

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.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 1612

INTRODUCER: Senator Clemens

SUBJECT: Citizens Property Insurance Corporation

DATE: March 29, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	Pre-meeting
2.			CA	
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 1612 repeals current law which limits the amount a public adjuster may charge, agree to, or accept as compensation with respect to a claim filed by a policyholder of Citizens Property Insurance Corporation.¹

This bill substantially amends the following section of the Florida Statutes: 627.351.

II. Present Situation:

Citizens Property Insurance Corporation (Citizens)

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.² Citizens is not a private insurance company.³ Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight-member Board of Governors that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board.

¹ s. 627.351(6)(a)6., F.S.

² Admitted market means insurance companies licensed to transact insurance in Florida.

³ Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

Citizens Accounts

Citizens offers three types of property and casualty insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.⁴ Assets may not be commingled or used to fund losses in another account.⁵ The three Citizens accounts are:

Personal Lines Account (PLA): Statewide account offering multiperil policies covering homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

- Policies in Force: 838,143
- In Force Premium: \$1,379,410,864
- Total Exposure: \$175,864,284,312

Coastal Account (COASTAL): Coastal area account offering personal residential wind-only policies, commercial residential wind-only policies and commercial nonresidential wind-only policies issued in limited eligible coastal areas. In addition, in August of 2007, Citizens began offering personal and commercial residential multiperil policies in the Coastal account.

- Policies in Force: 438,642
- In Force Premium: \$1,144,655,922
- Total Exposure: \$191,101,715,209

Commercial Lines Account (CLA): Statewide account offering multiperil policies covering commercial residential-condominium associations, apartment buildings and homeowners associations; and commercial non-residential policies.

- Policies in Force: 8,016
- In Force Premium: \$200,296,331
- Total Exposure: \$38,748,152,744

Total All Accounts Combined:⁶

- Policies in Force: 1,284,801
- In Force Premium: \$2,724,363,117
- Total Exposure: \$405,714,152,265

Citizens Financial Resources

“Citizens’ financial resources include insurance premiums, investment income, operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private

⁴ The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

⁵ Section 627.351(6)(b)2b., F.S.

⁶ Citizens’ weekly report as of 3/1/2013 on file with committee staff.

reinsurance, policyholder surcharges, and regular and emergency assessments. As of December 13, 2013, Citizens will have an accumulated surplus of approximately \$6.34 billion. For the 2013 hurricane season Citizens will have purchased \$1.75 billion in private reinsurance coverage along with the \$5.73 billion in mandatory layer reinsurance from the FHCF. For the 2013 hurricane season Citizens' probable maximum loss (PML) from a 1-in-100 year event is \$20.42 billion."

If a deficit occurs in a Citizens account, Citizens is authorized to levy assessments on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.⁷ The assessments Citizens may impose and their sequence is as follows:

Citizens Surcharge: Requires up to 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied on each of the three Citizens' accounts with a maximum assessment of 45 percent of premium.

Regular Assessment: If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers (except medical malpractice and workers compensation). The assessment may be recouped from policyholders through a rate filing process of up to 2 percent of premium or 2 percent of the deficit, whichever is greater. This assessment is not levied against Citizens' policyholders.

Emergency Assessment: Requires any remaining deficit for either of Citizens three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers comp), but including Citizens' policyholders. This assessment is levied up to 10 percent of premium or 10 percent of the deficit per account, whichever is greater. The maximum emergency assessment that can be levied against Florida's varicose insurance policyholders is 30 percent per policy.

Citizens Rates

Citizens' rates for coverage are required to be actuarially sound and are subject to the rate standards for property and casualty insurance in s. 627.062, F.S., except as otherwise provided.⁸ From 2007 until 2010, Citizens rates were frozen by statute⁹ at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to a level that is actuarially sound.¹⁰ Citizens must implement an annual rate increase which does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium

⁷ Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are.

⁸ Section 627.351(6)(n)1., F.S.

⁹ Section 627.351(6)(n)4., F.S.

¹⁰ Ch. 2009-87; s.10, L.O.F.

that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the FHCF coverage, pursuant to s. 215.555(5)(b), F.S.

