent probability of occurring. Information on probable maximum loss is contained in the meeting packet from the Insurance & Banking Subcommittee meeting on January 15, 2013.

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

or 2 percent of the remaining deficit in the Coastal Account.<sup>10</sup> 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.

Regular assessments cannot be levied for deficits in the PLA or CLA. Only Citizens Policyholder Assessments and emergency assessments can be levied to cure deficits in these accounts.

### Emergency Assessments

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 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.<sup>11</sup> 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.

### Background on Public Adjusters

Chapter 626, F.S., regulates insurance field representatives and operations. Part VI of the chapter governs insurance adjusters. The law recognizes various types of adjusters, including public adjusters, independent adjusters, company employee adjusters, and catastrophe or emergency adjusters. Adjusters can be further classified as resident or nonresident. Resident adjusters are those who reside in Florida and are licensed in Florida, whereas, nonresident adjusters reside outside of Florida and are licensed by their home state.

The Department of Financial Services (DFS) regulates all types of adjusters. The DFS reports Florida currently licenses almost 33,000 resident adjusters and approximately 51,500 non-resident adjusters.<sup>12</sup> Of these, 1,095 are resident public adjusters and 336 are non-resident public adjusters. The rest are resident and nonresident independent adjusters and company employee adjusters.<sup>13</sup>

A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim the policyholder files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies.

Current law provides numerous restrictions and parameters on activities of public adjusters.<sup>14</sup> Administrative rules also address public adjuster activities.<sup>15</sup> Public adjuster activities addressed by current law include: advertisement and solicitation, referrals, referral fees, loans to clients or prospective clients, notice of property loss claims, and allowing access to damaged property by other parties involved in the claim.

Public adjusters are licensed by the DFS if they meet the statutory qualifications for licensure found in s. 626.865, F.S. Qualifications include age, residency, testing, experience, and trustworthiness.<sup>16</sup>

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

<sup>11</sup> s. 627.352(6)(b)3.d., F.S.

<sup>12</sup> Information obtained from the DFS dated March 20, 2013, on file with staff of the Insurance & Banking Subcommittee.

<sup>13</sup> According to DFS, there are 15,035 licensed resident independent adjusters (16,214 non-resident independent adjusters); 16,015 licensed resident company employee adjusters (35,014 non-resident company employee adjusters).

<sup>14</sup> Laws enacted in 2008 (Ch. 2008-220, L.O.F.), in 2009 (Ch. 2009-87, L.O.F.), and 2011 (Ch. 2011-39, L.O.F.) provided significant changes relating to public adjusters.

<sup>15</sup> Rule 69B-220.201(4) and (5), F.A.C.

<sup>16</sup> Similar qualifications apply to independent and company adjusters.

Public adjusters must also present a \$50,000 bond to DFS in order to be licensed.<sup>17</sup> No bond is required of company employee or independent adjusters.

### Report by the Office of Program Policy Analysis and Government Accountability (OPPAGA) on Public Adjusters

In January 2010, the OPPAGA, at the request of the Legislature,<sup>18</sup> issued Report Number 10-06 on public adjuster representation in Citizens' claims.<sup>19</sup> The report examined data related to public adjuster representation in general and data related to public adjuster representation in Citizens' claims. The report found Citizens' claims filed in 2008 and 2009 with public adjuster involvement took longer to reach a settlement and had higher claims payments than those without public adjuster involvement.<sup>20</sup>

### Public Adjuster Fees<sup>21</sup>

Generally, public adjusters are typically paid a percentage of the claim payment, meaning the policyholder's claim payment amount is reduced by the public adjuster's fee. Independent and company employee adjusters do not charge policyholders a fee for adjusting the claim. The public adjuster fee percentage is usually negotiated between the public adjuster and the policyholder, except in residential property and condominium unit owner property claims. For these claims, public adjuster fees are limited by law to a specified percentage of the claim amount which varies depending on whether the claim is hurricane or non-hurricane related and if the claim is hurricane-related, depending on how soon after the hurricane the claims is filed. In addition with supplemental or reopened claims for residential property or condominium unit owners, the public adjuster fee cannot be based on the amount paid to the policyholder on the previous claim. Claims filed against Citizens apply a different public adjuster fee.

The Legislature first restricted fees charged by public adjusters in property insurance claims in 2008. The Legislature made further changes in 2011. Currently, the maximum fee for a public adjuster is different depending on if the claim is an initial claim, a reopened or supplemental claim, or a claim against Citizens. The fees are as follows:

*Initial Claims:* For initial residential and condominium unit owner property insurance claims, public adjusters are paid a maximum of ten percent of the insurance claim payment for claims resulting from a declaration of a state of emergency (i.e., claims from a hurricane) if the initial claim is made in the year after the declaration. For claims made after this time, public adjusters are paid a maximum of 20 percent of the claim payment.

Public adjusters are paid a maximum of 20 percent of a claim payment for initial residential and condominium unit owner property insurance claims not resulting from hurricanes.

*Reopened or Supplemental Claims:* The public adjuster fee for reopened or supplemental claims on residential and condominium unit owner property insurance policies cannot exceed 20 percent of the claim payment obtained on the reopened or supplemental claim. Unlike initial claims, there is no difference in the fee restriction for reopened or supplemental claims based on whether or not the claim resulting from a hurricane.

*Claims Filed Against Citizens Property Insurance Corporation:* For all claims against Citizens, a public adjuster representing a Citizens' policyholder is paid a maximum fee of 10 percent of the additional

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<sup>17</sup> s. 626.865(2), F.S.

<sup>18</sup> Ch. 2009-87, L.O.F. The legislation directed the OPPAGA report to address specific questions about public adjuster regulation in Florida, public adjuster regulation in Florida compared to other states, and the frequency and outcome on claims processing and payments resulting from public adjuster representation of Citizens' policyholders.

<sup>19</sup> Report available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-06> (last viewed March 20, 2013).

<sup>20</sup> The OPPAGA report found claims processing took between 132 and 296 days longer than claims without public adjuster representation and found the typical claim payment for a claim related to the 2004 hurricanes against Citizens involving a public adjuster was \$22,266 for claims filed in 2008 and 2009 whereas the typical claim payment for a claim related to the 2004 hurricanes against Citizens not involving a public adjuster during the same time period was \$18,659. For claims related to the 2005 hurricanes, the difference in claim payment was larger, with claims involving public adjusters resulting in claim payments that were 747% higher.

<sup>21</sup> Public adjuster fee restrictions are found in s. 626.854(11), F.S.

claim amount paid over the amount originally offered by Citizens. This fee restriction applies to initial claims resulting from hurricanes, initial claims not resulting from hurricanes, and reopened or supplemental claims.

### **Effect of Proposed Changes**

The bill repeals the law restricting fees paid to public adjusters representing a Citizens' policyholder to 10 percent of the additional claim amount paid over the amount originally offered by Citizens. Thus, public adjusters representing Citizens' policyholders will be paid the same fees for representing Citizens' policyholders as when they represent non-Citizens' policyholders. The fee amounts differ based on whether the claim is an initial claim or reopened or supplemental claim and are set forth above.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

**Section 2:** Provides an effective date of July 1, 2013.

## **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:**

Public adjusters representing Citizens' policyholders will receive higher fees than they receive under current law. However, the fees will not be greater than those accorded public adjusters representing non-Citizens' policyholders. Because a public adjuster fee is taken out of a claim payment or settlement, a higher public adjuster fee for a Citizens' claim than is allowed under current law could reduce the amount of the claim payment or settlement allocated to the Citizens' policyholder.

#### **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 in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**