

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: CS/SB 1274

INTRODUCER: Banking and Insurance Committee and Senator Hays

SUBJECT: Citizens Property Insurance Corporation

DATE: March 27, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1274 allows certain properties with new construction to be exempt from the prohibition on coverage from Citizens within the Coastal Barrier Resources System. The exemption applies to properties located within counties the Office of Insurance Regulation (OIR) determines Citizens is providing more than 75 percent of the policies for each line of business written by Citizens.

The bill allows Citizens to submit an alternative study to the OIR for the purposes of allowing additional windstorm mitigation discounts. Upon approval by the OIR Citizens must, in their next rate filing, include the mitigation discounts provided by the study. The bill allows the Financial Services Commission to make an addendum to the uniform mitigation verification form. The addendum to the form is to be used in counties whose building code has been verified to be more stringent than the highest code recognized by the form.

The bill prohibits a certified wind mitigation inspector from paying any referral fees or other forms of compensation to an insurance agent, broker or insurance agency employee that recommends an inspector's services to an insured. The bill also prohibits an insurance agent, broker or insurance agency employee from accepting any referral fees or other forms of compensation from a certified wind mitigation inspector.

II. Present Situation:

Citizens Property Insurance Corporation (Citizens)

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.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 Governors³ (board) that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. Citizens is subject to regulation by the Florida Office of Insurance Regulation.

Citizens offers property 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 Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, and condominium unit owner's policies.

The Commercial Lines Account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

The Coastal Account offers personal residential, commercial residential and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.⁶

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

² s. 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.

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

⁵ s. 627.351(6)(b)2b., F.S.

⁶ In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.

Eligibility for Citizens coverage is at times restricted, or alternatively, the amount of coverage provided by Citizens is limited. Personal lines residential structures are ineligible for Citizens if they have an insured value of \$1 million or greater.⁷ The eligibility threshold for such policies will be reduced annually in \$100,000 increments until it reaches \$700,000, effective January 1, 2017. Citizens will insure commercial residential properties at unlimited values. Citizens writes only the first \$1 million of commercial non-residential wind-only coverage and the first \$2.5 million of commercial non-residential multi-peril policies.

Citizens Rates

Rates for Citizens coverage are required to be actuarially sound,⁸ except that Citizens may not implement a rate increase that exceeds 10 percent for any single policy other than sinkhole coverage,⁹ excluding coverage changes and surcharges.¹⁰ The 10 percent limitation on rate increases is referred to as the Citizens rate “glide path” to achieving actuarially sound rates.¹¹ 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.

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 amounts, value of the property insured, and the location of the property. 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, which are approved by the 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.

Eligibility Based on Premium Amount

Under current law, an applicant for residential insurance cannot buy insurance in Citizens if an admitted insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 15 percent or more.¹² In addition, the coverage offered by the private insurer must be comparable to Citizens’ coverage.

⁷ s. 627.351(6)(a)3.a., F.S.

⁸ s. 627.351(6)(n)1., F.S.

⁹ s. 627.351(6)(n)6., F.S.

¹⁰ s. 627.351(6)(n), F.S.

¹¹ With the enactment of Chapter 2007-001, L.O.F., from January 25, 2007, to January 1, 2010, Citizens rates were fixed by statute at the rates that were in effect on December 31, 2006. The Legislature also rescinded a Citizens rate increase that had taken effect January 1, 2007, and resulted in a statewide average rate increase of 12 percent for policies in the personal lines account and 21.4 percent for policies in the high risk account (since renamed the coastal account).

¹² s. 627.351(6)(c)5., F.S.

Under current law, a residential policyholder cannot renew insurance in Citizens 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.¹³

Eligibility Based on Value of Property Insured

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.¹⁴ 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 31, 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 31, 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 31, 2016, can remain insured in Citizens until the policy expires in 2017, but cannot be renewed.

However, 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 the OIR determines is non-competitive.

Citizens does not have any eligibility restrictions based on the value of the property insured for condominium association, homeowner association, or apartment building policies. 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. These restrictions are contained in the underwriting rules of Citizens, not in the statute.

Eligibility Based on Location of Property

Current law also provides an eligibility restriction for insurance in Citizens based on the location of the property. Major structures for which a building permit for new construction or a substantial improvement of the structure is applied for on or after July 1, 2014, , and which are located seaward of the coastal construction control line or within the Coastal Barrier Resources System (CBRS) are ineligible for insurance in Citizens. The definition of "major structure" in s. 161.54, F.S., is the one that applies to Citizens' eligibility and is very broad, encompassing all residential and commercial buildings. The definition specifies it covers houses, mobile homes, apartment buildings, condominiums, hotels, motels, and restaurants. The definition of "substantial improvement" in s. 161.54, F.S., is the one that applies to Citizens' eligibility.

¹³ s. 627.351(6)(c)5., F.S.

¹⁴ s. 627.351(6)(a)3., F.S.

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.