Eligibility

If a policyholder seeking coverage from Citizens is offered coverage from an admitted carrier at the admitted carrier's current rate approved by the OIR and such offer of coverage is within 15 percent of Citizens' rate, that policyholder is not eligible for coverage with Citizens.¹¹

Policyholders who have coverage with Citizens remain eligible for such coverage regardless of any offer made by an admitted carrier.¹²

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.¹³ 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.¹⁴

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.¹⁵ Administrative rules also address public adjuster activities.¹⁶ 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.

¹¹ Section 627.351(6)(c)5.a., F.S.

¹² Id.

¹³ Information obtained from the DFS dated March 20, 2013, on file with committee staff.

¹⁴ 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).

¹⁵ 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.

¹⁶ Rule 69B-220.201(4) and (5), F.A.C.

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.¹⁷ Public adjusters must also present a \$50,000 bond to DFS in order to be licensed.¹⁸ 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,¹⁹ issued Report Number 10-06 on public adjuster representation in Citizens' claims.²⁰ 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.²¹

Public Adjuster Fees²²

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 claim 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 10 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

¹⁷ Similar qualifications apply to independent and company adjusters.

¹⁸ s. 626.865(2), F.S.

¹⁹ 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.

²⁰ Report available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-06> (last viewed March 28, 2013).

²¹ 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.

²² Public adjuster fee restrictions are found in s. 626.854(11), F.S.

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 resulted 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 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.

III. Effect of Proposed Changes:

The bill repeals current law which limits the amount a public adjuster may charge, agree to, or accept as compensation with respect to a claim filed by a policy holder of Citizens Property Insurance Corporation.²³ Under current law a public adjuster representing a policy holder of Citizens Property Insurance Corporation can be paid no more than 10 percent of the additional claim amount paid over the amount originally offered by Citizens. By removing this cap a public adjuster would be able to charge 10 percent of the amount paid for a Citizens' claim resulting from a declaration of a state of emergency and 20 percent of the amount paid for any initial, reopened or supplemental Citizens' claims.

According to data provided by Citizens²⁴, the average claim in 2012 among all policy types was \$5,100.00 without a public adjuster and \$11,150.00 with. Based on this data, Citizens' claims settled with the work of a public adjuster resulted in an average amount that was 118 percent greater than claims settled without the use of a public adjuster.

Example of the Changes:

Assuming the average amount settled without a public adjuster was an original offer by Citizens, on an initial, non emergency claim, and the average amount settled with a public adjuster was the final settlement amount negotiated with a public adjuster, then based on the changes in this bill when compared to current law, the differences in the fee paid to the public adjuster would result in a 268 percent increase, and the differences in the additional amount paid to the policyholder would result in a 30 percent decrease.

²³ s. 627.351(6)(a)6, F.S.

²⁴ Citizens report "2012 Public Adjuster Representation by Cause of Loss" on file with committee staff.

Current Law <i>(Adjuster Fee: 10% of the difference)</i>	Proposed Change <i>(Adjuster Fee: 20% of the amount settled)</i>
Initial Offer: \$5,100.00	Initial Offer: \$5,100.00
Settled Amount: \$11,150.00	Settled Amount: \$11,150.00
Adjuster Fee: $(\$6,050.00^{25} \times 10\%) = \605.00	Adjuster Fee: $(\$11,150.00 \times 20\%) = \$2,230.00$
Additional to Policyholder: $\$5,445.00^{26}$	Additional to Policyholder: $\$3,820.00^{27}$

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:

Public adjusters will be able to receive the same fee for representing Citizens’ policyholders as they currently receive when 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.

C. Government Sector Impact:

None.

²⁵ Subtract the initial offer from the settled amount to get the difference: $(\$11,150.00 - \$5,100.00) = \$6,050.00$

²⁶ Subtract the fee from the difference to get the additional amount to the policyholder: $(\$6,050.00 - \$605.00) = \$5,445.00$

²⁷ Subtract the fee from the difference to get the additional amount to the policyholder: $(\$6,050.00 - \$2,230.00) = \$3,820.00$

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.

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