

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 1476

INTRODUCER: Banking and Insurance Committee and Senator Flores

SUBJECT: Citizens Property Insurance Corporation

DATE: March 28, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1476 provides that Citizens Property Insurance Corporation (Citizens) may not impose a rate increase in any single year in excess of 5 percent, except for sinkhole coverage, for any single policy that covers property located in a county:

- Where the Office of Insurance Regulation determines there is not a reasonable degree of competition; and
- That has 25 percent or more of county land designated as an area of critical state concern.

The reduced rate cap begins January 1, 2020, and expires January 1, 2022.

This is an exception from current law, which applies to all counties and prohibits Citizens from imposing a rate increase in any single year in excess of 10 percent for any single policy, except for sinkhole coverage.

Currently, Citizens policyholders who reside in Monroe County would meet the criteria for the reduced rate cap. The bill would reduce premiums paid to Citizens by an estimated \$2.95 million over the 2 years the 5 percent rate cap is in effect.<sup>1</sup>

The effective date of the bill is July 1, 2019.

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<sup>1</sup> Email from Christine Ashburn, Communications, Legislative and External Affairs Chief for Citizens Property Insurance Corporation, March 22, 2019 (on file with Senate Committee on Banking and Insurance).

## 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.<sup>2</sup> Citizens is not a private insurance company.<sup>3</sup> Citizens was statutorily created in 2002 when the 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 Governors<sup>4</sup> 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.<sup>5</sup> Assets may not be commingled or used to fund losses in another account.<sup>6</sup>

**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 to 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.

**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.<sup>7</sup>

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<sup>2</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>3</sup> Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

<sup>4</sup> The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives each appoint two members.

<sup>5</sup> The Personal Lines Account and the Commercial Lines Account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

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

<sup>7</sup> 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.

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.<sup>8</sup> 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 Chief Financial Officer, President of the Senate, and Speaker of the House of Representatives each appoint two members of the board, with one member appointed chair by the Chief Financial Officer (CFO). The Governor appoints three members, one of whom serves as a consumer representative.<sup>9</sup> Board members serve 3 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>10</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 half of the board members are required by law to have insurance expertise in order to sit on the board.<sup>11</sup>

### **Citizens Glide Path Rates**

Citizens' rates for coverage are required to be actuarially sound and, except as otherwise provided in s. 627.351(6), F.S., are subject to the rate standards for property and casualty insurance in s. 627.062, F.S.<sup>12</sup> From 2007 until 2010, Citizens rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to a level that is actuarially sound. Citizens must implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges.<sup>13</sup> 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

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<sup>8</sup> Section 10, ch. 2013-60 L.O.F.

<sup>9</sup> s. 627.351(6)(c)4.a., F.S.

<sup>10</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>11</sup> Section 627.351(6)(c)4.a., F.S.

<sup>12</sup> Among the factors the Office of Insurance Regulation considers when reviewing a rate filing is the degree of competition among the insurers for the risk insured, per s. 627.062(3)(b), F.S.

<sup>13</sup> Section 627.351(6)(n)6., F.S.

added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.

### **Citizens Financial Resources**

Citizens' financial resources include insurance premiums, investment income, operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. If a deficit occurs in a Citizens account, Citizens is authorized to levy assessments on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.<sup>14</sup> The assessments Citizens may impose and their sequence is as follows:

**Citizens Surcharge:** Requires up to 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 Assessment:** 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 comp). 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 Assessment:** Requires any remaining deficit for either of Citizens three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers comp), but including Citizens' policyholders. 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.

### **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.

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<sup>14</sup> Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are.

### ***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.<sup>15</sup> In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

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.<sup>16</sup>

### ***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.<sup>17</sup> Structures with a dwelling replacement cost or a condominium unit that has a dwelling and contents replacement cost of \$700,000 or more are not eligible for coverage by the corporation.<sup>18</sup>

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 Miami-Dade and Monroe counties, after the OIR determined there was not a reasonable degree of competition in these counties (i.e. the counties were deemed non-competitive).<sup>19</sup>

Citizens does not have any eligibility restrictions based on the value of the property insured for condominium associations, homeowner associations, 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.

### **Areas of Critical State Concern**

The Areas of Critical State Concern Program was created by the Florida Environmental Land and Water Management Act of 1972.<sup>20</sup> The program is intended to protect resources and public facilities of major statewide significance, within designated geographic areas, from uncontrolled development that would cause substantial deterioration of such resources. Section 380.05, F.S., allows the Florida Administration Commission<sup>21</sup> to designate areas that contain resources of statewide significance as an Area of Critical State Concern.

