

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 Appropriations

BILL: CS/CS/SB 1006

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senators Flores and Margolis

SUBJECT: Depopulation of Citizens Property Insurance Corporation

DATE: April 20, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1006 makes the following changes related to Citizens Property Insurance Corporation (Citizens):

- Allows the consumer representative to the Citizens Board of Governors to be afforded the same conflict of interest exemption as other board members.
- Requires agents who write business for Citizens must also hold an appointment with an admitted carrier that is currently writing or renewing policies in the state.
- Allows Citizens to share underwriting and claims files data with entities that have obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, or modeling company. Such data may not be used for direct solicitations and must be kept confidential.
- Requires Citizens to make changes, by January 1, 2016, to their plan of operation as it relates to take-out agreements made with private insurers.
- Requires that private companies must include in their take-out offers to Citizens policyholders, a comparison of coverages and rate between the insurer's policy and Citizens policy.
- Allows a Citizens policyholder who declines a take-out offer the option to be excluded from future take-out agreements for up to six months.
- Allows a Citizens policyholder, who accepts a take-out offer, the ability to reapply to Citizens and be treated as a renewal through the clearinghouse if within 36 months of leaving Citizens their premium is increased above the rate allowed under Citizens glide path.

There is no fiscal impact to state funds.

The bill provides an effective date of July 1, 2015.

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. The Plan of Operations 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 homeowners, mobile homeowners, dwellings, tenants, 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.

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.

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

Citizens Clearinghouse

The Citizens Property Insurance Corporation policyholder eligibility clearinghouse program was established by the Legislature in 2013⁷. Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens. For new policies applying with Citizens, any private market offer through the clearinghouse for similar coverage that is not greater than 15 percent of Citizens rate makes the policy ineligible for coverage with Citizens. Additionally, a renewal Citizens policy that receives any private market offer through the clearinghouse for similar coverage that is equal to or less than Citizens rate is ineligible for coverage with Citizens.

Citizens Board of Governors

Citizens operates under the direction of a nine-member Board of Governors (board). The board members are not Citizens' employees and are not paid. The Governor, Chief Financial Officer, Senate President, and Speaker of the House of Representatives each appoint two members to the board, with one member appointed chair by the Chief Financial Officer. Board members serve three-year staggered terms. There is also a consumer representative on the board that is appointed by the Governor.

At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. By law, board members with the required insurance expertise fall within the exemption in the conflicting employment or contractual relationship statute that applies to public officers and agency employees.⁸ Thus, these board members can maintain employment in the private sector in jobs involving business with Citizens without violating the conflict of interest statute because the board member is required by law to have insurance expertise in order to sit on the board.

Citizens Underwriting and Claims Files

Current law allows Citizens to share confidential underwriting and claims files with an insurer that is contemplating underwriting a risk insured by the corporation, provided the insurer executes a notarized agreement to retain their confidentiality.⁹ The corporation may also make specified information from the underwriting and claims files available to general lines insurance agents. Such information is limited to the name, address, and telephone number of the property

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.

⁷ s. 10 ch. 2013-60 L.O.F.

⁸ Board members of Citizens fall under the definition of "public officer" in s. 112.313(1), F.S., because that definition includes any person appointed to hold office in any agency, including serving on an advisory board. "Agency" is defined in s. 112.312, F.S.

⁹ s. 627.351(6)(x)2., F.S.

owner or insured; the location of the risk; rating information; loss history; and policy type. The law requires the agent to retain the confidentiality of the information.¹⁰

Takeout Bonus Agreements

Section 627.3511, F.S., was created by the Legislature in 1995¹¹ and at that time applied to the depopulation of the Residential Property and Casualty Joint Underwriting Association. After the Legislature merged the two underwriting associations to create Citizens in 2002, this section was amended to apply to the depopulation of Citizens Property Insurance Corporation.

Take out agreements that were approved under this section allowed for a per policy bonus to be paid to each participating insurer provided that they removed a given number of policies for a set number of years. Today, takeouts from Citizens are no longer approved through takeout bonus agreements. The last Citizens takeout bonus agreement under this section took place in November 2007.

