

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 Rules

BILL: CS/CS/SB 1672

INTRODUCER: Rules Committee; Commerce and Tourism Committee; and Banking and Insurance Committee

SUBJECT: Property Insurance

DATE: April 22, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Matiyow/Knudson</u>	<u>Knudson</u>		BI SPB 7062 as introduced
1.	<u>Siples</u>	<u>Hrdlicka</u>	<u>CM</u>	Fav/CS
2.	<u>Matiyow/Knudson</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1672 enacts the following changes to property insurance laws, primarily relating to Citizens Property Insurance Corporation (Citizens). The bill:

- Prohibits an insurance agent, managing general agent, adjuster, customer or service representative from accepting referral fees or compensation from an inspection or inspection company related to an inspection used to obtain insurance coverage or establish the insurance premium.
- Prohibits a public adjuster, apprentice or associate from accepting a power of attorney that vests to the right to select the person that will perform repairs on an adjusted property.
- Delays the prohibition for Citizens to provide coverage to new structures within the Coastal Resources Barrier System by 1 year, from July 1, 2014, to July 1, 2015.
- Directs Citizens to stop writing new commercial residential multi-peril policies in the coastal account. Instead, Citizens will write separate Wind and All-Other Perils policies.
- Reduces 5 percent of the Citizens policyholder surcharge for deficits arising from the personal lines account and increases 5 percent of the Citizens policyholder surcharge for deficits arising from the coastal account.
- Requires all procurement protests within Citizens to be decided by the Division of Administrative Hearings.
- Directs Citizens to include commercial residential buildings within the Citizens policyholder eligibility clearinghouse program (clearinghouse) by October 1, 2015.

- Allows surplus lines insurers to make offers of similar coverage through the clearinghouse if no authorized insurers participating in the clearinghouse make an offer of coverage.
- Requires surplus lines insurers participating in the clearinghouse meet enhanced financial and disclosure requirements.
- Requires Citizens to issue an annual report of its estimated bonding capacity, estimated claims paying capacity, and estimated year-end cash balance.
- Prohibits an authorized mitigation inspector from paying any referral fees or other forms of compensation to an insurance agent, broker, or insurance agency employee that recommends the inspector's services to an insured.
- Prohibits an insurance agent, broker, or insurance agency employee from accepting any referral fees or other forms of compensation from an authorized mitigation inspector.
- Allows an insurer to exempt from independent verification, a uniform mitigation verification form completed by an authorized mitigation inspector that has a quality assurance program approved by the insurer.
- Provides that a uniform mitigation verification form provided to Citizens and completed by an authorized mitigation inspector with a quality assurance program approved by Citizens is not subject to independent verification or re-inspection if there has been no material changes to the structure.
- Prohibits contractors from providing deductible rebates to an insured, making such acts a 3rd degree felony.

II. Present Situation:

Public Adjusters

A public adjuster is a person, other than a licensed attorney, who, for compensation, prepares or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of the insured or third party.¹ The responsibilities of property insurance public adjusters include inspecting the loss site, analyzing damages, assembling claim support data, reviewing the insured's coverage, determining current replacement costs, and conferring with the insurer's representatives to adjust the claim. Public adjusters are licensed by the Department of Financial Services (DFS) and must meet specified age, residency, examination, and surety bond requirements.² The conduct of a public adjuster is governed by statute and by rule.³

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.⁴ Citizens is not a private insurance company.⁵ 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

¹ Section 626.854(1), F.S.

² Section 626.865, F.S.

³ See generally, ss. 626.854, 626.8698, 626.876, 626.878, 626.8795 and 626.8796, F.S., and Rule 69B-220, F.A.C.

⁴ Admitted market means insurance companies licensed to transact insurance in Florida.

⁵ Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

Joint Underwriting Association and the Florida Windstorm Underwriting Association. Citizens operates in accordance with s. 627.351(6), F.S., and is governed by a nine member board of governors⁶ (board) that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission.

