

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 931 Operations of Citizens Property Insurance Corporation

**SPONSOR(S):** Regulatory Affairs Committee; Insurance & Banking Subcommittee; Passidomo; J. Rodriguez and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 958

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Peterson	Luczynski
2) Regulatory Affairs Committee	18 Y, 0 N, As CS	Peterson	Hamon

### SUMMARY ANALYSIS

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.

By law, Citizens is required to adopt programs to reduce the number of insured properties and to decrease its financial exposure. The depopulation program, as it is known, encourages insurance companies licensed in Florida to assume policies currently covered by Citizens, thus reducing Citizens' policy count and exposure.

The bill changes the current depopulation procedures by requiring that take-out offers be communicated by Citizens and not the take-out company. Notice of a take-out offer must include standardized information that compares the coverage and estimated premium of each take-out offer to the coverage and premium provided by Citizens and must advise policyholders that they may accept or reject any offer. The reforms must be in place by January 1, 2017.

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. The corporation may also make specified information from the underwriting and claims files available to general lines insurance agents. The law requires the agent to keep the information confidential.

The bill expands the list of who may receive information from the confidential underwriting and claims files to include an entity that has obtained a permit to become an authorized insurer, a reinsurer, a licensed reinsurance broker, a licensed rating organization, or a modeling company. The information may be used by these entities for the sole purposes of analyzing risks for underwriting or developing rating plans in the private insurance market and must be kept confidential. The bill narrows the authorized uses of the data by agents to use in developing a takeout plan or analyzing risks for underwriting. In addition, the bill expressly prohibits the use of the data by any of the authorized users, other than insurers, for direct solicitation of policyholders.

Citizens operates under the direction of a nine-member Board of Governors (board). By law, board members with the required insurance expertise 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. There is also a consumer representative on the board who is appointed by the Governor. The bill provides the consumer representative on the Citizens' board with the same exemption from the conflict of interest statute as is provided in current law to the board members with insurance expertise.

In addition, the bill requires an insurance agent to have at least one appointment with an insurer in order to retain eligibility to write insurance with Citizens, and allows Citizens to use either the public hurricane loss projection model or other model or method acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides for an effective date of July 1, 2016.

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

**STORAGE NAME:** h0931c.RAC

**DATE:** 2/8/2016

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### 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. It is not a private insurance company.

Citizens was created in 2002 when the Legislature combined the state's two insurers of last resort, 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 property insurance in three separate accounts:<sup>1</sup>

- Personal Lines Account – personal residential<sup>2</sup> multiperil<sup>3</sup> policies.
  - With wind coverage, on properties located outside the Coastal Account area; and
  - Without wind coverage, on properties located within the Coastal Account Area.
- Commercial Lines Account – commercial residential<sup>4</sup> and commercial non-residential policies.
  - With wind coverage, on properties located outside the Coastal Account area; and
  - Without wind coverage, on properties located within the Coastal Account Area.
- Coastal Account – personal residential, commercial residential, and commercial non-residential wind-only<sup>5</sup> and multiperil policies<sup>6</sup> for properties in limited eligible coastal areas.<sup>7</sup>

At the time of its creation, Citizens handled approximately 602,000 policies. The policy count peaked in November 2012 at nearly 1.5 million, but has dropped to just under 500,000.<sup>8</sup>

##### Citizens Clearinghouse

The Legislature created the Clearinghouse in 2013 to ensure that new applications for insurance through Citizens and policies that are coming up for renewal are assessed to determine if appropriate coverage is available in the private market. By law, a new policy is ineligible for coverage in Citizens if a private company offers comparable coverage with a premium that is up to 15 percent higher than the Citizens premium. A policy is ineligible for renewal coverage through Citizens if a private company offers comparable coverage at or below Citizens' premium. A policy that is taken out of Citizens at renewal through the Clearinghouse is eligible to return through the Clearinghouse if, during the 36 months after takeout, the new insurer increases the policyholder's rate more than 10 percent in any year. Under this provision, a policyholder would then return to Citizens, unless the policyholder receives a new offer in the private market at or below Citizens' rate

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<sup>1</sup> s. 627.351(6)(b)2., F.S.