Takeout Non-Bonus Agreements

In January of 2008, Citizens Board of Governors adopted a takeout non-bonus plan that was approved by the Office of Insurance Regulation (OIR) in March of that year. Since that time, most takeout agreements between Citizens and private carriers have occurred under this plan. In addition to the requirements of the approved plan, the OIR has on occasion required additional requirements to be included in such takeout agreements. According to the OIR, until 2009 the OIR required private carriers that removed policies from Citizens through a takeout agreement to write the risk at a rate below the rate of Citizens at that time.¹² Additionally, in November of 2013 the OIR began requiring takeout companies to provide information to the policyholder detailing a rate comparison between the Citizens rate and the private insurer's rate.¹³

Depopulation

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.¹⁴ Policyholders whose policies are selected for takeout are sent a letter notifying them of the pending takeout and provided instructions on how they can elect (opt-out) to remain with Citizens, if eligible and should they wish to do so. Policyholders who do not opt-out within the opt-out timeframe will receive a Notice of Assumption, a non-renewal from Citizens and a Certificate of Assumption. The policyholder still has an additional timeframe from the receipt of these notices to elect to remain with Citizens. Citizens encourage policyholders who receive private-market offers to consider them carefully and discuss the advantages of such coverage with their agents. Accepting an offer from a private insurer can decrease a Citizens policyholder's potential of assessment.

¹⁰ *Id.*

¹¹ s. 10, ch.95-276, L.O.F.

¹² Information received from the OIR on March 19, 2015. (On file with the Banking and Insurance Committee)

¹³ *Id.*

¹⁴ s. 627.351(6), F.S.

In November 2011, Citizens reported a policy count of 1,472,391 policies insured. As of March 13, 2015, Citizens reports their policy count was at 598,408 policies insured.¹⁵ Much of the success of Citizens reduction in size is the result of depopulation through takeout agreements. In 2012, 2013, and 2014, a total of 1,059,323 policies were removed from Citizens and placed into the private market through the use of the current takeout agreement process.¹⁶

III. Effect of Proposed Changes:

The bill allows for the consumer representative on Citizens' board to be afforded the same exemption from the conflicting employment or contractual relationship statute for public officers and agency employees as is provided in current law to other members appointed to the Citizens board.

The bill requires agents placing policies with Citizens to hold an appointment by an insurer authorized to write and is writing or renewing personal lines or commercial residential property coverage or commercial nonresidential property coverage within the state.

The bill expands the list of who may receive information from the confidential underwriting and claims files to include an entity which has obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, or modeling company. The information made available to these entities is the same information available to a licensed general lines agent. The information may be used for the sole purpose of analyzing risks for underwriting in the private insurance market and must be kept confidential. In addition, the bill expressly prohibits the use of the data by any of the authorized users for direct solicitation of policyholders.

The bill requires Citizens Property Insurance Corporation to, by January 1, 2016, amend its plan of operations related to take-out agreements made with private insurers. The amended plan must include:

- That private companies must provide in their take-out offers to Citizens policyholders, a comparison of coverages, and rate between their policy and the Citizens policy. The OIR has required this of all take-out agreements reached after November 2013. This provision again will codify this requirement in statute.
- That a Citizens policyholder who declines a take-out offer may elect to not receive additional take-out offers for up to six months.
- That Citizens policyholders who accepts a take-out offer have the ability to reapply with Citizens and be treated as a renewal through the Citizens clearinghouse if, within 36 months of leaving Citizens, the private insurer increases the policy rate more than what is allowed under the Citizens glide path. This mirrors a similar provision that is applied to policyholders who accept offers of coverage from private insurers through the clearinghouse.

The bill provides an effective date of July 1, 2015.

¹⁵ Citizens Policy Inforce Weekly Summary Report March 16, 2015.

¹⁶ Citizens President's Report to the Board of Governors March 18, 2015.

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:

Under CS/CS/SB 1006, Citizens policyholders who accept take-out offers from private insurers and whose rates then increase above the Citizens glide path, within 36 months of leaving Citizens, will have the ability to reapply with Citizens and be rated as a renewal through the clearinghouse.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.351 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 Appropriations on April 16, 2015:

The committee substitute makes the following changes to the bill:

- Allows the consumer representative to the Citizens Board the same conflict of interest exemption provided to other board members.
- Requires agents who write business for Citizens must also hold an appointment with an admitted carrier that is currently writing or renewing policies in the state.
- Allows Citizens to share underwriting and claims files data with entities that have obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, or modeling company.
- Provides that Citizens must, by January 1, 2016, amend its plan of operations related to take-out agreements with private insurers.

CS by Banking and Insurance on March 23, 2015:

CS/SB 1006 made the following changes to the bill:

- Requires that all Citizens take-out agreements be approved by the OIR.
- Requires private companies to provide a comparison of coverages and rate between their policy and the Citizens policy.
- Allows Citizens policyholders a 6 month opt out from being included in any takeout agreements.
- Allows Citizens policyholders who accept take-out offers from private insurers and whose rates are then increased above the Citizens glide path, within 36 months of leaving Citizens, the ability to reapply with Citizens and be rated as a renewal through the clearinghouse.

- B. **Amendments:**

None.