

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 909	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Regulatory Affairs Committee; Insurance & Banking Subcommittee; Wood	111 Y's	6 N's
COMPANION BILLS:	(CS/SB 1770)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 909 passed the House on April 30, 2013 as CS/SB 1770. The bill includes portions of CS/CS/HB 835, CS/HB 433, CS/CS/HB 819, CS/CS/HB 1107, HB 1329, and CS/HB 7093. Part of the bill also passed the House and Senate in CS/CS/CS/SB 468. The bill addresses these property insurance issues: Citizens Property Insurance Corporation (Citizens), a clearinghouse for Citizens, public adjusters, the Florida Hurricane Catastrophe Fund (FHCF), the Florida Commission on Hurricane Loss Projection Methodology, and an exposure and assessment report for Citizens and the FHCF. Specifically, the bill:

- Prohibits Citizens from writing new policies or renewing policies for structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of: \$1,000,000 or more starting January 1, 2014; \$900,000 or more starting January 1, 2015; \$800,000 or more starting January 1, 2016; \$700,000 or more starting January 1, 2017. But, in counties where the Office of Insurance Regulation (OIR) determines there is no competition, Citizens can write or renew policies for property insured for less than \$1,000,000;
- Prohibits Citizens from insuring a newly constructed major structure or a substantially improved structure with a building permit application on or after July 1, 2014 and located seaward of the coastal construction control line or within the Coastal Barrier Resources System;
- Creates an Inspector General for Citizens;
- Subjects Citizens to s. 287.057, F.S., pertaining to procurement;
- Adds a consumer member to the Citizens' Board;
- Allows insurers who take policies out of Citizens to use Citizens' policy forms for three years;
- Requires Citizens to prepare an annual report on Citizens' loss ratio for non-catastrophic losses;
- Requires additional disclosure about surcharge and assessment liabilities for Citizens' policies;
- Repeals the current law allowing perpetual eligibility in Citizens for policyholders not taken out of Citizens by an assumption agreement;
- Creates a clearinghouse to divert new applications for insurance from Citizens and Citizens' renewals to the private market, starting January 1, 2014;
- Makes a property ineligible for renewal in Citizens if a private insurer offers to insure the property at the same premium or less than the Citizens' renewal premium;
- Repeals the 10% fee cap for public adjusters relating to insurance claims filed against Citizens;
- Extends the current exemption for medical malpractice insurance policyholders from assessments levied by the FHCF for another three years, until May 31, 2016;
- Adds a structural engineer to the Florida Commission on Hurricane Loss Projection Methodology, appointed by the Governor; and
- Requires Citizens and the FHCF to prepare and submit an annual report relating to their exposure and assessments.

The bill was approved by the Governor on May 29, 2013, ch. 2013-60, L.O.F., and will become effective on July 1, 2013, except as otherwise provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0909z1.IBS

DATE: June 12, 2013

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

The bill addresses these property insurance issues: Citizens Property Insurance Corporation (Citizens), a clearinghouse for Citizens, public adjusters, the Florida Hurricane Catastrophe Fund (FHCF), the Florida Commission on Hurricane Loss Projection Methodology, and an exposure and assessment report for Citizens and the FHCF.

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.¹ 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.²

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 Policies³
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-only⁴ 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.

Citizens' Management Structure

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

² "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.)

³ 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.

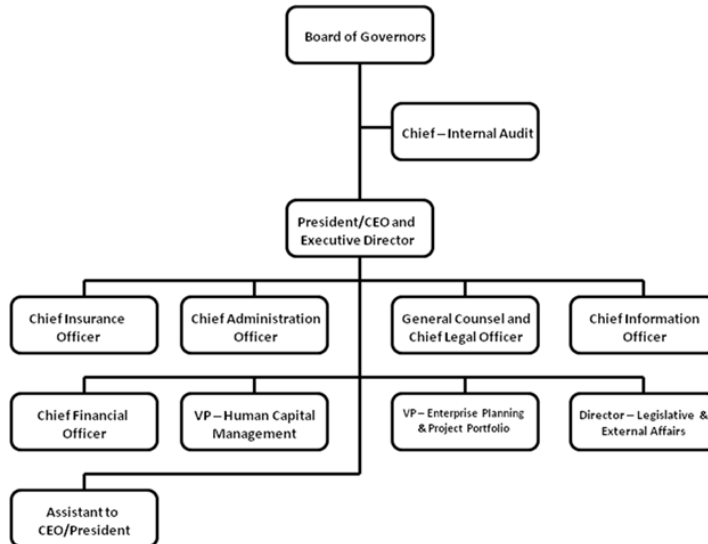
⁴ A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

Citizens operates under the direction of an eight member Board of Governors (Board). The Governor, Chief Financial Officer, Senate President, and Speaker of the House of Representatives each appoint two members of the Board, with one member appointed chair by the Chief Financial Officer. Board members serve three year staggered terms.⁵ At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. The board members are not Citizens' employees and are not paid. The bill adds another member to the Citizens' Board. This member is appointed by the Governor and represents consumers.

Only the Citizens' President/CEO/Executive Director and the Chief of Internal Audit report directly to the Citizens' Board. The following senior managers report directly to the President/CEO/Executive Director:

- Chief Insurance Officer,
- Chief Administration Officer,
- General Counsel and Chief Legal Officer,
- Chief Information Officer,
- Chief Financial Officer,
- Vice President of Human Capital Management,
- Vice President of Enterprise Planning and Project Portfolio, and
- Director of Legislative and External Affairs.

An organizational chart of the senior managers at Citizens is as follows:



Citizens' Inspector General

Citizens does not currently have an inspector general and is not required by law to have one. However, the Chief of Internal Audit has job duties and responsibilities similar to an inspector general. The Chief of Internal Audit position was created in Citizens in 2006.⁶ Citizens' first Chief of Internal Audit started in January, 2007. The position has been filled almost continuously since that time, with Citizens employing four Chiefs of Internal Audit since 2007.⁷

Generally, the duties of the Chief of Internal Audit include: fostering and promoting accountability and integrity in Citizens; holding the Citizen's leadership, management and staff accountable for efficient, cost-effective operation; and preventing, identifying, and eliminating fraud, waste, corruption, illegal

⁵ s. 627.351(6)(c)4., F.S.

