**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 378

INTRODUCER: Senator Bean

SUBJECT: Manufactured and Mobile Homes

DATE: March 9, 2013 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Matiyow | Burgess | BI | **Pre-meeting** |
| 2. | | | RI | |
| 3. | | | AP | |
| 4. | | | RC | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

SB 378 requires Citizens Property Insurance Corporation to issue policies for mobile homes and other related structures. The bill also specifies the manner in which funds from the Florida Mobile Home Relocation Trust Fund are to be disbursed to the Florida Mobile Home Relocation Corporation.

This bill substantially amends the following sections of the Florida Statutes: 627.351 and 723.06115.

## 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.[1] Citizens is not a private insurance company.[2] 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[3] (board) that administers its Plan of Operations, which is reviewed and approved by

[1] Admitted market means insurance companies licensed to transact insurance in Florida.

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

[3] The Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives appoint two members each.

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. Citizens is subject to regulation by the Florida 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

[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.

**Citizens Financial Resources**

"Citizens' financial resources include insurance premiums, investment income, operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private 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 comp). 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 statute[9] 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

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[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.

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 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.

**Mobile Home Coverage**

Current law limits Citizen's coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.[11]

**Coverage B (Other Structures)**

Effective[12] February 1, 2012, Citizens ceased providing Coverage B for the following structures whether attached to the dwelling or not:

- Screened enclosures that are aluminum framed or not covered by the same or substantially the same materials as that of the primary dwelling.
- Carports that are aluminum or not covered by the same or substantially the same materials as that of the primary dwelling.
- Patios that have a roof covering not constructed of the same or substantially the same materials as that of the primary dwelling.
- Awnings.
- Structures with a roof or wall covering that are thatch, lattice, slats or a similar material.
- Slat houses, chickees, tiki huts, gazebos, cabanas, canopies, pergolas or similar structures constructed to be open to the weather.

**Florida Mobile Home Relocation Corporation**

Section 723.061(1)(d), F.S., provides that a mobile home owner and/or tenant can be evicted from his or her mobile home due to a change in the use of the land comprising the mobile home park. The park owner must give the affected mobile home owners and tenants at least 6 months' notice of the eviction due to the projected change in use, and of their need to secure other accommodations.[13]

In 2001, the Florida Mobile Home Relocation Corporation (FMHRC) was created to provide payments to mobile home owners who are required to move due to a change in the use of the land comprising their mobile home park, pursuant to s. 723.061(1)(d), F.S.[14] The FMHRC is

[11] Section 627.351(6)(c)16., F.S.
[12] http://www.myfloridacfo.com/division/consumers/insurancelibrary/insurance/residual_markets/citizens/citizens_-_coverage_reduced_or_eliminated_in_2012.htm
[13] Section 723.061(1)(d)2., Florida Statutes.
[14] See generally: ss. 723.0611, 723.0612, and 723.06116, Florida Statutes.

administered by a volunteer-based, six-member board.[15] The board also employs or retains attorneys, accountants, and administrative personnel to perform its duties.[16]

The corporation receives funding from three sources:

- An annual one dollar surcharge on mobile home lots located in a mobile home park, collected by the Department of Business and Professional Regulation (DBPR) pursuant to s. 723.007(2), F.S.;
- An annual one dollar surcharge on registration payments by mobile home owners collected by the Department of Highway Safety and Motor Vehicles; and
- Funds collected from mobile home park owners when the mobile home owner applies for payment of moving expenses or mobile home abandonment allowance.[17]

All funds are deposited into the Florida Mobile Home Relocation Trust Fund (Trust Fund), established by s. 723.06115, F.S. Chapter 723, F.S., does not specify how the funds are to be disbursed to the FMHRC. Instead, the transfer of funds is conducted pursuant to a Memorandum of Understanding, entered into by the DBPR and the FMHRC.

Currently, funds are disbursed to the FMHRC on a monthly basis, less any amounts withheld for the required 8 percent contribution to the general revenue fund. According to the DBPR, during fiscal year 2011-2012, $759,376.86 was deposited into the Trust Fund while $698,945.71 of that amount was transferred to the FMHRC.

## III. Effect of Proposed Changes:

**Section 1.** The bill amends s. 627.351, F.S., to require Citizens Property Insurance Corporation provide coverage for any screened or glassed enclosures, carports, patios, awnings, decks and storage rooms or areas, whether attached to a mobile or manufactured home or not. The bill allows these additional structures to be made from any material and does not set any standards as it relates to age, condition and insurability. The bill also requires the value of the mobile home dwelling and additional structures be established by a sales contract within the last 12 months or an appraisal submitted by the owner.

**Section 2.** The bill amends s. 723.06115, F.S., to specify the manner in which funds from the Florida Mobile Home Relocation Trust Fund are to be disbursed to the Florida Mobile Home Relocation Corporation (FMHRC). Specifically, the bill provides that the Department of Business and Professional Regulation (DBPR) shall disburse funds from the Trust Fund to the FMHRC using the following procedures:

- At the beginning of each fiscal year, the FMHRC shall determine its operational costs and provide that amount to the DBPR, in writing. The DBPR must transfer that amount within 2 business days of the FMHRC's written request.

[15] Department of Business and Professional Regulation Internal Audit Report A-1112-BPR-032, page 2, dated October 4, 2012.
[16] Id.
[17] Department of Business and Professional Regulation Internal Audit Report A-1112-BPR-032, page 1, dated October 4, 2012.

- Throughout the year, additional requests for necessary operational funding may be submitted to the DBPR, in writing. The DBPR again must transfer the requested funds to the FMHRC within 2 business days.
- As it deems necessary, the FMHRC shall advise the DBPR, in writing, of the amount needed to make payments to mobile homeowners under the relocation program. The DBPR must distribute the amount within 2 business days of the FMHRC's written request.