Citizens offers property insurance in three separate accounts: personal lines, commercial lines, and coastal. Each account is a separate statutory account with separate calculations of surplus and deficits. Assets may not be commingled or used to fund losses in another account.⁷

The personal lines account (PLA) offers personal lines residential policies that provide comprehensive, multiperil coverage, except for those areas of the state covered by the coastal account. The PLA also writes policies that exclude wind coverage 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.⁸

The commercial lines account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage, except for those areas covered by 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 account⁹ offers personal residential, commercial residential, and commercial non-residential policies in eligible coastal areas. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.¹⁰

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.¹¹ The eligibility threshold for such policies will be reduced annually in \$100,000 increments until it reaches \$700,000.¹² Citizens will insure commercial residential properties at unlimited values. Citizens writes only the first \$1 million of

⁶ The Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives each appoint two members to the board. The Governor is also responsible for appointing one individual to serve solely as an advocate of the consumer. All members of the board must be Florida residents, and the board must be geographically diverse.

⁷ Section 627.351(6)(b)2.b., F.S.

⁸ Citizens, *2010 Annual Report*, available at

https://www.citizensfla.com/about/reports.cfm?show=pdf&link=/shared/documents/2010_AnnualReport.pdf (last visited Mar. 21, 2014).

⁹ This account was formerly known as the High Risk Account.

¹⁰ In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. See Press Release, Citizens, *New Citizens Program Provides Potential Savings for Wind-Only Policyholders* (July 31, 2007), available at https://www.citizensfla.com/shared/press/articles/new/07_31_2007.cfm (last visited Mar. 21, 2014).

Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account. See Citizens, *2008 Annual Report*, available at https://www.citizensfla.com/shared/documents/2008_AnnualReport.pdf (last visited Mar. 24, 2014).

¹¹ Section 627.351(6)(a)3.a., F.S.

¹² See s. 627.351(a)3.a.-d., F.S. Effective January 1, 2017, the eligibility limit for coverage by Citizens will be \$700,000.

commercial non-residential wind-only coverage and the first \$2.5 million of commercial non-residential multi-peril policies.

Citizens Financial Resources for Paying Claims

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. Citizens projected surplus for 2014 and its policies, premium in force and total exposure as of January 31, 2014, is as follows:¹³

Table 1: Citizens Surplus, Premium, Exposure, and Premium in Force

Citizens Account	Surplus ¹⁴	Policies In Force	Premium In Force ¹⁵	Total Exposure ¹⁶
PLA	\$2.73 Billion	610,237	\$999 Million	\$113.4 Billion
CLA	\$1.54 Billion	7,534	\$196 Million	\$36.8 Billion
Coastal	\$3.39 Billion	383,106	\$1.071 Billion	\$164.6 Billion
TOTAL	\$7.66 Billion	1,000,877	\$2.266 Billion	\$314.8 Billion

It is estimated that as of December 31, 2014, Citizens will have an accumulated surplus of approximately \$7.66 billion.¹⁷ Citizens has approximately \$1.85 billion in private reinsurance/catastrophe bonds coverage¹⁸ and \$4.48 billion in mandatory layer reinsurance from the FHCF.¹⁹ Citizens has additional pre-event liquidity²⁰ of \$3.93 billion. For the 2014 storm season, Citizens has an estimated aggregate claims paying capacity of \$17.9 billion.

If Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy regular assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute as follows:²¹

¹³ See Citizens, "Book of Business, Archived Policies in Force," available at <https://www.citizensfla.com/about/corpfinancials.cfm> (last visited Mar. 24, 2014).

¹⁴ Citizens, *Annual Report of Aggregate Net Probable Maximum Losses, Financing Options, and Potential Assessments* (Feb. 4, 2014) (on file with Senate Banking and Insurance Committee). See also e-mail from Christine Turner, Vice President-Communications, Legislative and External Affairs, Citizens Property Insurance Corp. (Mar. 4, 2014) (on file with Senate Banking and Insurance Committee).

¹⁵ Rounded to the nearest \$1 million.

¹⁶ Rounded to the nearest \$100 million.

¹⁷ See *supra* note 11 at 5. Surplus amounts consist of preliminary (unaudited) 2013 surplus and 2014 projected net income.

¹⁸ 2014 projected private risk transfer estimated as of the 2013 program. See *supra* note 11 at 5.

¹⁹ FHCF coverage is based on preliminary 2013 retention and payment multiples. Actual multiples may be significantly different (on file with Senate Banking and Insurance Committee). See *supra* note 11 at 6.

²⁰ Pre-Event Liquidity does not represent risk transfer and any monies drawn must be repaid.

²¹ Sections 627.351(6)(b)3.a., d., and i., F.S. See also Citizens, "Assessments," available at <https://www.citizensfla.com/about/citizensAssessments.cfm> (last visited Mar. 28, 2014).