⁶ See Section 15, Ch. 2006-12, L.O.F.

⁷ The Chief of Internal Audit position was not filled between 6/9/2007 and 11/4/2007 due to a lapse between the resignation of one Chief and the hiring of a replacement.

acts, and abuse. Specific duties and responsibilities for the position are contained in s. 627.351(6)(i), F.S. The Chief of Internal Audit carries out his duties primarily through audits, management reviews and investigations.

From December 2010 until October 2012, Citizens also had an Office of Corporate Integrity (Office).⁸ The Office handled employee complaints, particularly those that could indicate ethics violations and internal fraud. From December 2010 until July 2012, the employees in this office reported to Citizens' General Counsel and Chief Legal Officer. Thereafter, they reported to the Citizens' Chief of Internal Audit. The Office was disbanded by Citizens' Board in October 2012, but its functions were absorbed by other Citizens' staff, including the Office of Internal Audit, the Ethics Officer, and the Employee Relations Office.⁹

Governor's Inspector General Report

In September 2012, Governor Rick Scott asked his Office of the Chief Inspector General (Inspector General) to review travel expenses incurred by Citizens' Board members, Senior Managers, and employees to determine whether the expenses were incurred in accordance with Citizens' travel policies.¹⁰ The Governor requested the review after newspapers published articles relating to Citizens' employees' travel expenses.¹¹ The Inspector General issued a report on February 14, 2013.¹² The report found travel expenses incurred by Citizens' Board and staff were generally compliant with the Citizens' travel policies in effect when the travel was incurred. But, the Inspector General also found Citizens' travel policies were ambiguous and lacked specific requirements to ensure travel was necessary and conducted in the most economical manner. Additionally, the report noted the policies allowed for travel expenses in excess of the State of Florida travel guidelines. The Inspector General recommended Citizens be required to follow state travel laws and that Citizens' travel policies be updated to reflect that state travel laws apply to Board Members, Senior Managers, and all employees. The Inspector General also recommended Citizens enhance their internal controls to address the findings in the report.

Governor's Response to the Inspector General Report

In response to the Inspector General Report on Citizens' travel expenses, Governor Scott proposed four reforms.¹³ First, the Governor recommended Citizens immediately change their travel guidelines to comply with official state travel restrictions. Second, he recommended Citizens' Board members to change their travel policy to prohibit any international travel. Third, he suggested Citizens' travel policy be further tightened to allow only essential employees to attend board meetings. Lastly, the Governor recommended Citizens have its own independent statutory Inspector General to enforce existing rules and any additional reforms needed. On January 18, 2013, Citizens' President/CEO/Executive Director publically provided support for an Inspector General at Citizens.¹⁴ In a February 13, 2013 written response to the Inspector General's report, Citizens' President/CEO/Executive Director stated Citizens

⁸ The Office of Corporate Integrity began as the Office of Corporate Compliance within the Administration/Human Resources Department in Citizens. The Office of Corporate Compliance was established in June 2008.

⁹ Press Release from Citizens dated October 18, 2012, available at https://www.citizensfla.com/about/pressreleases.cfm?show=text&link=/shared/press/articles/new/10_18_2012.cfm&showyear=2012 (last viewed January 22, 2013). The Office was disbanded by the Citizens' Board upon a recommendation of the Audit Committee of the Board.

¹⁰ The Inspector General reviewed approximately 350 expense reports of travel and travel related expenses for Citizens' eight Board members, 13 Senior Managers and 18 other employees.

¹¹ "Expense reports for Citizens Property Insurance's top executives show lavish spending," August 26, 2012, available at <http://www.tampabay.com/news/business/banking/expense-reports-for-citizens-property-insurances-top-executives-show/1247636> (last viewed January 22, 2013); "Citizens Property Insurance interim president chucks up almost \$10,000 in travel expenses in two months," June 20, 2012, available at <http://www.tampabay.com/news/business/banking/citizens-property-insurance-interim-president-chucks-up-almost-10000-in/1236203> (last viewed January 22, 2013).

¹² Executive Office of the Governor Office of the Chief Inspector General, Report No. 2013-10, Citizens Property Insurance Corporation Travel Review, dated February 14, 2013, on file with the Insurance & Banking Subcommittee.

¹³ <http://www.flgov.com/2013/01/17/statement-from-governor-rick-scott-regarding-inspector-general-report-on-citizens-corporate-travel/> (last viewed January 22, 2013). The statement was issued in response to the Inspector General's preliminary report issued January 15, 2013.

¹⁴ https://www.citizensfla.com/about/pressreleases.cfm?show=text&link=/shared/press/articles/new/01_18_2013.cfm (last viewed January 22, 2013).

would implement changes to the corporation's travel and expense procedures to more closely mirror the travel guidelines applicable to state agencies.¹⁵

Effect of Changes Relating to Citizens' Inspector General

The bill creates an inspector general for Citizens. The bill outlines the job qualifications and duties and responsibilities of the position. The Citizens' inspector general is appointed by the Financial Services Commission¹⁶ (FSC) and can be removed from office only by the FSC. However, the inspector general will report to and be supervised the chairman of the Citizens' Board. The Citizens' Chief of Internal Audit is mandated to cooperate and coordinate activities with the Citizens' inspector general to avoid overlap of duties and responsibilities of these positions.

Citizens' Financial Resources to Pay Claims¹⁷

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.¹⁸

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.¹⁹ 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

¹⁵ Executive Office of the Governor Office of the Chief Inspector General, Report No. 2013-10, Citizens Property Insurance Corporation Travel Review, dated February 14, 2013, on file with the Insurance & Banking Subcommittee.

¹⁶ The Financial Services Commission is comprised of the Governor and Cabinet (s. 20.121(3), F.S.).

¹⁷ 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 (last viewed February 22, 2013)).

¹⁸ 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.

¹⁹ 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.

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.²⁰ 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 or 2 percent of the remaining deficit in the Coastal Account.²¹ 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.²² 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.