The bill allows the FMHRC to place funds received from the Trust Fund into a non-interest bearing checking account.

Finally, the bill specifies that other than the requirements set forth in the section, neither the FMHRC nor the DBPR is required to take any other action in order for the FMHRC to receive distributions from the Trust Fund. This effectively nullifies any additional disbursement "prerequisites," listed in the Memorandum of Understanding or elsewhere.

**Section 3.** This bill takes effect upon becoming a law.

## 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:

By limiting any underwriting standards on materials used and present condition of other structures, while allowing the owner to submit an appraisal on the insured value could allow for fraud. To the extent that this leads to the potential of fraud it could be costly to all insurance policyholders in the state that are required by law to fund Citizens' deficits through assessments.

### C. Government Sector Impact:

The bill requires funds to be transferred to the FMHRC within 2 business days of the DBPR's receipt of the written statement requesting payment. The disbursement of funds is ultimately handled by the Bureau of Finance and Accounting (Bureau) within the DBPR. Specifically, the DBPR processes fund disbursements as follows:

1. Receipt of transfer request;
2. Review of transfer request;
3. Approval of transfer request;
4. Payment request transmitted to the Bureau; and
5. Disbursement to the Corporation.

The DBPR has indicated that the disbursement process for the trust fund may take longer than 2 business days. To remedy this potential time lag, it may be necessary to increase the 2-day disbursement requirement.

## VI. Technical Deficiencies:

Line 491 may need to clarify the other structures need not be attached to the dwelling but do need to be located on the policyholder's parcel of land. Otherwise, Citizens could be required to insure structures on land the policyholder has no legal right to.

Lines 495 -506 may need to reference the Florida building code in regards to construction and materials used, instead of the bills current standard "irrespective of materials used." Having a stricter standard in regards to contraction and materials could limit the potential for fraud. Additionally, addressing the present condition of the existing structures and the need to make repairs before they can be insured would also limit the potential for fraud.

On lines 511-512 the appraisal should be completed by a real estate appraiser licensed by the Florida Department of Business and Professional Regulation under s. 475.610 F.S. Requiring a licensed professional to determine the insured value would limit the potential for fraud.

## VII. Related Issues:

**Inspector General Audit Findings**

On October 4, 2012, the Department's Office of Inspector General issued its audit findings regarding the business practices of the Florida Mobile Home Relocation Program.[18] The audit did not find any evidence of wrongdoing; however, it expressed concerns regarding inadequate segregation of duties, large cash balances that have amassed, and other internal control issues. Additionally, the audit report made several recommendations to the DBPR. Such recommendations include:

- Amend the current Memorandum of Understanding to address the transfer of funds, submission of additional financial reporting, and periodic review of the Memorandum;
- Review and analyze the FMHRC's financial information in order to enhance detective controls and to minimize the risks associated with inadequate segregation of duties; and

[18] See, generally: Department of Business and Professional Regulation Internal Audit Report A-1112-BPR-032, dated October 4, 2012.

- Consider policy and operational changes so as to better align the FMHRC's operations with current needs.[19]

Taking these audit findings into account, this bill likely does not improve the level of the FMHRC's financial oversight. Specifically:

- On line 598, the bill provides that the FMHRC, "as it deems necessary", shall request the amount needed to make payments to mobile home owners under the relocation program. This effectively allows the FMHRC to request program disbursements without providing documentation supporting the disbursement.
- The bill does not provide that the FMHRC's distribution requests be approved by anyone within the FMHRC.
- The bill does not otherwise provide any oversight by the DBPR of the FMHRC's accounting practices, as it relates to calculating its operational costs and program disbursements. For example, no supporting documentation is required to be submitted with the operational budget request and/or claims disbursement request.
- The bill effectively nullifies the disbursement provisions of the Memorandum of Understanding. It may be helpful to also codify the remaining provisions of the Memorandum of Understanding, specifically the provisions relating to the DBPR monitoring/access to records, record retention, and report submission. Codifying some or all of these remaining provisions would work to decrease confusion, and increase clarity and oversight of the FMHRC.

**Insufficient Funding and Timing of Funding**

It is possible that the Trust Fund may not contain sufficient funding to meet the requests of the FMHRC, making it impossible for the DBPR to comply with the procedure set forth in s. 723.06115(3), F.S. To remedy this potential issue, additional language could specify that distributions to the FMHRC are subject to funds being available in the Trust Fund.

Moreover, the bill requires that the FMHRC be paid its operational costs, in full, at the beginning of each fiscal year. It is unlikely that the FMHRC will need its entire yearly operating budget to be disbursed at one time. As such, it would be prudent for the DBPR to disburse the FMHRC's yearly operational costs in quarterly installments. This would leave the balance invested with the state Treasury until needed, providing increased oversight over the funds.

[19] Department of Business and Professional Regulation Internal Audit Report A-1112-BPR-032, page 5, dated October 4, 2012.

**FDIC Protection**

The bill provides that funds transferred to the FMHRC may be placed in a non-interest bearing checking account. The Federal Deposit Insurance Corporation (FDIC) provides coverage to protect depositors in FDIC-insured institutions. Specifically, the FDIC will guarantee up to $250,000 per ownership category, per institution.[20]

Thus, if the FMHRC places disbursed funds in excess of $250,000 in one non-interest bearing checking account pursuant to the provisions created in the bill, only $250,000 of those funds would be federally guaranteed. Furthermore, the DBPR's recent internal audit report, as discussed above, indicated that the FMHRC currently maintains several commercial bank accounts, the balance of which regularly exceeds the $250,000 FDIC insurance limit.

## 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.



[20] http://fdic.gov/deposit/deposits/dis/index.html, last visited on March 9, 2013.