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<sup>15</sup> Section 627.351(6)(c)5., F.S.

<sup>16</sup> Section 627.351(6)(c)5., F.S.

<sup>17</sup> Section 627.351(6)(a)3., F.S.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* and Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (on file with the Committee on Banking and Insurance).

<sup>20</sup> Florida Department of Economic Opportunity, Areas of Critical State Concern Program, available at <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern> (last visited March 28, 2019).

<sup>21</sup> Section 380.031(1), F.S., "Administration Commission" or "commission" means the Governor and the Cabinet.

### ***Florida Keys Area of Critical State Concern***

The Florida Keys Area of Critical State Concern, designated in 1974, includes the Village of Islamorada, City of Marathon, City of Layton, City of Key Colony Beach, and unincorporated Monroe County. In 1984, the City of Key West was also designated an Area of Critical State Concern. Administration Commission oversight includes authority to promulgate administrative rules that guide local government growth and development decisions related to comprehensive plans and land development regulations. Annually, the Florida Department of Economic Opportunity (DEO) is required by s. 380.0552(4)(b), F.S., to submit a written report to the Florida Administration Commission describing the progress of the Florida Keys Area toward completing the work program tasks specified in commission rules.

### ***Big Cypress Area of Critical State Concern***

The Big Cypress Area of Critical State Concern includes portions of Collier, Mainland Monroe, and Miami-Dade Counties and was designated by the Big Cypress Conservation Act of 1973<sup>22</sup> and s. 380.055, F.S. The area is approximately 860,000 acres of which 729,000 acres are in the Big Cypress National Preserve. The purpose for designation was to "conserve and protect the natural, environmental and economic resources and the scenic beauty of the Big Cypress Area, including the proposed Federal Big Cypress National Fresh Water Reserve, the Everglades National Park, and ecologically related wetlands, estuarine fisheries, and the fresh water aquifer, and ecologically related areas."<sup>23</sup>

### **III. Effect of Proposed Changes:**

The bill would reduce the current Citizens rate cap of no more than a 10 percent increase, per policy, per year, to no more than a 5 percent increase, per policy, per year, in a county where the Office of Insurance Regulation determines there is not a reasonable degree of competition and the county has 25 percent or more of land designated as an area of critical state concern. Sinkhole coverage is excluded from the rate caps. The reduced rate cap for these areas begin January 1, 2020, and expires January 1, 2022.

Currently, the OIR has determined Miami-Dade and Monroe County to be noncompetitive for purposes of determining eligibility for Citizens.<sup>24</sup> Monroe County has more than 25 percent of county land designated as an Area of Critical State Concern. Thus, Monroe County is currently the only county that would qualify for the reduced rate cap of 5 percent.

The effective date of the bill is July 1, 2019.

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<sup>22</sup> Florida Department of Economic Opportunity, Big Cypress Area, available at <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/the-big-cypress-swamp> (last visited March 28, 2019).

<sup>23</sup> Fla. Admin. Code R. 28-25.002

<sup>24</sup> Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (on file with the Committee on Banking and Insurance).

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Citizens policyholders in Monroe County will have potential rate increases capped at no more than 5 percent per year rather than the current cap of no more than 10 percent per year. Representatives from Citizens estimate the bill will reduce premiums paid to Citizens by an estimated \$2.95 million over the 2 years the 5 percent rate cap is in effect.<sup>25</sup>

Should Citizens run a deficit for failing to collect enough premium to pay for losses, surcharges and assessments could be needed. If needed, they would be levied to Citizens policyholders and all lines of private insurance excluding medical malpractice and workers compensation.

## C. Government Sector Impact:

The current percent of increased rate needed for Citizens to be actuarially sound in Monroe County is 47.2 percent.<sup>26</sup>

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<sup>25</sup> Email from Christine Ashburn, Communications, Legislative and External Affairs Chief for Citizens Property Insurance Corporation, March 22, 2019 (on file with Senate Committee on Banking and Insurance).

<sup>26</sup> *Id.*

**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 by Banking and Insurance on March 25, 2019:**

The CS applies the 5 percent rate cap to counties with 25 percent or more of land designated as an area of critical state concern. The CS reduces from 4 years to 2 years the time in which the 5 percent rate cap would be in effect.

- B. **Amendments:**

None.