Citizens Surcharge²²

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

Regular Assessment²³

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

Emergency Assessment²⁴

Requires any remaining deficit for either of Citizens three accounts be funded by multi-year emergency assessments on all insurance policyholders, including Citizens policyholders.²⁵ This assessment is levied up to 10 percent of premium or 10 percent of the deficit per account, whichever is greater. The maximum emergency assessment that can be levied against Florida’s varicose insurance policyholders is 30 percent per policy.

Citizens resources for paying claims and assessable shortfall amounts for probable maximum loss events occurring once every 50 years, 100 years, and 250 years are detailed in tables 2-A, 2-B, and 2-C, below.²⁶

Table 2-A: Citizens 1 in 50 Year Probable Maximum Losses (PML) and Potential Assessments²⁷
(\$ in billions)

Citizens Accounts	1: 50 Year PML Loss	Surplus Recovery	FHCF Reimbursement	Reinsurance/ Cat Bonds	Assessable Shortfall
PLA/CLA	\$3.129	\$1.428	\$1.702	\$0	\$0
Coastal	\$7.563	\$2.934	\$2.780	\$1.850	\$0
TOTAL	\$10.657	\$4.326	\$4.481	\$1.850	\$0

²² Section 627.351(6)(b)3.i., F.S.

²³ Section 627.351(6)(b)3.a., F.S.

²⁴ Section 627.351(6)(b)3.d., F.S.

²⁵ Emergency assessments are not levied against medical malpractice and workers compensation policyholders.

²⁶ Citizens, *Annual Report of Aggregate Net Probable Maximum Losses, Financing Options, and Potential Assessments* at 5.

²⁷ PML is based on policies in-force as of December 31, 2013, using a computer-based simulation model, AIR CLASIC/2, Version 15.0, based on a weighted average of Standard Sea Surface Temperature (SSST) and Warm Sea Surface Temperature (WSST) Event Catalogs and include estimated loss adjustment expenses. Although combined PMLs and surplus are shown, assessments are triggered at an account level. FHCF coverage is combined for PLA/CLA and separate for the coastal account. PMLs are not additive; the combined value shown is not the sum of PLA/CLA and Coastal PMLs.

Table 2-B: Citizens 1 in 100 Year Probable Maximum Losses and Potential Assessments
 (\$ in billions)

Citizens Accounts	1: 100 Year PML Loss	Surplus Recovery	FHCF Reimbursement	Reinsurance/ Cat Bonds	Assessable Shortfall
PLA/CLA	\$5.406	\$3.704	\$1.702	\$0	\$0
Coastal	\$11.841	\$3.390	\$2.780	\$1.850	\$3.822
TOTAL	\$17.448	\$7.660	\$4.481	\$1.850	\$3.456

Table 2-C: Citizens 1 in 250 Year Probable Maximum Losses and Potential Assessments
 (\$ in billions)

Citizens Accounts	1: 250 Year PML	Surplus Recovery	FHCF Reimbursement	Reinsurance/ Cat Bonds	Assessable Shortfall
PLA/CLA	\$9.532	\$4.270	\$1.702	\$0	\$3.560
Coastal	\$19.165	\$3.390	\$2.780	\$1.850	\$11.145
TOTAL	\$28.303	\$7.660	\$4.481	\$1.850	\$14.311

Citizens Rates

Rates for Citizens coverage are required to be actuarially sound,²⁸ except that Citizens may not implement a rate increase that exceeds 10 percent for any single policy other than sinkhole coverage, excluding coverage changes and surcharges.²⁹ The 10 percent limitation on rate increases is referred to as the Citizens rate “glide path” to achieving actuarially sound rates.³⁰ 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.³¹

Citizens Clearinghouse

In 2013, the Legislature mandated the creation of the Citizens Property Insurance Corporation Policyholder Eligibility Clearinghouse Program (clearinghouse) for personal residential risks.³² The clearinghouse has two purposes:

- To determine if a new or renewal policy is eligible for Citizens coverage; and
- To enhance access of new Citizens applicants and existing Citizens policyholders to offers of coverage from authorized insurers.³³

²⁸ Section 627.351(6)(n)1., F.S.

²⁹ Section 627.351(6)(n)6., F.S.

³⁰ With the enactment of ch. 2007-1, 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) (on file with Senate Banking and Insurance).