Disclosure of Assessment Potential

Since January 1, 2012, insurance agents issuing and renewing property insurance in Citizens are required to obtain an acknowledgement signed by the homeowner relating to the potential assessments imposed on the policy by Citizens. Citizens must keep a copy of the signed acknowledgement. The signed acknowledgement creates a conclusive presumption the policyholder understood and accepted the Citizens' assessment liability.

The bill adds an additional assessment disclosure relating to insurance in Citizens. The additional notice states each Citizens' policyholder is subject to a policyholder surcharge of up to 45 percent of premium and that eligibility for insurance in Citizens is predicated on an applicant for Citizens' insurance first trying to obtain insurance in the private market. The additional disclosure language also provides that insurance in the private market has rates that are regulated and approved by the State.

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amount and value of the property insured. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules,

²⁰ s. 627.351(6)(b)3.a.,d., and i., F.S.

²¹ s. 627.351(6)(b)3.a., F.S.

²² s. 627.352(6)(b)3.d., F.S.

which are approved by the Office of Insurance Regulation (OIR), give flexibility for Citizens to denote some risks as uninsurable based on factors not enumerated in statute, such as age of home, condition and age of roof, vacant property, certain seasonal occupancy, and type of electrical wiring. The bill provides some new statutory eligibility requirements for Citizens and does not address the ones set by underwriting rule.

Eligibility Based on Premium Amount

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.²³ 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.

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.

For policies being renewed by Citizens, the bill adds a new eligibility requirement based on premium amount. The 15 percent premium restriction, described above, imposes an eligibility requirement based on premium amount only for new policies. Thus, under current law, policies can be renewed in Citizens if a private market insurer is willing to insure the property regardless of the premium associated with the private insurer's offer. The bill makes policies being renewed by Citizens ineligible for insurance in Citizens at renewal if an insurer in the private market offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.

The bill also repeals current law allowing a Citizens' policyholder to remain eligible for personal or commercial residential insurance in Citizens when the policyholder receives an offer of coverage from an insurer in the private market. However, current law allowing a Citizens' policyholder taken out of Citizens by an assumption agreement to remain eligible for insurance in Citizens until the end of the assumption period is maintained.

Eligibility Based on Value of Property Insured

Citizens currently has eligibility restrictions for homes and condominium units based on the value of the property insured. These restrictions are in addition to the 15 percent premium eligibility restriction.

²³ s. 627.351(6)(c)5.a., F.S. Commercial non-residential property is not subject to this eligibility restriction.

Citizens currently does not insure a home or condominium unit if the insured value of the dwelling is \$1 million or more.²⁴

The bill adds additional eligibility restrictions for only personal residential property based on insured value and phases in the new restrictions over six years. Personal lines residential property is primarily homeowner's, mobile homeowner's, tenant's, dwelling, condominium unit owner's, cooperative unit owner's, and similar policies.

Under the bill, structures with a dwelling replacement cost or a condominium unit that has a dwelling and contents replacement cost of:

- \$1 million or more cannot obtain insurance in Citizens starting January 1, 2014, but property insured by Citizens for \$1 million or more on December 31, 2013 can remain insured in Citizens until the policy expires in 2014, but cannot be renewed.
- \$900,000 or more cannot obtain insurance in Citizens starting January 1, 2015, but property insured for \$900,000 or more on December 1, 2014 can remain insured in Citizens until the policy expires in 2015, but cannot be renewed.
- \$800,000 or more cannot obtain insurance in Citizens starting January 1, 2016, but property insured for \$800,000 or more on December 1, 2015 can remain insured in Citizens until the policy expires in 2016, but cannot be renewed.
- \$700,000 or more cannot obtain insurance in Citizens starting January 1, 2017, but property insured for \$700,000 or more on December 1, 2016 can remain insured in Citizens until the policy expires in 2017, but cannot be renewed.

However, under the bill, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of \$1 million or less in counties with no competition. The bill requires the OIR to determine whether there is competition in the county.

Citizens does not have any eligibility restrictions based on the value of the property insured for condominium association, homeowner association, or apartment building policies and the bill does not add any such restrictions for these properties.

Citizens has multiple eligibility and coverage restrictions for commercial businesses, depending on where the business is located and the type of policy the business purchases from Citizens. The restrictions are contained in the underwriting rules of Citizens, not in the statute. The bill does not add any eligibility restrictions based on the value of the property insurance for commercial businesses.

Eligibility Based on Location of Property

The only eligibility for insurance in Citizens in current law based on the location of the property to be insured is the designation of wind-only zones where Citizens can provide coverage for only property damage caused by wind events. And even this eligibility does not preclude Citizens from insuring property located in a wind-only zone, but allows Citizens to restrict its coverage to damage from wind events only.

Citizens' Wind-Only Policies

Citizens provides coverage in the Coastal Account for specially designated areas, called wind-only zones,²⁵ which have been determined to be particularly vulnerable to severe hurricane damage. In these areas, a property owner can obtain a property insurance policy from Citizens covering property damage from only wind events and can obtain a property insurance policy from a private market insurance company covering property damage and liability from non-wind events (other peril/non-wind coverage).

²⁴ This restriction is pursuant to an underwriting rule.

²⁵ Also called windstorm areas or windstorm boundaries.

The wind-only zones that currently exist have evolved over three decades, but originated with the creation of the FWUA in 1970. The FWUA was created to cover residential and commercial policyholders unable to secure windstorm coverage in the voluntary market. This coverage was limited to defined geographical areas in the state determined by the then Department of Insurance (Department). Eligibility was limited to structures in areas found by the Department, after public hearings, to meet three criteria:

- the lack of windstorm coverage in the area was deterring development, causing mortgages to be in default, and causing financial institutions to deny loans;
- the area was subject to the requirements of the Southern Standard Building Code or its equivalent; and
- extending windstorm coverage to the area was consistent with the policies and objectives of environmental and growth management.