<sup>2</sup> Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

<sup>3</sup> A multiperil 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. Multiperil property insurance policies may include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

<sup>4</sup> Commercial residential policies include condominium association, apartment building, and homeowner's association policies

<sup>5</sup> 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.

<sup>6</sup> Effective July 1, 2014, Citizens may no longer offer new commercial residential policies providing multiperil coverage, but may continue to renew existing policies. s. 627.351(6)(b)2.a.(III), F.S.

<sup>7</sup> These include areas eligible for coverage by the FWUA as those areas were defined on January 1, 2002. s. 627.351(6)(a)2., F.S.

<sup>8</sup> Citizens Property Insurance Corporation, *Citizens policy count passes milestone, Drops below 500,000*, Jan. 20, 2016, available at [https://www.citizensfla.com/web/public/-/20160120\\_policy-count](https://www.citizensfla.com/web/public/-/20160120_policy-count).

## Depopulation

By law, Citizens is required to adopt programs to reduce the number of insured properties and to decrease its financial exposure.<sup>9</sup> The depopulation program, as it is known, encourages insurance companies licensed in Florida to assume policies currently covered by Citizens, thus reducing Citizens' policy count and exposure.<sup>10</sup> Depopulation has been accomplished almost exclusively by Florida domestic insurers—either those already in existence which have removed policies as part of an overall business plan, or those new domestic insurers created specifically to remove policies from Citizens.<sup>11</sup>

A Citizens policy that is assumed by a takeout company (TOC) is, as of the date of assumption, direct insurance issued by the TOC. The TOC is liable to pay any claims that may arise, although Citizens continues to service the policy. During the period before the policy expires, Citizens pays to the TOC the unearned premiums on the policy that it has received adjusted to reflect any changes in coverage or conditions as may occur during the period. Forty-five days before the Citizens policy expires, the TOC issues the initial offer on renewal coverage with the premium amount. At this time (or any time after the assumption and prior to the policy's expiration) the policyholder may return to Citizens, unless the Clearinghouse presents an offer of coverage with a premium equal to or less than the Citizens renewal premium.<sup>12</sup>

## Depopulation Procedure

The depopulation programs are administered on a monthly cycle according to the following sequence of events:

- The Office of Insurance Regulation (OIR) issues a consent order approving authorized admitted carriers to participate in a specific assumption.<sup>13</sup>
- Citizens provides a data file of policies in force to a TOC to use to select policies for assumption.
- The TOC solicits new agent appointments or notifies appointed agents if the TOC wishes to assume any of an agent's policies.<sup>14</sup>
- The TOC provides Citizens with the list of policies it has selected to assume and a list of policies assigned to agents who did not respond to the TOC's solicitation or declined to be appointed.
- Citizens reviews the takeout lists of the participating TOCs and sends each TOC the policy selections it is assigned to assume. If more than one TOC has selected the same policy for removal, Citizens uses an algorithm<sup>15</sup> to assign the duplicate selections.
- Each TOC reviews and may reweight<sup>16</sup> its list. The TOC sends the reweighted list to Citizens.
- Citizens then sends a letter of encouragement<sup>17</sup> to all policyholders on a TOC's final mailing list and notifies those policyholders whose agents did not respond to the TOC's solicitation or declined to be appointed.

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<sup>9</sup> s. 627.351(6)(q)3.a., F.S.

<sup>10</sup> See generally s. 627.3511, F.S.