³¹ Section 215.555(5)(b), F.S.

³² Chapter 2013-60, L.O.F.

³³ Section 627.3518(2), F.S.

The clearinghouse facilitates the diversion of ineligible applicants and existing policyholders from the corporation into the voluntary insurance market. Citizens launched the personal residential clearinghouse for new applicants on January 27, 2014.³⁴

All applicants for Citizens personal lines residential coverage and all Citizens personal lines residential policies at renewal are submitted to the clearinghouse. The clearinghouse interacts with participating private-market insurers to match specific risks with the OIR approved rating and underwriting criteria of each participating insurer. The clearinghouse displays all quotes that have been received for each risk submitted. However, a Citizens quote will be displayed as ineligible if one or more participating insurers makes a comparable offer of coverage priced within 15 percent of Citizens' premium for new applicants³⁵ or for a renewal policy makes a comparable offer of coverage priced no more than Citizens current rate. If a risk is deemed ineligible for Citizens, the policyholder's agent will be unable to submit the application to Citizens but will be able to access the offering insurer's policy system to bind the coverage. While the same eligibility thresholds apply for new commercial policies,³⁶ there is no clearinghouse for commercial-residential and commercial non-residential new or renewal policies written by Citizens.

Citizens was also directed to develop appropriate procedures for developing a clearinghouse for commercial residential coverage that would divert ineligible applicants and existing Citizens policyholders into the private insurance market.³⁷ Citizens issued a report on December 30, 2013, detailing its compliance with statutory requirements.³⁸ The report indicates that admitted insurers currently writing commercial residential property in Florida are interested in participating in a commercial residential clearinghouse. Citizens also indicated that it has been contacted by prospective insurers targeting commercial residential lines and opined that there is significant interest in this product line. The lack of statutory authority to create a clearinghouse was identified as the primary obstacle to its creation.

Surplus Lines Insurance

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies authorized to transact insurance in Florida).³⁹ There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and

³⁴ Press Release, Citizens, *Citizens Statement on Property Insurance Clearinghouse Rollout* (Jan. 27, 2014), available at <https://www.citizensfla.com/shared/press/articles/141/01.27.2014.pdf> (last visited Mar. 28, 2014).

³⁵ Section 627.351(6)(c)5.a., F.S. See also Citizens, *The Property Insurance Clearinghouse Providing New Options for Florida Homeowners* (2014), available at <https://www.citizensfla.com/shared/clearinghouse/documents/ProvidingNewOptions.pdf> (last visited Mar. 28, 2014).

³⁶ Section 627.351(6)(c)5.b., F.S.

³⁷ Chapter 2013-60, s. 10, L.O.F., Section 627.3518(2), F.S.

³⁸ Citizens, *Property Insurance Clearinghouse Commercial Lines Report* (Dec. 31, 2014), available at <https://www.citizensfla.com/shared/press/legislation/78/12.30.2013.pdf> (last visited Mar. 28, 2014).

³⁹ Florida Department of Financial Services, Division of Consumer Services, *Surplus Lines Insurance: Insuring the Uninsurable*, available at

- Capacity risks, which are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not “authorized” insurers as defined in the Florida Insurance Code and thus do not obtain a certificate of authority from the OIR to transact insurance in Florida. Rather, surplus lines insurers are “unauthorized” or “nonadmitted” insurers, but are eligible to transact surplus lines insurance under the surplus lines law as “eligible surplus insurers.”⁴⁰ The OIR determines whether a surplus lines insurer is “eligible” based on statutory guidelines. Eligibility requirements reviewed by the OIR for surplus lines include:

- Eligibility is requested in writing for the insurer by the Florida Surplus Lines Service Office;
- Insurer was authorized for the prior 3 years in the state or country of its domicile to write the kinds of insurance the insurer wants to write in Florida (with limited exceptions);
- Insurer provides the OIR with its current annual financial statement;
- Insurer meets surplus requirements (delineated below); and
- Insurer has a good reputation relating to payment of claims and policyholder service.⁴¹

Generally, a surplus lines insurer must have and maintain a surplus of \$15 million or more in order to obtain and maintain eligibility. In addition, an insurer formed outside the U.S. must have and maintain in the U.S., a trust fund containing at least \$5.4 million.⁴² The OIR has no duty or responsibility to determine the actual financial condition or claims practice of surplus lines insurers.⁴³ A finding of eligibility by the OIR only means the surplus lines insurer *appears* to be financially sound and to have a satisfactory claims practice.

