

**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 Appropriations Subcommittee on Agriculture, Environment, and General Government

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**BILL:** PCS/CS/SB 1574 (274232)

**INTRODUCER:** Appropriations Subcommittee on Agriculture, Environment, and General Government; Banking and Insurance Committee; and Senator Brandes

**SUBJECT:** Citizens Property Insurance Corporation

**DATE:** April 12, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1574 revises Citizens Property Insurance Corporation (Citizens or corporation) eligibility criteria, rates, assessment surcharges on Citizens' policyholders, depopulation programs, producing agent commissions, and confidentiality exceptions for underwriting and claim files.

The bill defines "primary residence" to mean the dwelling that the insured represented as their permanent home on the insurance application or otherwise to the corporation.

The bill limits application of the Citizens "glide path," which prevents rate increases of greater than 10 percent, by applying the glide path to only Citizens personal lines residential policies issued on or before January 1, 2022, on residential properties used as the primary residence with a dwelling replacement cost of less than \$700,000 or single-unit condominiums with a dwelling and contents replacement cost of less than \$700,000.

The bill provides that Citizens policyholders become ineligible for Citizens personal lines residential coverage upon receiving an offer from an authorized insurer for comparable coverage that is not 15 percent greater than the actuarially sound Citizens premium would be on the property. Under current law, Citizens policyholders remain eligible unless they receive an offer of comparable coverage less than the current Citizens premium, which for many policyholders is subject to the glide path's 10 percent limit on annual rate increases.

The bill increases the maximum surcharge that may be levied on Citizens' policyholders if Citizens projects a deficit in one of its accounts to: 20 percent of premium if Citizens has one million policyholders but less than 1.5 million policyholders; and 25 percent of premium if Citizens has 1.5 million policyholders or more. The surcharge may be levied for each of Citizens' three accounts.

The bill authorizes surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans. The surplus lines insurer must: meet financial requirements; provide notice to the policyholder which outlines any coverage differences and explains surplus lines policies are not covered by the Florida Insurance Guaranty Association; and provide coverage similar to that provided by Citizens. A risk with a personal residential dwelling replacement cost or a single condominium unit with a combined dwelling and contents replacement cost that is less than \$700,000, remains eligible for Citizens regardless of receipt of an offer of comparable coverage from a surplus lines insurer. If such risk has a replacement cost of \$700,000 or more, however, the risk is ineligible for Citizens coverage upon receiving an offer of comparable coverage from a surplus lines insurer that is not greater than 15 percent more than the premium for Citizens coverage.

The bill also:

- Revises confidentiality exceptions for Citizens' underwriting and confidential claim files;
- Limits the commissions Citizens may pay to producing agents; and
- Makes technical changes to s. 627.3517, F.S., and reenacts and makes conforming changes to s. 627.3518, F.S.

The bill does not impact state revenue or expenditures.

The bill takes effect January 1, 2022.

## II. Present Situation:

### **Citizens Property Insurance Corporation—Overview**

Citizens Property Insurance Corporation (Citizens or corporation) 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>1</sup> Citizens is not a private insurance company.<sup>2</sup> 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 Governors that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.<sup>3</sup> The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial

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<sup>1</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>2</sup> Section 627.351(6)(a)1., F.S.

<sup>3</sup> Section 627.351(6)(a)2., F.S.

Officer each appoints two members to the board.<sup>4</sup> Citizens is subject to regulation by the Florida Office of Insurance Regulation (OIR).

Citizens currently offers three policy types: Personal Lines Accounts, Commercial Lines Accounts and Coastal.

### ***Citizens' Accounts***

*The Personal Lines Account (PLA)* offers personal lines residential policies that provide comprehensive, multi-peril 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.<sup>5</sup>

*The Commercial Lines Account (CLA)* offers commercial lines residential and non-residential 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 non-residential policies covering business properties.<sup>6</sup>

*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 multi-peril policies.<sup>7</sup>

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.<sup>9</sup>

### ***Current Policies***

As of February 28, 2021, Citizens reports 552,340 policies in-force with a total exposure of \$150,498,489,611.<sup>10</sup> The below chart outlines Citizens account and product type, number of policies in-force, total exposure and premium with surcharges.