The wind-only zones currently apply to 29 Florida counties. When the wind-only zones were established, only Monroe County was included. In 1992, when Hurricane Andrew hit South Florida, the wind-only zone did not include Miami-Dade, Broward, or Palm Beach counties. After Hurricane Andrew, the Department and the Legislature expanded the boundaries of the wind-only zones to the current ones. In July 2002, when Citizens was created, Citizens maintained the wind-only zones from the FWUA.

Coastal Construction Control Line

According to the Department of Environmental Protection (DEP), the Coastal Construction Control Line Program (CCCL) is an essential element of Florida's coastal management program.²⁶ It provides protection for Florida's beaches and dunes while assuring reasonable use of private property. The Coastal Construction Control Line Program protects Florida's coastal system from improperly sited and designed structures which can destabilize or destroy the beach and dune system. Adoption of a coastal construction control line establishes an area of jurisdiction in which special siting and design criteria are applied for construction and related activities. These standards may be more stringent than those that apply in the rest of the coastal building zone because during a storm event greater forces are expected to occur in the more seaward zone of the beach. Chapter 62B-33, Florida Administrative Code, provides the design and siting requirements that must be met to obtain a coastal construction control line permit. Approval or denial of a permit application is based upon a review of the potential impacts to the beach dune system, adjacent properties, native salt resistant vegetation, and marine turtles.²⁷

The DEP established the coastal construction control line by evaluating historical weather data (including past hurricanes which impacted the area under study, tide cycles, offshore bathymetry, erosion trends, upland topography, and existing vegetation and structures) using appropriate engineering predictive models and scientific principles to determine the upland limits of the effect of a one-hundred year coastal storm.²⁸ Importantly, the coastal construction control line is not a setback line or line of prohibition for construction. Rather, new construction as well as additions, remodeling, and repairs to existing structures are allowed seaward of the control line; however, such structures and activities, unless exempt by rule or law, require a CCCL permit from the DEP. An interactive map showing the coastal construction control line is available online.²⁹

Coastal Barrier Resources System

²⁶ A homeowner's guide to the Coastal Construction Control Line Program is available online. (See link for "Homeowners Guide to Coastal Construction Control Line (CCCL) Program," available at <http://www.dep.state.fl.us/beaches/publications/index.htm#cccl>, last viewed February 21, 2013).

²⁷ <http://www.dep.state.fl.us/beaches/programs/ccclprog.htm> (last viewed February 21, 2013).

²⁸ Some major storm effects, including wind and flooding may penetrate much farther inland than the control line, however the magnitude of the forces associated with those effects is considerably less than those which are anticipated seaward of the control line.

²⁹ See link for "How to determine if you (sic) property is seaward of the CCCL using 'Map Direct'," available at <http://www.dep.state.fl.us/beaches/publications/index.htm#cccl> (last viewed February 21, 2013).

The Coastal Barrier Resources Act (CBRA or Act)³⁰ was passed in 1982 and reauthorized in 1990, 2000 and 2005.³¹ Under CBRA, some undeveloped land located on coastal barriers is designated by the Secretary of the Interior as CBRA units in the Coastal Barrier Resource System (CBRS). The Act does not prohibit or regulate development of land in the CBRS, it simply precludes land owners from obtaining federal financial assistance for development of coastal barrier land. The Act encourages the conservation of hurricane prone, biologically rich coastal barriers by restricting federal expenditures that encourage development, such as federal flood insurance, road building, disaster relief, and wastewater systems. Areas within the CBRS can be developed if the private developer or other non-federal party bears the full cost of development. Between 1982 and 2010, the CBRA saved over \$1 billion in federal dollars.³²

The U.S. Fish and Wildlife Service is the federal agency responsible for implementing CBRA. There are more than 3.1 million acres of coastal barrier habitat designated within the CBRS. The CBRS covers 2,500 miles of shoreline along the Atlantic and Gulf coasts, Great Lakes, Puerto Rico, and U.S. Virgin Islands.³³ The official CBRS maps are available online.³⁴ A 2007 Government Accountability Office report estimated 84 percent of the CBRA units in the CBRS remain undeveloped and 13 percent of the units have had minimal levels of development since they were included in the CBRS.³⁵ Florida has 128 units in the CBRS totaling 677,334 acres, and 454 shoreline miles.³⁶

The CBRS boundaries are depicted on U.S. Geological Survey topographic quadrangle maps which are, on average, 30 years old. With three exceptions, only Congress has the authority to change CBRA boundaries to include or exclude specific property. The exceptions allow the Secretary of the Interior to change the boundaries for (1) voluntary additions to the CBRS by property owners, (2) additions of excess federal property to the CBRS, and (3) the required CBRA 5-year review that solely considers changes to the CBRS by natural forces such as erosion or accretion.³⁷

In 2011, the U.S. Fish and Wildlife Service partnered with the Federal Emergency Management Agency to initiate a review of the entire CBRS for changes that resulted from natural forces such as erosion or accretion (the required 5-year review) and to digitally convert the existing CBRS maps. The first batch of map conversion is completed and covers Delaware, South Carolina, Texas, and one county in Florida. Also, the U.S. Fish and Wildlife Service is currently finalizing versions of comprehensively revised CBRS maps to correct mapping errors, add qualifying land and aquatic habitat to the CBRS, and replace the outdated base maps. The revisions cover land in Alabama, Florida, and Rhode Island and will be presented for congressional consideration. The Fish and Wildlife Service is also developing a new interactive mapper to provide the public with more accessible and accurate CBRS data and maps.³⁸

Effect of Changes Relating to Eligibility Based on Location of Property

The bill adds an eligibility restriction for insurance in Citizens based on the location of the property. Under the bill, major structures for which a building permit for new construction is applied for on or after July 1, 2014 or for which a building permit for a substantial improvement of the structure is applied for on or after July 1, 2014, and which is located seaward of the coastal construction control line or within the CBRS will be ineligible for insurance in Citizens. The definition of “major structure” that is contained in s. 161.54, F.S., is the one that applies to Citizens’ eligibility. Generally, this definition defines houses, mobile homes, apartment buildings, condominiums, and certain types of businesses as “major

³⁰ Public Law 97-348.

³¹ <http://www.fws.gov/CBRA/Act/Legislation.html> (last viewed March 7, 2013).