The OIR must withdraw the eligibility of a surplus lines insurer if the OIR has reason to believe the insurer is insolvent or is in unsound financial condition; does not make reasonable prompt payment of claims; or does not meet the statutory guidelines for eligibility (including maintenance of \$15 million in surplus). The OIR may withdraw the eligibility of a surplus lines insurer if the insurer willfully violates a statute or rule.⁴⁴

Division of Administrative Hearings (DOAH)

The DOAH is a state agency that employs full-time administrative law judges to conduct hearings in most cases in which the substantial interests of a person are determined by an agency and which involve a disputed issue of material fact.⁴⁵ When a state agency proposes to take some action that is adverse to a person, the affected person is normally entitled to request an administrative hearing to determine the matter.⁴⁶ Requests for hearings are initially made to the appropriate state agency. If the case does not involve disputed facts, the agency itself will

<http://www.myfloridacfo.com/division/consumers/UnderstandingCoverage/Guides/documents/SurplusLines.pdf> (last visited Mar. 31, 2014).

⁴⁰ Section 626.914(2), F.S.

⁴¹ Section 626.918, F.S.

⁴² Section 626.918(2)(d)1.a., F.S.

⁴³ Section 626.918(4), F.S.

⁴⁴ Section 626.919, F.S.

⁴⁵ See ss. 120.52, 120.569, and 120.65, F.S.

⁴⁶ DOAH, “Representing Yourself Before the Division of Administrative Hearings,” *available at* <http://www.doah.state.fl.us/ALJ/RepYourself.pdf> (last visited Mar. 31, 2014).

conduct a proceeding and subsequently render a decision. If the request for hearing indicates that the affected person disputes facts upon which the proposed action is based, the agency ordinarily refers the case to the DOAH for a hearing. The DOAH provides a hearing conducted by an independent and neutral administrative law judge who thereafter enters a Recommendation or Final Order, which is provided to the state agency and the parties in the case. In the case of a Recommended Order, the agency reviews the Order and issues a final decision, which usually adopts the judge's factual findings, but may under certain circumstances reject or modify certain legal conclusions of the judge or the recommended penalty, if any. If the final decision is adverse to the non-agency party, an appeal may be taken within a limited time to a District Court of Appeal.

Uniform Mitigation Verification Inspection Form

Since 2003, insurers have been required to provide mitigation credits, discounts, other rate differentials, or reductions in deductibles (mitigation discounts) to reduce residential property insurance premiums for properties with mitigation features.⁴⁷ 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 renewed.

Typically, policyholders are responsible for substantiating to their insurers that the insured property has mitigation features, usually by submitting a completed uniform mitigation verification inspection form to the insurer to substantiate mitigation features. Insurers must accept mitigation forms prepared by home inspectors, building code inspectors, contractors, engineers, and architects and may accept forms prepared by persons determined to be qualified by the insurer to prepare the form.

Insurers can require mitigation forms provided to the insurer by mitigation inspectors or a mitigation inspection company be independently verified for quality assurance purposes before accepting the mitigation form as valid. The insurer must pay for the independent verification.⁴⁸ At their expense, insurers can also independently verify, for quality assurance purposes, mitigation forms submitted by policyholders or insurance agents.

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:⁴⁹

- 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

⁴⁷ Section 627.0629(1), F.S. Mitigation features are construction techniques used or items purchased and installed by a property owner to protect a structure against windstorm damage and loss. (e.g., hurricane shutters, hip roof, specified roof covering).

⁴⁸ Section 627.711(8), F.S.

⁴⁹ Section 627.711(2)(a), F.S.

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.

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.⁵⁰ However, licensed engineers and licensed contractors 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.⁵¹ 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 that 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.⁵²

In 2013, the Department of Business and Professional Regulation (DBPR) issued a declaratory statement regarding the prohibition against the offering of referral fees for home inspection referrals.⁵³ 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

⁵⁰ Section 627.711(3), F.S.

⁵¹ Section 627.711(4), F.S.

⁵² Section 627.711(5), F.S.

⁵³ *In re: Petition for Declaratory Statement, Don Meyler Inspections, Inc.*, Case No. DS 2013-39 (DBPR July 19, 2013), available at http://www.myfloridalicense.com/dbpr/pro/homein/documents/ds_04_2013-039.pdf (last visited Apr. 8, 2014).