Statewide Impact of Citizens’ Eligibility Based on Location of Property

Citizens has identified approximately 100,000 parcels of land statewide completely within the CBRS or seaward of the coastal construction control line. Under current law, these parcels are ineligible for insurance in Citizens if:

- The parcel is currently improved (i.e., developed) and the structure located on the parcel is substantially improved with a building permit applied for on or after July 1, 2014, or
- If the parcel is currently unimproved (i.e., vacant), but is later developed with a building permit applied for on or after July 1, 2014.

Of the 100,000 total parcels of land completely within the CBRS or seaward of the coastal construction control line, Citizens currently writes 25,000 policies statewide insuring structures on these parcels. Thus, any substantial improvement to these 25,000 properties where a building permit is applied for on or after July 1, 2014, would keep them from continuing to be insured by Citizens.

Citizens identified another 80,000-100,000 properties it currently insures that could be moved within the CBRS or the control line if the boundaries of these areas change. This would prevent these properties from keeping insurance in Citizens if they are substantially improved with a building permit applied for on or after July 1, 2014.

Monroe County Impact of the Application of the CBRS Eligibility Restriction

There is no coastal construction control line in Monroe County. Thus, the provision in current law relating to eligibility for Citizens insurance for property located in the CBRS is the only applicable provision for Monroe County.

Monroe County has the following types of property located in whole or in part in the CBRS:

- 83 parcels are privately owned and improved (i.e., developed) and are completely contained within the CBRS.
- 1,239 parcels are privately owned and unimproved (i.e., vacant) and are completely contained within the CBRS.
- 573 parcels are privately owned and improved and intersect the CBRS in some manner (but are not wholly in the CBRS).
- 1,311 parcels are privately owned and unimproved and intersect the CBRS in some manner (but are not wholly in the CBRS).

Alternate Mitigation Study

Section 627.0629(1), F.S., requires rate filings for residential property insurance to include actuarially reasonable mitigation discounts. The OIR determines the amount of the discount. The

current OIR administrative rule¹⁵ relating to mitigation discount amounts allows insurance companies to modify the amounts if the insurer provides a detailed alternate study supporting the modification and allows the OIR to review all assumptions used in the study. To date, the OIR has approved alternate discount studies for three insurers. The OIR is currently reviewing alternate studies for two more insurers.¹⁶

Uniform Mitigation Verification Inspection Form

Section 627.0629, F.S., requires rate filings for residential property insurance to include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties. The windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength; roof covering performance; roof-to-wall strength; wall-to-floor foundation strength; opening protections; and window, door, and skylight strength.

Section 627.711, F.S., requires insurers to clearly notify an applicant or policyholder of a personal lines residential property insurance policy of the availability and range of each premium discount, credit, other rate differential, or reduction in deductibles, for wind mitigation. The notice must be provided when the policy is issued and upon each renewal. The notification must be done on a form developed by the Office of Insurance Regulation, known as the Notice of Premium Discounts for Hurricane Loss Mitigation.

To qualify for a hurricane premium discount, consumers must submit a completed Uniform Mitigation Verification Inspection Form developed by rule by the Financial Services Commission.¹⁷ The current uniform mitigation form recognizes the Florida Building Code adopted in 2001 or later and the South Florida Building Code adopted in 1994. All insurers are required to use this form when factoring discounts for wind insurance.

Certified Wind Mitigation Inspector

Under current law an insurer must accept a uniform mitigation verification form signed by an authorized mitigation inspector. Those who qualify as an authorized mitigation inspector include:

- A home inspector licensed under s. 468.8314, F.S., who has completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board which includes hurricane mitigation techniques and compliance with the uniform mitigation verification form and completion of a proficiency exam;
- A building code inspector certified under s. 468.607, F.S.;
- A general, building, or residential contractor licensed under s. 489.111, F.S.;
- A professional engineer licensed under s. 471.015, F.S.;
- A professional architect licensed under s. 481.213, F.S.; or
- Any other individual or entity recognized by the insurer as possessing the necessary qualifications to properly complete a uniform mitigation verification form.

¹⁵ Rule 69O-170.017, F.A.C.

¹⁶ Information received from the OIR on file with the Banking & Insurance Committee Staff.

¹⁷ Rule 69O-170.0155, F.A.C.

A person who is authorized to sign a mitigation verification form must inspect the structures referenced by the form personally, not through employees or other persons, and must certify or attest to personal inspection of the structures referenced by the form. However, licensed engineers under s. 471.015, F.S., and licensed contractors s. 489.111, F.S., may authorize a direct employee, who is not an independent contractor, and who possesses the requisite skill, knowledge and experience, to conduct a mitigation verification inspection. Insurers shall have the right to request and obtain information regarding any authorized employee's qualifications prior to accepting a mitigation verification form.