³² <http://www.fws.gov/CBRA/Act/index.html> (last viewed March 6, 2013).

³³ <http://www.fws.gov/coastalbarrier.html> (last viewed March 6, 2013).

³⁴ <http://www.fws.gov/CBRA/Maps/index.html> (last viewed March 7, 2013).

³⁵ <http://www.fws.gov/coastalbarrier.html> (last viewed March 7, 2013).

³⁶ Link to Florida map on <http://www.fws.gov/CBRA/Maps/index.html#LocatorMaps> (last viewed March 11, 2013).

³⁷ U.S. Fish & Wildlife Service Report to Congress: John H. Chafee Coastal Barrier Resources System Digital Mapping Pilot Project, available from the Report to Congress link at <http://www.fws.gov/coastalbarrier.html> (last viewed March 7, 2013).

³⁸ “CBRA Turns 30 on October 18, 2002”, available at <http://www.fws.gov/coastalbarrier.html> (last viewed March 7, 2013).

structures.” The definition of “substantial improvement” that is also contained in s. 161.54, F.S., is the one that applies to Citizens’ eligibility. Generally, this definition makes any repair, reconstruction, rehabilitation, or improvement to a structure that costs 50 percent or more of the market value of the structure to be a “substantial improvement.” The statutory definition contains additional parameters and guidance and exclusions.

Establishment of a Clearinghouse for Citizens

The bill establishes a clearinghouse program (clearinghouse) for use by Citizens before certain types of 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 clearinghouse established in the bill does not replace or supplant other depopulation programs by Citizens.³⁹ Depopulation of Citizens can occur two ways. One way is by keeping policies currently insured in the private market out of Citizens and keeping them in the private market. The second way is by taking policies out of Citizens by insurers in the private market. To date, most of Citizens’ depopulation programs have focused on taking policies out of Citizens and the bill provides a new option for keeping policies out of Citizens.

All applications for certain types of insurance in Citizens and all policies to be renewed in Citizens for certain types of property 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 personal lines residential⁴⁰ insurance in Citizens is submitted to the clearinghouse, the insurers participating in the clearinghouse have two business 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 property is not eligible for insurance in Citizens. If more than one insurer offers insurance within the guideline, the property owner can choose from which insurer to purchase insurance. If an insurer offers to write insurance, but the premium is more than the guideline, then the property owner 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 property is not eligible to renew insurance in Citizens. If more than one insurer offers insurance at premiums within the renewal guideline, the property owner can choose from which insurer to purchase insurance. If an insurer offers to write insurance, but the premium is more than the renewal guideline, then the property owner can choose to buy insurance with the insurer or renew their insurance with Citizens.

The clearinghouse will not cover commercial nonresidential property or commercial residential property. However, Citizens must start developing a process to include commercial residential property in the clearinghouse and must report to the Legislature by January 1, 2014 on this issue.

The bill specifies additional parameters for the clearinghouse. The clearinghouse must be an organizational unit within Citizens. Citizens is authorized to employ or contract with outside vendors for

³⁹ Section 627.351(6)(q)3., F.S., requires Citizens to develop and maintain one or more depopulation programs to reduce its policy count and exposure. The depopulation programs must be approved by the Office of Insurance Regulation and be prudent and not unfairly discriminatory.

⁴⁰ By definition, personal lines residential insurance coverage consists of the type of coverage provided by homeowner’s, mobile homeowner’s, dwelling, tenant’s, condominium unit owner’s, cooperative unit owner’s, and similar coverage (s. 627.4025(1), F.S.).

operation of the clearinghouse. Citizens is not authorized to charge insurers or agents a fee to use the clearinghouse. A shortened notice of nonrenewal (45-days) applies to policies nonrenewed by Citizens because a private market insurer selected the property to insure through the clearinghouse. The bill provides exceptions to current law requiring insurance agents to be appointed by each insurer the agent sells insurance for in order to effectuate efficient implementation of the clearinghouse by independent and captive insurance agents.⁴¹ The bill allows authorized and surplus lines insurers to use a managing general agent or broker to participate in the clearinghouse.

In order to allow homeowners to stay with their insurance agent, even if the agent is not appointed by the insurer that selected the property from the clearinghouse, the bill requires insurers to enter into limited agency agreements with agents placing the coverage. A limited agency allows the agent to keep his or her book of business, continue to be the agent on the policy, and to continue to service the policy, which gives the homeowner a smooth transition to their new insurer. Independent agents may enter into limited agency agreements with insurers that do not currently appoint the agent but who write insurance through the clearinghouse for the agent's existing customer. Exclusive agents (i.e., captive agents) may enter into limited servicing agreements with these insurers only if the insurer appointing the exclusive agent approves the agreement. If a policyholder's agent does not represent the insurer selecting the policy from the clearinghouse and the agent does not enter into a limited agency or service agreement with the insurer selecting the policy, the policyholder is still ineligible for insurance in Citizens and will have to change agents.

The bill also provides exceptions to current law relating to payment of agent commissions for risks kept out of Citizens or taken out within the first 30 days of the policy to effectuate implementation of the clearinghouse. Finally, the bill requires insurance agents to retain expirations and records related to any insurance written through the clearinghouse.

Procurement of Commodities and Contractual Services by Citizens

The bill requires Citizens' purchase of commodities and contractual services begun on or after October 1, 2013 to comply with s. 287.057 F.S., which governs the purchase of commodities and contractual services by state agencies. The bill provides exceptions to the procurement requirements. It outlines a process for affected persons to protest Citizens' actions relating to contracts, invitations-to-bid, requests-for-proposals, invitations-to-negotiate, and bids.

Use of Citizens' Policy Forms by Private Insurers

Recently, Citizens has significantly reduced the coverage on the property they insure and reduced the policy limits on certain coverage.⁴² For example, Citizens no longer insures screen enclosures or carports. It does not write builder's risk insurance⁴³ anymore. And, Citizens now has a 10% mandatory sinkhole deductible and a policy limit for personal liability of \$100,000, instead of \$300,000. Some insurers in the private market have made coverage reductions similar to some of the ones made by Citizens, but no private insurer has made all of the reductions Citizens has made. To effectuate the coverage changes, Citizens changes their policy forms to delineate the reduced coverage and obtains approval of the form change from the OIR. Once a policy is issued or renewed after the effective date of the new policy form, the reduced coverage applies to the property insured by the policy.