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:

Prohibition on Referral Fees (Section 1, creates s. 626.621(15), F.S.)

The bill prohibits licensed agents, adjusters, customer representatives, service representatives, and managing general agents from directly or indirectly accepting any compensation, inducement, or reward from any inspector who submits inspections used by insurers in obtaining coverage or establishing insurance premiums.

Public Adjusters (Section 2, amends s. 626.854(18), F.S.)

The bill prohibits the execution of a power of attorney that vests the authority to choose the persons or entities that will perform repair work on a residential property insurance loss in a public adjuster, a public-adjuster apprentice, or any person acting on their behalf.

Coastal Barrier Resources System prohibition of coverage exemption (Section 3, amends s. 627.351(6)(a)5.b., F.S.)

In 2013, the Legislature made properties located within the Coastal Barrier Resources System to be ineligible for coverage by Citizens if a building permit for new construction or substantial improvement was applied for on or after July 1, 2014.⁵⁴ The bill postpones this date to July 1, 2015.

Commercial Residential Insurance in the Coastal Account (Section 3, amends s. 627.351(6)(b)2.a.(III), F.S.)

Effective July 1, 2014, Citizens may not offer new commercial residential multiperil insurance policies in the coastal account. Instead, Citizens will continue to offer commercial residential wind-only policies and separate commercial residential policies that exclude wind. Citizens may continue renewing commercial residential multi-peril policies within the coastal account that is insured by Citizens on June 30, 2014.

Citizens Policyholder Surcharge (Section 3, amends s. 627.351(6)(b)3.i.(I), F.S.)

If the Citizens Board of Governors (board) determines that one or more of the three accounts (personal lines, commercial lines, or coastal) has a projected deficit, the board levies a Citizens policyholder surcharge against all policyholders of the corporation. Current law allows a policyholder surcharge of up to 15 percent of the premium to be levied to fund a deficit for each Citizens account. All Citizens policyholders are subject to the surcharges, regardless of which account is projected to have a deficit. For example, if the board projected a deficit for the coastal account requiring a 10 percent policyholder surcharge and a deficit for the personal lines account requiring a 2 percent surcharge, all Citizens policyholders would be charged a 12 percent

⁵⁴ Chapter 2013-60, s. 7, L.O.F.

surcharge. Citizens' policyholders are subject to a maximum 45 percent surcharge consisting of up to 15 percent for each of the three accounts.

The bill increases the maximum Citizens policyholder surcharge for coastal account deficits to 20 percent of the premium and decreases the maximum surcharge for personal lines account deficits to 10 percent of the premium. The maximum surcharge liability of all Citizens policyholders remains unchanged at no more than 45 percent of the premium.

Competitive Procurement Protests (Section 3, amends ss. 627.351(6)(e)2.b.(II) and 627.351(6)(e)3., F.S.)

The bill removes the authority of the board to decide protests relating to competitive procurement and requires the board to contract with the DOAH to hear such protests instead. Citizens must reimburse the costs incurred by the DOAH related to hearing the protests. The bill grants the DOAH jurisdiction to hear the cases and issue recommended orders. The DOAH's rules and procedures apply to the proceedings; however, bond requirements do not. The board, as the "agency head," will consider the recommended orders and take final action on the protest. The board's final action is appealable to the First District Court of Appeal.

Surplus Lines Insurer Participation in Citizens Clearinghouse (Section 4, amends s. 627.3518, F.S.)

The bill defines "surplus lines insurer" as an unauthorized insurer that the OIR has made eligible to issue coverage under the Surplus Lines Law.⁵⁵

The bill authorizes surplus lines insurers to participate in the Citizens clearinghouse program beginning January 1, 2015. A surplus lines insurer must offer similar coverage to that provided by Citizens. Coverage may be offered by a surplus lines insurer only if the risk receives no coverage offers from authorized insurers. An offer of coverage from a surplus lines insurer will not affect whether a risk is eligible to be insured by Citizens.

The surplus lines insurer must provide prominent notice that:

- An applicant in the clearinghouse is not required to accept an offer of coverage from a surplus lines insurer;
- An offer of coverage from a surplus lines insurer does not affect the applicant's eligibility for coverage from Citizens;
- An applicant who accepts an offer of coverage from a surplus lines insurer may submit a new application for coverage to Citizens at any time;
- Surplus lines policies are not covered by the Florida Insurance Guaranty Association (FIGA); and
- Rates for surplus lines insurance are not subject to review by the OIR.