<sup>11</sup> CITIZENS PROPERTY INSURANCE CORPORATION, *History of Depopulation* (Feb. 2012), available at [https://www.citizensfla.com/about/mDetails\\_boardmtgs.cfm?show=PDF&link=/bnc\\_meet/docs/431/01A\\_Historical\\_Report\\_of\\_Depopulation\\_Activity.pdf&event=431&when=Past](https://www.citizensfla.com/about/mDetails_boardmtgs.cfm?show=PDF&link=/bnc_meet/docs/431/01A_Historical_Report_of_Depopulation_Activity.pdf&event=431&when=Past) (last visited Jan. 12, 2016).

<sup>12</sup> CITIZENS PROPERTY INSURANCE CORPORATION, *Agent Technical Bulletin: New Process for Returning a Risk to Citizens After Assumption/Depopulation/Takeout*, ATB # 014-14 (September 16, 2014), available at [https://www.citizensfla.com/agent/ac\\_techbulletins.cfm?show=pdf&year=2014&link=/shared/IE/IE002-14.pdf](https://www.citizensfla.com/agent/ac_techbulletins.cfm?show=pdf&year=2014&link=/shared/IE/IE002-14.pdf) (last visited Jan. 12, 2016).

<sup>13</sup> To assume policies from Citizens, admitted carriers must submit documentation to the OIR verifying that they meet required standards and have the financial resources and business plan in place to properly pay claims.

<sup>14</sup> Agents are not required to contact the policyholder regarding the offer and are not permitted to opt out of an assumption on the policyholder's behalf.

<sup>15</sup> The depopulation algorithm attempts to allocate the policies to the various takeout companies by a methodology that groups the duplicates based on the number of companies that have selected them; sorts the policies within each batch by policy form, zip code, and total premium; and assigns each policy to one of the TOCs that has selected it in a way that equitably allocates premium among the companies. (CITIZENS PROPERTY INSURANCE COMPANY, *Depopulation Algorithm Allocation* (Nov. 15, 2013), available at <https://www.citizensfla.com/web/public/depopulation-resources> (last visited Feb. 5, 2016).

<sup>16</sup> If the list does not have a desirable ratio of policies, for example is too heavily weighted in one geographic area, the TOC may remove policies from the list. This process is called reweighting.

- The TOC then sends a letter in a form approved by the OIR to policyholders indicating that the TOC is extending an offer to assume the policyholder's coverage and notifying the policyholder of the right to reject or opt out of the offer. The letter may include a link to a coverage comparison chart on the OIR's website.

### Effect of the Bill on Depopulation

The bill requires Citizens to revise the depopulation program for personal lines residential policies to maximize policyholder options and encourage increased participation by insurers and agents. In effect, the new requirements give Citizens more control and involvement in communicating take-out offers. After January 1, 2017, a policy may not be taken out from Citizens unless the following occurs:

- Companies requesting to take-out a policy must notify Citizens and include with the notification coverage information and an estimated premium. The information must be communicated in a form prescribed by Citizens.

Citizens changed its take-out procedure effective with the October 2015, take-out to require companies to include the premium estimate in the take-out letter the company sends to the policyholder. The bill changes the procedure by requiring the companies to provide the information to Citizens. Citizens, in turn, communicates the information to the policyholder and agent. This enables Citizens to more closely monitor the exchange.

- Citizens must provide the policyholder and the agent of record written notice of all insurers requesting to take out a policy and of the policyholder's right to accept an offer or to reject all offers and remain with Citizens. The notice must include the amount of the estimated premium; a description of coverage; and a comparison of both the offered coverage and estimated premium to the coverage and premium that is provided by Citizens.

This changes the current procedure by eliminating the algorithm, which was used by Citizens to randomly assign one offer to a policyholder when more than one company was requesting to take out the policy. This also requires offers to be communicated by Citizens and not a company that may be unknown to the policyholder.

### **Underwriting Files of Citizens Property Insurance Corporation**

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. 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 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.