The bill allows insurers who take policies out of Citizens to use Citizens' policy forms for three years without approval from the OIR to use the forms. Thus, insurers taking property policies from Citizens will be able to insure that property with the same reduced coverage Citizens insured the property for, instead of the more comprehensive coverage the insurer uses for property not taken from Citizens.

⁴¹ Independent insurance agents are those that are authorized by multiple insurers to place insurance with the insurers. Captive agents are those that are authorized to place insurance with one insurer only and operate as an exclusive agent for that insurer. Independent agents cannot place insurance with insurers that use captive agents.

⁴² See Presentation to the Financial Services Commission by Citizens Property Corporation, dated June 26, 2012, available at <https://www.citizensfla.com/about/mediaresources.cfm> (last viewed February 22, 2013).

⁴³ Builder's risk insurance is a property policy designed to provide coverage for buildings while under construction. <http://buildersriskinsurance.org/> (last viewed February 22, 2013).

Additionally, insurers will be able to insure the property with reduced coverage without obtaining approval from the OIR.

Citizens' Report on Non-Catastrophic Losses

Currently, there is no required reporting on non-catastrophic losses for any insurer, including Citizens. The bill requires Citizens to prepare a report by January 15th of each year on non-catastrophic losses. Specifically, the report must provide Citizens' loss ratio for non-catastrophic losses on a statewide and county basis. A loss ratio is the percentage of each premium dollar an insurer spends on claims.⁴⁴ For example, a loss ratio of 115 means for every \$1 in premium collected by the insurer, the insurer pays out \$1.15 in losses on a claim. The report must be provided to the OIR and posted on the Citizens Internet website.

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.⁴⁵ 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.⁴⁶

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.⁴⁷ Administrative rules also address public adjuster activities.⁴⁸ 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.⁴⁹ Public adjusters must also present a \$50,000 bond to DFS in order to be licensed.⁵⁰ 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

⁴⁴ <http://www2.iii.org/glossary/> (last viewed March 24, 2013).

⁴⁵ Information obtained from the DFS dated March 20, 2013, on file with staff of the Insurance & Banking Subcommittee.

⁴⁶ 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).

⁴⁷ 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.

⁴⁸ Rule 69B-220.201(4) and (5), F.A.C.

⁴⁹ Similar qualifications apply to independent and company adjusters.

⁵⁰ s. 626.865(2), F.S.

In January 2010, the OPPAGA, at the request of the Legislature,⁵¹ issued Report Number 10-06 on public adjuster representation in Citizens' claims.⁵² 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.⁵³

Public Adjuster Fees⁵⁴

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 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 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.

⁵¹ 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.

⁵² Report available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-06> (last viewed March 20, 2013).

⁵³ 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.

⁵⁴ Public adjuster fee restrictions are found in s. 626.854(11), F.S.

Effect of Changes Relating to Public Adjuster Fees

The bill makes several changes to the public adjuster law. The changes relate to conduct of the public adjuster and public adjuster fees. The bill adds language requiring the public adjuster to meet with the insurer to try to reach an agreement on the scope of the loss. Current law only requires the insurer to meet with the public adjuster. The bill also prohibits a public adjuster from acquiring any interest in salvaged property unless the policyholder consents. This is generally a codification of an administrative rule.⁵⁵

The bill also makes one change to the cap on public adjuster fees. The bill repeals current law restricting fees paid to public adjusters representing a Citizens' policyholder to ten 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. This effect of this change is an increase in public adjuster fees.

The bill also applies the disciplinary provisions in s. 626.8698, F.S., to public adjusters who violate the statutory fee restrictions through any maneuver, shift, or device. Disciplinary actions include a fine, license suspension, license revocation, and license denial.

Florida Hurricane Catastrophe Fund

The Florida Hurricane Catastrophe Fund (FHCF or Fund) is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers.⁵⁶ The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must participate in the FHCF (s. 215.555(4)(a), F.S. and s. 215.555(2)(c), F.S.). The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage (45, 75, or 90%) of hurricane losses to residential property above the insurer's retention (deductible).⁵⁷

The FHCF must offer two options for reinsurance coverage for all residential property insurers. One of the two options is mandatory and thus must be purchased by all insurers on their residential property exposure. The voluntary coverage option, Temporary Increase In Coverage Limit Options (TICL), offers reinsurance to insurers above the mandatory coverage.

For the mandatory coverage, the FHCF charges insurers the "actuarially indicated" premium for the coverage provided by the FHCF, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. The premium for mandatory coverage also includes a cash build-up factor which is charged on top of the actuarially indicated premium. For the 2012-2013 contract year, the cash build-up factor is 20%, meaning an insurer's premium is 20% greater than the actuarially indicated premium. The cash build-up factor increases by 5% each year until it is 25% (2013-2014 contract year).

Florida law sets the maximum amount the FHCF reimburses insurers each year for the mandatory coverage.⁵⁸ This is the FHCF's capacity. Under current law, the FHCF's capacity is \$17 billion for each contract year. The capacity does not increase until the FHCF's cash and bonding ability exceeds \$34

⁵⁵ Rule 69B-220.201(4)(e), F.A.C.

⁵⁶ s. 215.555, F.S. The FHCF was created after Hurricane Andrew in 1992.

⁵⁷ Retention is defined to mean the amount of losses below which an insurer is not entitled to reimbursement from the Fund. A retention is calculated for each insurer based on its proportionate share of Fund premiums.

⁵⁸ s. 215.555(4)(c)1., F.S.

billion. Because this condition for an increase in capacity is not yet met, for the current contract year, the insurance industry as a whole is covered for losses up to \$17 billion by the mandatory coverage.