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

<sup>5</sup> See s. 627.351(6)(b)2.a., F.S. and *Account History and Characteristics*, Citizens Property Insurance Corporation, <https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563> (March 2016) (last visited Mar. 24, 2021).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

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

<sup>9</sup> Section 627.3518(2)-(3), F.S.

<sup>10</sup> Citizens Property Insurance, *About Us, Snapshot, February 28, 2021*, <https://www.citizensfla.com/-/20210228-policies-in-force> (last visited Mar. 28, 2021).

Account	Product Line	Policies In-Force	Total Exposure	Premium with Surcharges
PLA	Personal Residential Multi-peril (PR-M)	417,152	101,117,610,386	830,762,252
Coastal	Personal Residential Multi-peril (PR-M)	71,958	15,117,007,309	185,808,533
Coastal	Personal Residential Wind-Only (PR-W)	58,163	23,726,750,884	145,934,626
Coastal	Commercial Residential Multi-peril (CR-M)	125	631,877,883	2,910,767
Coastal	Commercial Residential Wind-Only (CR-W)	1,805	4,590,853,279	25,745,969
Coastal	Commercial Non-Residential Multi-peril (CNR-M)	25	20,269,100	181,093
Coastal	Commercial Non-Residential Wind-Only (CNR-W)	2,407	1,945,320,260	23,429,973
CLA	Commercial Residential Multi-peril (CR-M)	566	3,208,005,710	12,309,859
CLA	Commercial Non-Residential Multi-peril (CNR-M)	139	140,794,800	880,037
Total		552,340	150,498,489,611	1,227,963,109

Source: Citizens Property Insurance<sup>11</sup>

These numbers do not reflect policies tagged for takeout via Citizens' Depopulation Program but still serviced by Citizens.<sup>12</sup> Citizens' policy count grew by more than 100,000 in 2020 with 2,000-3,000 new policies written each week. At this rate, Citizens estimates an additional 100,000 policies by year end 2021.<sup>13</sup>

### Citizens Glide Path Rates

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>14</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 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, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Citizens Property Insurance Corporation, *2021 Rate Kit, Executive Summary, Rate Structure Discussion*, [https://www.citizensfla.com/documents/20702/15266147/2021+Rate+Kit\\_final.pdf/d9da9ea7-73da-a958-6477-263da4e49e41?t=1607993377967](https://www.citizensfla.com/documents/20702/15266147/2021+Rate+Kit_final.pdf/d9da9ea7-73da-a958-6477-263da4e49e41?t=1607993377967) (last visited Mar. 26, 2021).

<sup>14</sup> Section 627.351(6)(n)6., F.S.

reinsurance, policyholder surcharges, and regular and emergency assessments. Non-weather water losses, reinsurance costs and litigation are the major determinants of insurance rates.<sup>15</sup> In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.<sup>16</sup> Under Florida law, if the Citizens' Board of Directors determines that a Citizens' account has a projected deficit, Citizens is authorized to levy assessments<sup>17</sup> on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.<sup>18</sup> Citizens may impose three assessment tiers and their sequence is as follows:<sup>19</sup>

***Citizens Policyholder 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 for each of the three Citizens' accounts—the CLA, the PLA, and the Coastal Account—that project a deficit. Thus, the total maximum premium surcharge a policyholder could be assessed is 45 percent.<sup>20</sup>

***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' compensation.<sup>17</sup> The assessment may be recouped from policyholders through a rate filing process of up to two percent of premium or two percent of the deficit, whichever is greater.<sup>21</sup> This assessment is not levied against Citizens' policyholders.

