

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	HB 7095	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Insurance & Banking Subcommittee; Nelson	109 Y's	5 N's
COMPANION BILLS:	(SB 1850)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

HB 7095 passed the House on April 30, 2013 as SB 1850. The bill provides a public records exemption for certain proprietary business information provided by insurers to the clearinghouse program of 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. Current law allows homeowners with offers for property insurance from an insurer in the private market to still obtain insurance from Citizens if certain Citizens' eligibility requirements are met. A major eligibility requirement is a 15 percent premium restriction. This restriction prohibits a homeowner from buying insurance in Citizens if an insurer in the private market offers the homeowner insurance for a premium that is up to 15 percent more than the Citizens' premium. However, there is no mechanism for an insurance agent to check with all insurers in the private market to see if any of them will insure the property within the premium restriction. This likely allows property to be insured by Citizens even though a private market insurer will insure the property for a premium up to 15 percent more than the Citizens' premium. Additionally, homeowners can circumvent the premium eligibility restriction and buy insurance in Citizens, even when an insurer in the private market will insure the property within the 15 percent premium restriction, by shopping for insurance with multiple agents.

CS/SB 1770 establishes a clearinghouse program (clearinghouse) for use by Citizens before property insurance can be written or renewed by Citizens. CS/SB 1770 also implements a premium eligibility restriction for policies renewed by Citizens. The purpose of the clearinghouse is to ensure only property meeting the Citizens' premium eligibility restrictions for new insurance and renewal insurance is insured by Citizens. All Citizens' applications for insurance and all Citizens' renewal policies must be submitted to the clearinghouse to determine if the policy can be written or renewed by a property insurer operating in the private market within the premium eligibility restrictions. Insurers are not required to participate in the clearinghouse.

This bill exempts an insurer's proprietary business information provided to the clearinghouse and relating to the identification and selection of risks through the clearinghouse from public records requirements. The insurer must identify information as proprietary business information in order for the public records exemption to apply. The clearinghouse may disclose the confidential and exempt proprietary business information under specified conditions.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill was approved by the Governor on May 29, 2013, ch. 2013-61, L.O.F., and will become effective on July 1, 2013, unless otherwise provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Citizens Property Insurance Corporation

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. Although it operates like a private insurance company, 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 and over \$418 billion in exposure.³ 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.⁴

Current law allows homeowners with offers for property insurance from an insurer in the private market to still obtain insurance from Citizens if certain Citizens' eligibility requirements are met. Citizens must also have a procedure to determine the eligibility of a potential risk. A major eligibility requirement for insurance in Citizens provided in current law is a 15 percent premium restriction. This restriction prohibits a homeowner from buying insurance in Citizens if an insurer in the private market offers the to insure the property for a premium that is up to 15 percent more than the Citizens' premium. 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.

¹ Section 24(c), Art. I of the State Constitution.

² s. 119.15, F.S.

³ <https://www.citizensfla.com/about/corpfinancials.cfm> (last viewed February 23, 2013).

⁴ *Id.*

Currently, an insurance agent selling a property insurance policy checks with the insurers in the private market represented by the agent to see if any of them will insure the property for a premium up to 15 percent more than the Citizens' premium. If an insurer will do that, the agent cannot put the policy in Citizens. However, the agent can only check with the insurers he or she represents and because captive agents represent only one insurer, these agents can check with only one insurer. There is no mechanism for an agent, either captive or not, to check with all insurers in the private market to see if any of them will write insurance within the premium restriction. This likely allows property to be insured by Citizens even though a private market insurer will insure the property for a premium up to 15 percent more than the Citizens' premium.

Additionally, homeowners can circumvent the premium eligibility restriction and buy insurance in Citizens, even when an insurer in the private market will insure the property within the premium restriction, by shopping for property insurance with multiple agents. If one agent denies the homeowner insurance in Citizens because he or she represents a private insurer that will insure the property for a premium up to 15 percent more than the Citizens' premium, the homeowner can go to a different agent. If that agent does not represent a private insurer willing to insure the property within the 15 percent premium eligibility restriction, the agent can put the policy in Citizens. Thus, the property is insured by Citizens, even though there is a private insurer willing to insure it within the 15 percent premium restriction, simply because the agent selling the policy does not represent that private insurer.

CS/SB 1770

CS/SB 1770 establishes a clearinghouse program (clearinghouse) for use by Citizens before property insurance can be written or renewed by Citizens. The purpose of the clearinghouse is to ensure only property meeting the Citizens' premium eligibility restrictions obtains insurance in Citizens. The bill also implements a premium eligibility restriction for policies renewed by Citizens. This premium eligibility restriction prohibits Citizens from renewing a policy if an insurer in the private market will insure the property for the same premium or less than the Citizens' renewal premium.

All applications for insurance in Citizens and all policies to be renewed in Citizens must be submitted to the clearinghouse to determine if the policy can be written or renewed by a property insurer operating in the private market within the statutory premium eligibility restrictions. Insurers are not required to participate in the clearinghouse.

When an application for insurance in Citizens is submitted to the clearinghouse, insurers participating in the clearinghouse have two days to select the property to insure. If the two-day period expires and no insurer has elected to insure the property, Citizens will insure it. If the property is selected by an insurer and the premium offered by the insurer is within the statutory premium eligibility guideline for new applications, then the homeowner is not eligible for insurance in Citizens. If more than one insurer offers insurance within the guideline, the homeowner chooses from which insurer to purchase insurance. If an insurer offers to write insurance, but the premium is more than the guideline, then the homeowner can choose to buy insurance with the insurer or buy insurance with Citizens.

The same clearinghouse submission and selection process applies to Citizens' renewals, but there is no two-day waiting period. Citizens' renewals will be submitted to the clearinghouse for selection during the time period provided by law for notifying the policyholder their policy is being renewed, which is 45 days before renewal. If property insured by Citizens is up for renewal and is selected from the clearinghouse by an insurer with a premium from the insurer within the statutory renewal premium eligibility guidelines, then the homeowner is not eligible to renew insurance in Citizens. If more than one insurer offers insurance at premiums within the renewal guideline, the homeowner chooses from which insurer to purchase insurance. If an insurer offers to write insurance, but the premium is more than the renewal guideline, then the homeowner can choose to buy insurance with the insurer or renew their insurance with Citizens.

Effect of the Bill

The bill exempts an insurer's proprietary business information provided to the clearinghouse and relating to the identification and selection of risks through the clearinghouse from public records requirements. The insurer must identify information as proprietary business information in order for the public records exemption to apply. The clearinghouse may disclose the confidential and exempt proprietary business information under specified conditions.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.⁵

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:

None.

D. FISCAL COMMENTS:

None.

⁵ Section 24(c), Art. I of the State Constitution.