Before FHCF monies are available to pay claims each insurer must meet a retention/deductible. The retention amount for each insurer is different because the amount is based on the amount of premium the insurer pays to the FHCF. For the 2012-2013 contract year, the insurance industry as a whole has an aggregate retention of \$7.389 billion for mandatory coverage, meaning the total of all individual insurer retentions/deductibles will total \$7.389 billion per hurricane event if all participating insurers reached their retention. Although the insurance industry's aggregate deductible/retention totals \$7.389 billion, insurers can obtain reimbursement from the FHCF before the insurance industry losses total \$7.389 billion because loss recovery from the FHCF is based on an individual insurer meeting its own retention for mandatory coverage prior to losses being reimbursed.

Revenue bonds are issued by the FHCF to pay claims when the FHCF's funds are inadequate. These bonds are funded by emergency assessments levied by the FHCF against property and casualty insurance premiums paid by policyholders (other than workers' compensation, accident and health, federal flood and, until May 31, 2013, medical malpractice), including surplus lines policyholders.⁵⁹ The FHCF assessment base is over \$34.6 billion.⁶⁰ Annual assessments are capped at 6% of premium with respect to losses from any one year and a maximum of 10% of premium to fund hurricane losses from multiple years.⁶¹

Exemption for Medical Malpractice Insurance from FHCF Assessments

The bill allows medical malpractice insurance policyholders to be exempt from FHCF assessments until May 31, 2016. The exemption has been in place since 2005⁶². These policyholders are currently exempt from the assessment base, but under current law they will be added to the base starting June 1, 2013 because their exemption expires on May 31, 2013. Thus, the bill extends the exemption for these policyholders three more years.

The Florida Hurricane Catastrophe Finance Corporation

The bill changes the name of the Florida Hurricane Catastrophe Fund Finance Corporation to the "State Board of Administration Finance Corporation." The Florida Hurricane Catastrophe Fund Finance Corporation is the corporation that issues revenue bonds for the Florida Hurricane Catastrophe Fund. The Florida Hurricane Catastrophe Fund Corporation had long-term ratings of Aa3/AA-/AA from Moody's, Standard and Poor's, and Fitch, respectively.⁶³ This change should not impact property insurance rates. However, the change may prevent confusion among bond purchasers with other types of catastrophe bonding and may make bonds issued by the FHCF easier to sell at a lower price.

Outdated Provisions Relating to FHCF Coverage

The bill repeals several provisions in the FHCF governing statute that are obsolete because they sunset. For example, current law allowing certain insurers to buy \$10 million of FHCF coverage below their FHCF retention is repealed because current law allowing this purchase expired on May 31, 2012. Also, current law allowing insurers to buy additional reinsurance from the FHCF below their retention (TEACO coverage) is repealed because current law allowed this purchase only through May 31, 2010.

The Florida Commission on Hurricane Loss Projection Methodology

⁵⁹ s. 215.555(6)(b)1., F.S.; s. 215.555(6)(b)(10), F.S.

⁶⁰ Assessment base total is as of the end of 2011. See Report Prepared for the Florida Hurricane Catastrophe Fund on Claims-Paying Capacity Estimates by Raymond James Public Finance Department, dated October 9, 2012, available at <http://www.sbafla.com/fhcf/AdvisoryCouncil/2012MeetingMaterials/tabid/1311/Default.aspx> (last viewed February 27, 2013).

⁶¹ s. 215.555(6)(b)2., F.S.

⁶² Ch. 2005-2, L.O.F.

⁶³ Report Prepared for the Florida Hurricane Catastrophe Fund Claims-Paying Capacity Estimates, dated October 9, 2012, available at <http://www.sbafla.com/fhcf/AdvisoryCouncil/2012MeetingMaterials/tabid/1311/Default.aspx> (last accessed March 5, 2013).

In 1995 the Legislature established the Florida Commission on Hurricane Loss Projection Methodology (Commission) to serve as an independent body within the State Board of Administration.⁶⁴ The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. Individual insurers are required to use the Commission's findings in order to support or justify a rate filing.

The Commission is comprised of 11 members. Members of the Commission include experts in insurance finance, statistics, computer system design, and meteorology who are full-time faculty members in the State University System and appointed by the CFO, an actuary member from the FHCF Advisory Council, an actuary employed with a property and casualty insurer appointed by the CFO, an actuary employed by OIR, the Executive Director of Citizens, the senior employee responsible for FHCF operations, the Insurance Consumer Advocate, and the Director of Emergency Management. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards.

Only hurricane loss models or methods the Commission deems accurate or reliable can be used by insurers in rate filings to estimate hurricane losses used to set property insurance rates. Additionally, insurers have 60 days after the Commission finds a model accurate and reliable to use the model to predict the insurer's probable maximum loss levels in a rate filing.

The bill adds another member to the Commission, who will be appointed by the Governor. The member must be a full-time faculty member in the State University System and a licensed professional structural engineer with expertise in wind mitigation techniques. Structural engineering is a branch of civil engineering dealing primarily with the design and construction of structures.⁶⁵ Engineers in Florida are licensed and regulated by the Board of Professional Engineers created within the Department of Business and Professional Regulation.⁶⁶ Wind mitigation specifically targets the structural and nonstructural aspects that prevent or lessen damage caused by high winds that occur with storms.⁶⁷

Report to the Legislature Relating to the FHCF and Citizens

Section 627.3519, F.S., requires the Financial Services Commission (FSC)⁶⁸ to provide the Legislature, by February 1st each year, a report on the aggregate net probable maximum losses⁶⁹, financing options, and potential assessments of the FHCF and Citizens. This statute was enacted in 2006.⁷⁰ The FSC has provided the required report on to the Legislature each February since 2008.

The report includes the amount and term of debt needed to be issued by the FHCF and Citizens to support the probable maximum losses required to be reported. The assessment percentage that would be needed to support the debt is also required to be reported.

The OIR prepares the report on behalf of the FSC. The OIR does not compute or generate the information required to be reported. Much of the information needed in the report is already computed by the FHCF and by Citizens and provided to various stakeholders, such as potential bond investors, rating agencies, public policymakers, and the advisory and governing boards of the FHCF and Citizens. Thus, the OIR gathers the information already computed from FHCF and Citizens and presents the information in a report format.