An authorized mitigation inspector that signs a uniform mitigation form and a direct employee authorized to conduct mitigation verification inspections may not commit misconduct when performing an inspection. Misconduct occurs when an authorized mitigation inspector signs a uniform mitigation verification form that:

- Falsely indicates that he or she personally inspected the structures referenced by the form;
- Falsely indicates the existence of a feature which entitles an insured to a mitigation discount which the inspector knows does not exist or did not personally inspect;
- Contains erroneous information due to the gross negligence of the inspector; or
- Contains a pattern of demonstrably false information regarding the existence of mitigation features that could give an insured a false evaluation of the ability of the structure to withstand major damage from a hurricane endangering the safety of the insured's life and property.

The licensing board of an authorized mitigation inspector may commence disciplinary proceedings and impose administrative fines and other sanctions for such misconduct violations.

In 2013, the Department of Business and Professional Regulation (DBPR) issued declaratory statement 2013-04045. The statement concluded licensed home inspectors authorized to complete mitigation inspections are not prohibited under current law from paying referral fees to insurance agents and brokers who recommend their services. The DBPR declaratory statement clarifies that s. 468.8319(1)(h), F.S., only prohibits licensed home inspectors from paying referral fees to licensed real estate agents and licensed real estate brokers.

III. Effect of Proposed Changes:

Exemption to the prohibition on coverage by Citizens within a CBRS (Section 1)

In 2013, the Florida Legislature required properties located within the Coastal Barrier Resources System to be ineligible for coverage from Citizens if a building permit for new construction was applied for after July 1, 2014. The bill would exempt from this prohibition all properties located in a CBRS within a county the OIR determines Citizens provides more than 75 percent of the policies for each line of business Citizens writes.

Alternate study relating to mitigation discounts

Citizens currently does not have an alternate study relating to mitigation discounts. However, Citizens has provided funding for a study of Monroe County to the non-profit group Fair

Insurance Rates in Monroe (FIRM).¹⁸ To date FIRM has not completed their study. When such a study is complete the bill allows Citizens to submit the alternative study to OIR and if approved must, in their next rate filing, include the mitigation discounts provided by the study.

Addendum to the uniform mitigation verification form (Section 2)

The bill allows the Financial Services Commission to create an addendum to the uniform mitigation verification form. The addendum is to help policyholders located in counties with a verified stronger building code than currently utilized for the form to receive greater mitigation credits than allowed by the current form.

Prohibition on referral fees paid by wind mitigation inspectors

The bill prohibits a certified wind mitigation inspector from paying any referral fees or other forms of compensation to an insurance agent, broker or insurance agency employee that recommends an inspector's services to an insured. Additionally, the bill prohibits an insurance agent, broker or insurance agency employee from accepting any referral fees or other forms of compensation from a certified wind mitigation inspector.

Effective Date (Section 3)

The effective date of the bill is July 1, 2014.

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.

¹⁸ Rate Study Funding Agreement entered into by Fair Insurance Rates in Monroe (FIRM) and Citizens on file with the Banking & Insurance Committee Staff.

B. Private Sector Impact:

Property owners with new construction located in a CBRS in a county where the OIR determines Citizens is writing more than 75 percent of the policies for a particular line of business, will be able to be insured by Citizens. This exemption included current policyholders with Citizens who make substantial improvements to their insured structure after July 1, 2014.

Citizen's policyholders could receive greater mitigation discounts if a study is submitted and approved by the OIR concluding such discounts are warranted.

If the PSC amends the uniform mitigation form to recognize counties with stronger building codes, it will allow Citizens policyholders in such counties to receive greater mitigation credits than allowed by the current form.

Certified wind mitigation inspectors will be prohibited from paying referral fees to an insurance agent, broker or company employee that recommends an inspector's services to an insured. Additionally, an insurance agent, broker or company employee is prohibited from accepting any referral fees or other forms of compensation from a certified wind mitigation inspector.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear how OIR will determine a county is non-competitive with regards to commercial policies as OIR currently does not collect market share data on commercial-lines policies issued in the state. Additionally, it is unclear if policies written by surplus lines insurers will be included in the calculation of Citizens market share with regards to determining competitiveness within a county.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.351, 627.711.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 25, 2014:

The CS:

- Requires the Office of Insurance Regulation (OIR) to determine non-competitive counties with regards to exempting properties within Coastal Barrier Resources System from the prohibition of coverage with Citizens.
- Changes the market share formula for Citizens that the OIR is to use when determining that a county is non-competitive.
- Allows Citizens to submit an alternative study to OIR regarding windstorm mitigation. Upon approval by the OIR, Citizens must include mitigation discounts provided by the study in their next rate filing.
- Allows the Financial Services Commission to make an addendum to the uniform mitigation verification form. The addendum to the form is to be used in counties whose building code has been verified to be more stringent than the highest code recognized by the form.
- Prohibits a certified wind mitigation inspector from paying any referral fees or other forms of compensation to an insurance agent, broker or company employee that recommends an inspectors services to an insured.
- Prohibits an insurance agent, broker or company employee from accepting any referral fees or other forms of compensation from a certified wind mitigation inspector.

- B. **Amendments:**

None.