***Emergency Assessment:***

Requires any remaining deficit for Citizens' three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers' compensation), including Citizens' policyholders. This assessment may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the

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<sup>15</sup> Citizens Property Insurance Corporation, *2021 Rate Kit, Citizens 2021 Rates, Frequently Asked Questions*, [https://www.citizensfla.com/documents/20702/15266147/2021+Rate+Kit\\_final.pdf/d9da9ea7-73da-a958-6477-263da4e49e41?t=1607993377967](https://www.citizensfla.com/documents/20702/15266147/2021+Rate+Kit_final.pdf/d9da9ea7-73da-a958-6477-263da4e49e41?t=1607993377967) (last visited Mar. 26, 2021).

<sup>16</sup> Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, <https://www.citizensfla.com/assessments> (last visited Mar. 26, 2021).

<sup>17</sup> Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums. Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, <https://www.citizensfla.com/assessments> (last visited Mar. 26, 2021).

<sup>18</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. Section 627.351.(6)(b)3.f.-h., F.S.

<sup>19</sup> Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments, Assessment Tiers*, <https://www.citizensfla.com/assessments> (last visited Mar. 26, 2021).

<sup>20</sup> Sections 627.351.(6)(b)3.(i)(I) and 627.351.(6)(c)21., F.S. See also, <https://www.citizensfla.com/assessments> (last visited Mar. 26, 2021).

<sup>21</sup> Section 627.351.(6)(b)3.a., F.S.

corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.<sup>22</sup>

### **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 are approved by the Office of Insurance Regulation (OIR) and are set out in Citizens' underwriting manuals.<sup>23</sup>

#### ***Eligibility Based on Premium Amount***

An applicant for residential insurance cannot buy insurance in Citizens if an authorized 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>24</sup> In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

A residential policyholder cannot renew insurance in Citizens if an authorized insurer 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>25</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>26</sup> Structures with a dwelling replacement cost of \$700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of \$700,000 or more, are not eligible for coverage with Citizens.<sup>27</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 one million dollars or less in Miami-Dade and Monroe counties, after the OIR determined these counties to be non-competitive.<sup>28</sup>

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<sup>22</sup> Section 627.351(6)(b)3.d., F.S.

<sup>23</sup> See *Revised Underwriting Manuals*, Citizens Property Insurance Corporation, <https://www.citizensfla.com/-/20160329-revised-underwriting-manuals> (last visited March 12, 2021).

<sup>24</sup> Section 627.351(6)(c)5., F.S.

<sup>25</sup> Section 627.351(6)(c)5., F.S.

<sup>26</sup> Section 627.351(6)(a)3., F.S.

<sup>27</sup> Section 627.351(6)(a)3.d., F.S.

<sup>28</sup> Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (*available at* <https://www.floir.com/siteDocuments/Citizens165625-14-O.pdf>) (last visited Mar. 25, 2021). See also Section 627.351(6)(a)3.d., F.S.

## Citizens 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.<sup>29</sup> In 2016, the Legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to takeout agreements.<sup>30</sup> As part of these updated requirements, codified under s. 627.351(6)(ii), F.S., a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer is requesting to take out;<sup>31</sup>
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take-out a policy; such list must include a description of the coverage offered and the estimated premium for each take-out request; and
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:
  - The amount of the estimated premium;
  - A description of the coverage; and
  - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

## Access to Public Records – Generally

The Florida Constitution provides the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>32</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>33</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in ss. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.<sup>34</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial

<sup>29</sup> Section 627.351(6)(q)3.a., F.S.

<sup>30</sup> Chapter 2016-229, L.O.F.

<sup>31</sup> Such requests from insurers must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

<sup>32</sup> FLA. CONST. art. I, s. 24(a).

<sup>33</sup> *Id.*

<sup>34</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022), [https://www.flsenate.gov/UserContent/Publications/SenateRules/2020-2022\\_Rules.pdf](https://www.flsenate.gov/UserContent/Publications/SenateRules/2020-2022_Rules.pdf) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022), and <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Reference&CommitteeId=&Session=2021&DocumentType=The%20Rules%20of%20The%20House%20of%20Representatives&FileName=2020-2022%20House%20Rules%20-%20%20Edition%201.pdf> (last visited Mar. 26, 2021).

branch records.<sup>35</sup> Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

### **Confidentiality of Citizens' Underwriting and Claims Files**

Section 626.916(1)(x), F.S., establishes certain records of Citizens are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Pursuant to sub-sub-paragraphs 1.a.-b. these exempt records include:

- Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files.
- Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law.