⁶⁴ The Commission is created in s. 627.0628, F.S. This statute also provides the composition and duties of the Commission.

⁶⁵ <http://www.merriam-webster.com/dictionary/structural%20engineering> (last viewed on March 17, 2013).

⁶⁶ Chapter 471, F.S.

⁶⁷ Booklet entitled "Florida's Foundation, Make Mitigation Happen," Florida's Division of Emergency Management, p.2, available at www.floridadisaster.org/mitigation/.../Wind%20Mitigation%20Book (last viewed on March 17, 2013).

⁶⁸ The Financial Services Commission is comprised of the Governor and Cabinet (s. 20.121(3), F.S.).

⁶⁹ Probable maximum loss is an estimate of maximum dollar value that can be lost under realistic situations.

⁷⁰ Section 20, Ch. 2006-12.

The bill requires Citizens and the FHCF to prepare the report, rather than the FSC, and present it to the FSC and the legislative presiding officers annually. The content of the report is not changed by the bill.

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:

The changes made by the bill restricting the eligibility for insurance in Citizens should reduce the number of policies in Citizens. Reducing the number of policies in Citizens decreases the amount of losses experienced by Citizens. Decreasing the amount of losses lessens the likelihood of a deficit for Citizens, which in turn, reduces the probability and amount of assessments on Citizens' and non-Citizens' policyholders.⁷¹

Further restricting eligibility for insurance in Citizens, by premium comparison at renewal, by the insured value of the property, or by the location of the property will force some Citizens' policyholders into the private or surplus lines market for property insurance. These markets could charge more for insurance than Citizens which would increase the premiums for some current Citizens' policyholders.

Homeowners insured by Citizens that are selected by an insurer in the private market through the clearinghouse are no longer subject to a maximum 45 percent assessment levied by Citizens against its policyholders.

⁷¹ 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. If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders (Citizens Policyholder Assessment) of up to 15 percent of premium per account in deficit, for a maximum total of 45 percent. 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 or 2 percent of the remaining deficit in the Coastal Account. 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. 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. 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.

Some homeowners currently insured in Citizens may not be able to renew their insurance in Citizens under the bill if their policy is selected by an insurer participating in the clearinghouse. If selected, the homeowner should not have an increase in premium because the bill allows insurers to select the property to insure only if the insurer charges the same premium or less than the Citizens' renewal premium. Some homeowners currently insured by Citizens may see a premium decrease if the private market insurer selecting their policy from the clearinghouse has premiums lower than Citizens.

Homeowners insured by Citizens that are selected by an insurer in the private market through the clearinghouse may obtain property insurance with expanded coverages. Recently, Citizens has significantly reduced coverages and reduced the policy limits on certain coverage.⁷² For example, Citizens no longer insures screen enclosures or carports. And, Citizens now has a 10 percent mandatory sinkhole deductible and a policy limit for personal liability of \$100,000, instead of \$300,000. Some insurers in the private market have made coverage reductions similar to some of the ones made by Citizens, but no private insurer has made all of the reductions Citizens has made.

Insurance agents that enter into a limited agency arrangement with insurers participating in the clearinghouse with which they do not have an appointment should not be impacted by the bill. The limited agency agreement should allow the agent to continue to receive commissions on the policy, continue to service the policy, and continue to have the policy in the agent's book of business. However, exclusive insurance agents (i.e., captive agents) not approved by their insurer to enter into limited service arrangements with other insurers participating in the clearinghouse may lose some of their current business. These agents will no longer be able to renew or service the policy because they will have no contractual relationship with the new insurer on the policy. And, property owners who use these agents will no longer be able to use them and will have to change agents.

Allowing insurers who take policies out of Citizens to use Citizens' policy forms which provide for reduced coverage on the insured property reduces the insurers' exposure for those policies for the three years the insurer is allowed to use the forms. However, policyholders previously insured by Citizens who are taken out by an insurer in the private market will not get the more comprehensive coverage offered by the insurer to its' other policyholders.

Citizens may incur additional costs, including staff time, to calculate and publish the report required for non-catastrophic losses.

The changes to the public adjuster fees will increase fees paid to public adjusters in Citizens' claims and decrease the claim payment made to the homeowner.

Extending the exemption for policyholders of medical malpractice insurance from the FHCF assessments causes policyholders of the other types of property and casualty insurance included in the assessment base to pay higher assessments than they would be had the exemption expired. Although medical malpractice is not currently in the FHCF assessment base, it was to be added as of June 1, 2013. Adding additional types of insurance to the assessment base grows the base and lowers the assessment for all types of insurance in the base. As of December 31, 2011, medical malpractice premiums totaled almost \$555 million.⁷³ Thus, the bill precludes the FHCF assessment base of \$34.6 billion⁷⁴ to increase by \$555 million.

If the FHCF has to issue revenue bonds to pay claims, it is likely to obtain more favorable bonding terms with a larger the assessment base. Thus, extending the exemption for medical malpractice from

⁷² See Presentation to the Financial Services Commission by Citizens Property Corporation, dated June 26, 2012, available at <https://www.citizensfla.com/about/mediasources.cfm> (last viewed February 22, 2013).

⁷³ This total includes premiums from surplus lines insurance and risk retention groups. Information obtained from the OIR on February 27, 2013, on file with the Insurance & Banking Subcommittee.

⁷⁴ Assessment base total is as of the end of 2011. See Report Prepared for the Florida Hurricane Catastrophe Fund on Claims-Paying Capacity Estimates by Raymond James Public Finance Department, dated October 9, 2012, available at <http://www.sbafla.com/fhcf/AdvisoryCouncil/2012MeetingMaterials/tabid/1311/Default.aspx> (last viewed February 27, 2013).

being added to the assessment base may result in the FHCF receiving less favorable bonding terms than it would receive had medical malpractice been added to the base on June 1, 2013.

Policyholders of medical malpractice insurance will not have to pay FHCF assessments on their medical malpractice insurance for another three years. Under current law, these policyholders would have had to start paying FHCF assessments levied due to hurricanes occurring on or after June 1, 2013.

D. FISCAL COMMENTS:

None.