### Effect of the Bill on Underwriting Files of Citizens Property Insurance Corporation

The bill expands the list of who may receive information from the confidential underwriting and claims files to include an entity that has obtained a permit to become an authorized insurer, a reinsurer, a licensed reinsurance broker, a licensed rating organization, or a 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 by these entities for the sole purposes of analyzing risks for underwriting or developing rating plans in the private insurance market and must be kept confidential. The bill narrows the authorized uses of the data by agents to use in developing a takeout plan or analyzing risks for underwriting. In addition, the bill expressly prohibits the use of the data by any of the authorized users, other than insurers, for direct solicitation of policyholders.

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<sup>17</sup> Prior to February 2015, Citizens sent the letter of encouragement after the TOC had sent its offer letter. When some policyholders received the offer letter, they discarded the letter without reading it, since the letter was not from a person or company familiar to the policyholder. In other cases, the policyholder may have read the TOC letter, but not understood the significance of the opt out requirement. As a result, Citizens changed the timing of its letter of encouragement.

## Board of Governors of Citizens Property Insurance Corporation

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 of the board, with one member appointed chair by the Chief Financial Officer. Board members serve three-year staggered terms.

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.<sup>18</sup> 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.

There is also a consumer representative on the board that is appointed by the Governor.

### Effect of the Bill on the Composition of the Citizens Board

The bill provides the consumer representative on the Citizens' board with the same exemption from the conflicting employment or contractual relationship statute for public officers and agency employees as is provided in current law to the board members with insurance expertise.

### **Public Hurricane Loss Projection Model**

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.<sup>19</sup> The Commission is to adopt findings on the accuracy or reliability of the actuarial methods, standards, principles, models, and other means used to project hurricane losses. Members of the Commission include experts across a broad spectrum of insurance, finance, statistics, computer system, emergency management, and other interests. 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.

The state authorized and initially funded the development of a public hurricane loss projection model (public model) pursuant to the 2000 General Appropriations Act.<sup>20</sup> The public model was designed in accordance with standards set by the Commission and is submitted to the Commission for review. Like the private models, the public model projects loss costs and probable maximum loss levels from hurricanes for personal lines and commercial lines residential property insurance. The public model is available for use by public or private entities, including the OIR in connection with rate review. Current law requires Citizens to use the public hurricane loss projection model as the minimum benchmark for determining the windstorm portion of its rates.<sup>21</sup>

### Effect of the Bill on the Public Hurricane Loss Projection Model

The bill authorizes Citizens to use the public model or other model or method found to be acceptable by the Commission.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

**Section 2:** Provides an effective date of July 1, 2016.

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<sup>18</sup> 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.

<sup>19</sup> s. 627.0628, F.S.

<sup>20</sup> Ch. 2000-166, s. 2226, Laws of Fla.

<sup>21</sup> s. 627.351(6)(n)3., F.S.

## 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:

Broader access to the underwriting data may facilitate greater participation in the Clearinghouse and depopulation programs.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2016, the Insurance & Banking Subcommittee considered and adopted an amendment and reported the bill favorably as a committee substitute. The amendment corrected a drafting error by changing the term "an authorized insurer" to the term "an entity that has obtained a permit to become an authorized insurer."

On February 4, 2016, the Regulatory Affairs Committee considered and adopted amendments and reported the bill favorably as a committee substitute. The amendments:

- Extended to the consumer representative on the Citizens board the same exemption from the conflict of interest statute that applies to the board members with insurance expertise.
- Required Citizens to appoint only those agents who have and maintain at least one appointment with a separate insurer to write or to renew the types of policies offered by Citizens.
- Allowed Citizens to use the public hurricane loss projection model or other model or method approved by the Florida Commission on Hurricane Loss Projection Methodology to estimate windstorm rates.
- Added requirements for providing information about competing offers and comparing rate and premium information to a policyholder and the agent of record before a policy may be taken out of Citizens through the depopulation program.

This analysis is drafted to the committee substitute as passed by the Regulatory Affairs Committee.