Sub-sub-paragraphs 1.a.-b. also provide that such records may be released to other governmental agencies upon written request and demonstration of need. Records so released and held by the receiving agency would remain confidential and exempt.

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

**Section 1** revises s. 627.021, F.S., to revise the scope of the Rating Law under ch. 627, F.S., to state the chapter does apply to surplus lines coverage placed pursuant to the Surplus Lines Law under ss. 626.913-626.937, F.S., when “specifically stated to apply.”

**Section 2** defines “primary residence” to mean the dwelling that the insured has represented as their permanent home on the insurance application or otherwise to the corporation and makes a number of revisions to s. 627.351, F.S., regarding Citizens Property Insurance Corporation (Citizens or corporation).

#### ***Surcharge Levied on Citizens' Policyholders for Projected Account Deficits***

The bill revises s. 627.351(6)(b)3.i.(I), F.S., to revise the 15 percent of premium surcharge cap for Citizens' policyholders when the Citizens' Board of Governors determines Citizens has a projected deficit. The 15 percent cap is replaced with an escalating cap for Citizens' policyholders, based upon the total number of Citizens' policyholders if:

- Citizens has less than one million policyholders, the premium surcharge cap is 15 percent per account.
- Citizens has at least one million policyholders, but less than 1.5 million policyholders, the premium surcharge cap is 20 percent per account.
- Citizens has at least 1.5 million or more policyholders, the premium surcharge cap is 25 percent per account.

As under current law, a surcharge may be levied for each of Citizens' three accounts. For example, under the bill, if Citizens has 1.2 million policies, a Citizens policyholder could be assessed a maximum policyholder surcharge of 60 percent of premium, consisting of a 20 percent surcharge for each of Citizens' three accounts.

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<sup>35</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).



***Revision to Eligibility for Coverage with Citizens Regarding Renewal Premiums***

The bill revises s. 627.351(6)(c)5.a., F.S., to state a residential policyholder is ineligible to renew a policy with Citizens if such policyholder can obtain comparable coverage from an authorized insurer for less than, or equal to, 15 percent more than the actuarially sound Citizens' renewal premium would be for the risk. Under existing law, a policyholder would be ineligible only if an authorized insurer could offer comparable coverage for less than or equal to Citizens' premium, which for many policyholders is subject to the glide path's 10 percent limit on annual rate increases.

***Limitations on Commissions***

In proposed new s. 627.351(6)(c)22., F.S., the bill limits the commissions Citizens may pay to producing agents of record. The bill limits the commissions to no more than the average of commissions paid in the preceding year by the 20 insurers writing the greatest market share of property insurance in Florida.

***Glide Path Eligibility***

The bill revises s. 627.351(6)(n)6., F.S., to create new requirements to remain eligible for the 10 percent rate increase cap under Citizens' glide path provision. To continue to qualify for the glide path, the coverage, must:

- Be a personal residential property used as a primary residence;
- Be a policy initially issued before January 1, 2022; and
- Cover homestead personal residential property that has a dwelling replacement cost below \$700,000, or, if a single condominium unit has a combined dwelling and contents replacement cost below \$700,000.

These provisions take effect on or after January 1, 2022.

***Surplus Lines Insurer Participation in Citizens' Depopulation, Take-out, and Keep-out Plans***

The bill revises s. 627.351(6)(q)3.d., F.S., to establish a new program where eligible surplus lines insurers may participate in any Citizens' depopulation, take-out, or keep-out plan in the same manner and terms as an authorized insurer. To be eligible for participation in a particular program, a surplus lines insurer must follow all Citizens' requirements relating to the plan that would be applicable to admitted insurers, follow statutory requirements applicable to the removal of policies from Citizens, and obtain approval from the OIR. In considering a surplus lines insurer's request for approval, the OIR must ensure that the insurer:

- Maintains surplus of \$50 million on a company or pooled basis;
- Has a superior, excellent, exceptional, or equally comparable financial strength rating by a rating agency acceptable to the OIR;
- Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover its 100-year probable maximum hurricane loss at least twice in a single hurricane season;<sup>36</sup>

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<sup>36</sup> The insurer also must submit such reinsurance to the OIR for review.