⁵⁵ Sections 626.913-626.937, F.S.

The notice must also include any other information required by the OIR. The notice must be signed by the policyholder and kept on file with the surplus lines insurer for as long as the policyholder remains insured by the surplus lines insurer.⁵⁶

A Citizens policyholder who accepts an offer of coverage from a surplus lines insurer and subsequently applies for coverage with Citizens within 36 months of being insured by Citizens will be considered a renewal policy. The rates on such policies will be rated as renewals and thus be subject to the 10 percent limit on annual rate increases.

To participate in the clearinghouse, the surplus lines insurer must be eligible to offer coverage under Florida's Surplus Lines Law and must maintain at least a \$50 million surplus on a company or pooled basis, be rated A- or higher by A.M. Best Company,⁵⁷ and have the ability to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season through its reserves, surplus, reinsurance and reinsurance equivalents.

Inclusion of Commercial Residential Risks within the Citizens Clearinghouse (Section 4, amends s. 627.3518(2), F.S.)

The bill requires Citizens to implement procedures for facilitating offers of coverage to commercial residential risks through the clearinghouse by October 1, 2015.

Reports Submitted by Citizens (Sections 3 and 6, amend ss. 627.351(6)(hh) and 627.35191, F.S., and Section 5, repeals s. 627.3519, F.S.)

Current law requires Citizens to report, for each calendar year, its loss ratios for residential non-catastrophic losses on a statewide average and county basis to the OIR. The bill changes the reporting date to March 1, rather than January 15, to provide Citizens sufficient time to complete the report (**Section 3**). The bill repeals the report required under s. 627.3519, F.S., as it is duplicative of the report requirements under s. 627.35191, F.S. (**Section 5**). The bill requires Citizens to provide a new report detailing its estimated borrowing capacity, claims-paying capacity, and estimated year-end balance to the Legislature and the Financial Services Commission in May of each year (**Section 6**).

Mitigation Inspectors – Prohibition on Referral Fees (Section 7, amends s. 627.711, F.S.)

The bill prohibits an authorized 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 an authorized mitigation inspector.

⁵⁶ In addition to the notice required by the bill, currently, the insured must be provided notice that surplus lines insurers' policy rates and forms are not approved by any Florida regulatory agency and that surplus lines insurers are not protected by the FIGA (s. 621636.924, F.S.); and personal residential property insured must be informed in writing that coverage may be available and less expensive from Citizens, but that Citizens assessments are higher and that Citizens coverage may be less than the property's existing coverage (s. 626.916(1)(e), F.S.)

⁵⁷ Specifically, the surplus lines insurer must be rated as superior, excellent, exceptional, or equally comparable financial strength by a rating agency acceptable by the OIR.

Verification of Uniform Mitigation Forms (Section 7, amends s. 627.711, F.S.)

The bill permits an insurer to exempt a uniform mitigation form from the independent verification process if it is completed by an authorized mitigation inspector that possesses a quality assurance program approved by the insurer. The bill does not allow independent verification of mitigation discount forms submitted to Citizens if a quality assurance program approved by Citizens reviewed and verified the form when it was submitted. In addition, Citizens is not allowed to re-inspect a property to confirm mitigation features if the mitigation form was reviewed and verified by a quality assurance program approved by Citizens.

Prohibition of Deductible Rebates by Contractors (Section 8, amends s. 817.234, F.S.)

The bill prohibits a contractor or a person acting on behalf of a contractor from paying, waiving, or rebating all or part of an insurance deductible applicable to covered property for which the payment to the contractor for repairs will be made from the proceeds of a property insurance policy. A person who violates this paragraph commits a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Effective Date (Section 9)

The effective date of the bill is July 1, 2014, except as otherwise provided.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The inclusion of commercial residential policies within the Citizens clearinghouse would help enforce the 15 percent eligibility requirement for new Citizens applicants, and encourage private-market insurers to offer coverage to existing Citizens policyholders. Private market insurers are actively writing commercial residential policies that insure

newer buildings with a replacement cost greater than \$10 million.⁵⁸ Citizens estimates that approximately up to 15 percent of its current commercial residential policies would be attractive to the private market, given Citizens' current rates for such risks and their characteristics such as location, age and building construction type. Commercial residential policies constitute approximately 20 percent of Citizens total risk, with a PML of \$4.2 billion.⁵⁹