- Provides prominent notice to the policyholder that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association and outline any substantial policy differences between the existing Citizens' policy and the policy the insurer is offering; and
- Provides policy coverage similar to that provided by Citizens.

The surplus lines insurer also must file the following with the OIR:

- Information requested by the OIR to demonstrate compliance with s. 624.404(3), F.S., regarding basic qualifications to transact insurance in Florida;<sup>37</sup>
- A service-of-process consent and agreement form executed by the insurer;
- Proof that the insurer has been an eligible or authorized insurer for at least three years;
- A duly authenticated copy of the insurer's current audited financial statement;<sup>38</sup>
- A certified copy of the insurer's most recent official financial statement required by the insurer's domiciliary state (this is only required if the authenticated copy provided above differs from what the insurer provided to their domiciliary state); and
- A copy of the United States trust account agreement, if applicable.

Participation in these plans would not make a surplus line insurer subject to additional requirements under ch. 626, F.S., except that which is already required under part VIII. Policies taken out are not subject to the exporting requirements provided in s. 626.916(1)(a)-(c), and (e), F.S.

After assuming policies under these plans, a surplus lines insurer would be required to remit a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business to the Bureau of Collateral Management within the Department of Financial Services (DFS). The insurer would also need to submit to the OIR an accounting of the policies assumed and the amount of unearned premium for such policies and a sworn affidavit attesting to its accuracy by an officer of the surplus lines insurer. Subsequently, each quarter, the surplus lines insurer must update the OIR with the unearned premium in force for the previous quarter on policies assumed from the corporation, and must submit additional funds with that filing if the special deposit is insufficient to cover the unearned premium on assumed policies. The purpose of the special deposit is to allow the DFS, in the event of liquidation of the surplus lines insurer, to pay unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of ch. 631, F.S., or in compliance with any order of a court having jurisdiction over the insurer's insolvency.

A surplus lines broker representing a surplus lines insurer must obtain confirmation, in advance, from the producing agent that the agent is willing to participate in the take-out plan with the surplus lines insurer. Also, authorized insurers are to be given priority over surplus lines insurers if both select a particular policy for removal.

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<sup>37</sup> This may include biographical affidavits, fingerprints processed pursuant to s. 624.34, F.S., and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company.

<sup>38</sup> The statement must be in English, expressing all monetary values in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and including any additional information relative to the insurer as the OIR may request.

The surplus lines insurer participation provision also states if a policyholder has a dwelling replacement cost of \$700,000 or more or if a single condominium unit has a combined dwelling and contents replacement cost of \$700,000 or more, the policyholder would no longer qualify for Citizens coverage should the premium offered by the surplus lines insurer is no greater than 15 percent higher than that offered by Citizens. This provision does not apply to policyholders with a dwelling replacement cost below \$700,000 or a single condominium unit with a combined dwelling and contents replacement cost below \$700,000. Such policyholders would maintain eligibility for coverage with Citizens.

### *Underwriting and Confidential Claim Files*

The bill revises an existing public records exemption<sup>39</sup> under s. 626.916(1)(x)2., F.S., to allow authorized insurers, considering underwriting a risk held by Citizens, to access underwriting files and confidential claims files that would otherwise be exempt from public records requirements. The bill expands this exception to also include reinsurance intermediaries, eligible surplus lines insurers, or entities that have been created to seek authority to write property insurance in this state. The bill also revises activities that would allow such parties, including authorized insurers, to receive this information. In particular, relevant information from both the underwriting files and confidential claim files may be released to the parties seeking to underwrite or assist in underwriting a risk.

**Section 3** of the bill makes technical changes to s. 627.3517, F.S.

**Section 4** of the bill makes conforming changes to s. 627.3518(5) and reenacts s. 627.3518(6)-(7), F.S., to implement revisions made by **Section 2** of the bill above.