Allowing surplus lines insurers to participate in the Citizens clearinghouse may serve to further depopulate Citizens. The bill requires a participating surplus lines insurer to maintain at least \$50 million in surplus and demonstrate the ability to cover two 1 in 100 PML events in a single hurricane season. If these financial protections prove insufficient to prevent an insolvency, claims of policyholders who accept an offer of coverage from a surplus lines insurer will not be covered by the Florida Insurance Guaranty Association.

Prohibiting Citizens from writing new commercial residential multi-peril policies in the coastal account and instead allowing Citizens to offer separate wind-only and all-other perils (AOP) policies may further depopulate commercial residential multi-peril policies in the coastal account. Testimony from Citizens representatives indicated a rate arbitrage issue exists, whereby the Citizens premium in the coastal account for multi-peril policies is less expensive than the Citizens premiums for a wind-only policies plus a separate AOP policy.⁶⁰ Citizens' rates for AOP coverage, if rated separately from wind, are approximately competitive with the private market. When wind and AOP are combined in a multi-peril product, the rate becomes non-competitive with the private market.

The reduction by 5 percent of the Citizens policyholder surcharge for deficits arising from the personal lines account and the increase by 5 percent of the Citizens policyholder surcharge for deficits arising from the coastal account, depending on the storm scenario, could result in every Citizens policyholder paying less, more, or the same amount when compared to current law of no more than 15 percent per account.

C. Government Sector Impact:

Citizens may incur expenses associated with implementing procedures to include commercial residential risks within the Citizens clearinghouse.

The bill requires Citizens to pay for all costs associated with any procurement protests heard by DOAH.

VI. Technical Deficiencies:

None.

⁵⁸ Citizens, *Property Insurance Clearinghouse Commercial Lines Report* at 6.

⁵⁹ Citizens, *Property Insurance Clearinghouse Commercial Lines Report* at 4.

⁶⁰ Testimony by Christine Ashburn, Vice President, Communications, Legislative and External Affairs, Citizens, before the Senate Banking and Insurance Committee in Tallahassee, Fl. (Feb. 18, 2014). *See also* Letter from Barry Gilway, President/CEO and Executive Director, Citizens (Jan. 13, 2014), *available at* http://www.flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket_2519.pdf (last visited Mar. 31, 2014).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.621, 626.854, 627.351, 627.3518, 627.35191, 627.711 and 817.234.

This bill repeals section 627.3519 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Rules on April 21, 2014:**

- Deletes the provision of the bill that would have increased the minimum non-hurricane property insurance deductible from \$500 to \$1,000.
- Prohibits a contractor from providing deductible rebates, making it a 3rd degree felony.
- Prohibits insurance agents from receiving referral fees related to inspections that are used to obtain insurance coverage or establish the insurance premium.

CS by Commerce and Tourism on April 7, 2014:

- Prohibits a public adjuster or public adjuster apprentice from accepting a power of attorney that authorizes him or her to choose the person or entity to perform repair work.
- Postpones the date that new construction or substantial improvement to a structure in the Coastal Barrier Resources System is ineligible for coverage by Citizens to July 1, 2015, from July 1, 2014.
- Deletes the bill provision that exempted properties located within counties for which Citizens provides windstorm coverage for more than 75 percent of the personal lines policies with windstorm coverage from the prohibition on coverage by Citizens in the Coastal Barrier Resources System.
- Deletes the bill provision that allowed Citizens policyholders who live in counties with stronger building codes to receive greater mitigation than currently allowed on the uniform mitigation verification form.
- Prohibits a mitigation inspector from offering compensation or other inducement and an insurance agency, agent, customer representative, or employee from accepting compensation or other inducement for referring a property owner to the inspector or inspection company.
- Allows an insurer to exempt from independent verification, a uniform mitigation verification form, completed by an authorized mitigation inspector that has a quality assurance program approved by the insurer.
- Provides that a uniform mitigation verification form provided to Citizens is not subject to re-inspection, if there have been no material changes to the structure, or

independent verification, if the form is completed by an authorized mitigation inspector that has a quality assurance program approved by Citizens.

B. Amendments:

None.

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