**Section 5** specifies an effective date of January 1, 2022 for the bill.

## **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.

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<sup>39</sup> Public records, unless expressly stated to be confidential and exempt, are subject to s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill revises surcharge limits Citizens Property Insurance Corporation (Citizens) may charge its policyholders when a Citizens' account shortfall is projected. In addition, the bill authorizes a new surcharge on Citizens' policyholders when a legal expense deficit exists. These additional authorized surcharges, may, depending on the necessity of assessing such surcharges, lead to additional insurance costs for Citizens' policyholders.

Provisions of the bill revising glide path eligibility may also lead to increased premiums, at least in the short term, for some Citizens' policyholders whose policies no longer qualify for the 10 percent rate increase cap. However, private market insurers seeking to write coverage on such policies will benefit from not having to compete on price with Citizens' coverage for which the glide path suppresses an actuarially sound rate.

The bill provides Citizens' policyholders become ineligible for Citizens' personal lines residential coverage upon receiving an offer from an authorized insurer for comparable coverage that is not 15 percent greater than the actuarially sound Citizens' premium would be on the property. This will result in ineligibility for some Citizens' policyholders as competitive market rates may be at a much higher rate than the customer currently pays under Citizens. For example, if a Citizens' premium subject to the glide path is \$2,000 but the actuarially sound premium for that property is \$2,500, the policyholder would be ineligible for Citizens coverage upon receiving an offer of coverage that is not more than 15 percent higher than the actuarially sound premium. In this example, the offered premium could not exceed \$2,875, which represents a 43.75 percent premium increase.

Provisions of the bill allowing surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans will likely have some impact on the number of policies held by Citizens and may result in additional policies moving from Citizens into the private market. Allowing surplus lines insurers to participate in these plans may have an indeterminate negative impact on the number of such policies taken by authorized insurers due to increased competition.

C. Government Sector Impact:

The provisions of the bill relating to allowing surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans requires such insurers, if they take out policies from Citizens, to make specified deposits with the Bureau of Collateral

Management and to make regular filings with the Office of Insurance Regulation. This will likely lead to an indeterminate amount of additional regulatory cost for those government entities.

The bill's revisions to Citizens' eligibility criteria and ratemaking should result in further depopulation of policies, which will reduce the amount of risk insured by Citizens and the possibility of assessments. Citizens will collect an actuarially sound premium on all new business after July 1, 2021, which will benefit Citizens' financial status, and reduce the likelihood of deficits and associated surcharges and assessments.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 627.021 and 627.351 of the Florida Statutes.

This bill makes technical changes to section 627.3517 of the Florida Statutes.

This bill reenacts and makes conforming changes to section 627.3518 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.)

**Recommended CS/CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on April 8, 2021:**

The committee substitute:

- Defines “primary residence” to mean the “dwelling that the insured has represented as their permanent home on the insurance application or otherwise to the corporation.”
- Removes language establishing a legal surcharge for new policies and subsequent renewals.
- Replaces the phrase “owner occupied” with the newly defined “primary residence” in regards to Citizens’ policy eligibility and glide-path eligibility.

**CS by Banking and Insurance on March 16, 2021:**

The committee substitute revises a bill provision creating new requirements for an insurance policy to remain eligible for the 10 percent rate increase cap under Citizens Property Insurance Corporation's (Citizens) glide path provision. Under the original bill, to continue to qualify for the glide path, the policy must meet certain guidelines, including that it cover homestead personal residential property. The committee substitute

deletes the homestead provision and replaces it with the property needing to be owner-occupied and makes a conforming change in in the bill for this revised provision.

The committee substitute also revises a requirement in the original bill regarding qualifications for a surplus lines insurer to participate in a Citizens depopulation, take-out, or keep-out program. The requirement that the insurer maintain “a financial strength rating of A- or higher by A.M. Best Company” is replaced in the committee substitute with a more general requirement that the insurer “have a superior, exceptional, or comparable financial strength rating by a rating agency acceptable to” the Office of Insurance Regulation.

**B. Amendments:**

None.