

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 Appropriations Subcommittee on Agriculture, Environment, and General Government

BILL: PCS/CS/SB 186 (804270)

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

SUBJECT: Citizens Property Insurance Corporation

DATE: February 18, 2022 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> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 186 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 makes it a requirement, rather than an option, that Citizens Property Insurance Corporation merge their Personal Lines, Commercial Lines, and Coastal Accounts if financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are no longer outstanding.

The bill provides Citizens residential policyholders are ineligible for renewal with Citizens if an offer of coverage is received from an authorized insurer, unless that offer presents a premium that is more than 20 percent greater than the Citizens renewal premium for comparable coverage. Under current law, Citizens policyholders remain eligible unless they receive an offer of comparable coverage which has a premium of less than the Citizens renewal premium.

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 provides that when Citizens assumes a policy from an unsound insurer, the premium shall be the higher of the last premium amount charged by the unsound insurer to the policyholder or the premium that would be normally charged by Citizens to carry said risk. If an unsound insurer's premium is applied to the policy, that premium would remain in place unchanged until the rate for Citizens, that would be normally applicable, exceeds the amount last charged by the unsound insurer.

The bill authorizes surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans if Citizens' policy count exceeds 700,000 policies. Citizens policy count was 759,305 policies as of December 31, 2021. The surplus lines insurer must: meet financial requirements; provide notice to the policyholder which outlines any coverage differences and explain 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 the premium for Citizens coverage.

The bill also:

- Defines "primary residence" and revises the application of the Citizens' rate increase restriction glide path to only apply to personal lines residential policies covering a policyholder's primary residence and single commercial lines residential policies;
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- Revises confidentiality exceptions for Citizens' underwriting and confidential claim files;
- Limits the commissions Citizens may pay to producing agents; and
- Makes technical changes to section 627.3517, Florida Statutes, and reenacts and makes conforming changes to section 627.3518, Florida Statutes.

The bill has an indeterminate fiscal impact to state revenues and expenditures. *See Section V. Fiscal Impact Statement.*

The bill takes effect January 1, 2023.

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.¹ Citizens

¹ Admitted market means insurance companies licensed to transact insurance in Florida.

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 Governors that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.³ The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board.⁴ Citizens is subject to regulation by the Florida Office of Insurance Regulation (OIR).

Citizens has three different accounts through which it offers property insurance: a personal lines account, a commercial lines account, and a coastal account.

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 home owners, dwellings, tenants, and condominium unit owner's policies.⁵

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.⁶

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.⁷

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.⁸ 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.⁹

² Section 627.351(6)(a)1., F.S.

³ Section 627.351(6)(a)2., F.S.

⁴ Section 627.351(6)(c)4.a., F.S.

⁵ 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 Jan. 22, 2022).

⁶ *Id.*

⁷ *Id.*

⁸ Section 10, ch. 2013-60, L.O.F.

⁹ Section 627.3518(2)-(3), F.S.

Current Policies

As of December 31, 2021, Citizens reports 759,305 policies in-force with a total exposure of \$232,502,323,529.¹⁰ The below chart outlines Citizens account and product type, number of policies in-force, total exposure and premium with surcharges.

| Account | Product Line | Policies In-Force | Total Exposure | Premium with Surcharges |
|---------|---|-------------------|-----------------|-------------------------|
| PLA | Personal Residential Multiperil (PR-M) | 589,028 | 167,886,789,888 | 1,280,496,248 |
| Coastal | Personal Residential Multiperil (PR-M) | 98,105 | 23,245,226,192 | 278,331,349 |
| Coastal | Personal Residential Wind-Only (PR-W) | 67,342 | 28,784,726,623 | 178,916,825 |
| Coastal | Commercial Residential Multiperil (CR-M) | 111 | 592,392,383 | 2,789,952 |
| Coastal | Commercial Residential Wind-Only (CR-W) | 1,749 | 5,682,636,307 | 33,449,678 |
| Coastal | Commercial Non-Residential Multiperil (CNR-M) | 39 | 48,588,500 | 569,765 |
| Coastal | Commercial Non-Residential Wind-Only (CNR-W) | 2,212 | 1,837,291,826 | 23,692,614 |
| CLA | Commercial Residential Multiperil (CR-M) | 580 | 4,289,395,010 | 17,091,136 |
| CLA | Commercial Non-Residential Multiperil (CNR-M) | 139 | 135,276,800 | 879,248 |
| Total | | 759,305 | 232,502,323,529 | 1,816,216,815 |

Source: Citizens Property Insurance¹¹

These numbers do not reflect policies tagged for takeout via Citizens' depopulation program but still serviced by Citizens.¹² From December 2020 to December 2021, Citizens' policy count grew by nearly 40 percent, adding 216,566 total policies in force.¹³ Citizens has expressed that it expects to exceed one million policies in force in 2022.¹⁴

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. Under the originally established glide path, Citizens had to 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

¹⁰ Citizens Property Insurance, *About Us, Snapshot, December 31, 2021*, <https://www.citizensfla.com/-/20211231-policies-in-force> (last visited Jan. 22, 2022).

¹¹ *Id.* This table does not include policies tagged for takeout via the Depopulation Program but still serviced by Citizens.

¹² *Id.*

¹³ Citizens Property Insurance Corporation, *Policies in Force*, <https://www.citizensfla.com/policies-in-force> (last visited Jan. 22, 2022).

¹⁴ Citizens Property Insurance Corporation, *Press Release: Citizens Board approves 2022 rate recommendations* (December 15, 2021), available at <https://www.citizensfla.com/-/20211215-citizens-board-approves-2022-rate-recommendations>.

changes and surcharges. In 2021, the Legislature revised this glide path to increase it one percent per year to 15 percent, as follows:¹⁵

- 11 percent for 2022.
- 12 percent for 2023.
- 13 percent for 2024.
- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

The implementation of this increase ceases when Citizens has achieved actuarially sound rates.¹⁶ In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium 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.¹⁷

Citizens Financial Resources

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. Non-weather water losses, reinsurance costs and litigation are currently the major determinants of insurance rates.¹⁸ In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.¹⁹ Under Florida law, if the Citizens' Board of Directors determines a Citizens' account has a projected deficit, Citizens is authorized to levy assessments²⁰ on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.²¹ Citizens may impose three assessment tiers and their sequence is as follows:²²

Citizens Policyholder Surcharge – A surcharge of up to 15 percent of premium 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.²³

¹⁵ Section 627.351(6)(n)5., F.S.

¹⁶ Section 627.351(6)(n)7., F.S.

¹⁷ Section 627.351(6)(n)6., F.S.

¹⁸ Citizens Property Insurance Corporation, *2022 Rate Kit, Citizens 2021 Rates, Frequently Asked Questions*, <https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548> (last visited Jan. 22, 2022).

¹⁹ Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, <https://www.citizensfla.com/assessments> (last visited Jan. 22, 2022).

²⁰ Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums.

²¹ 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.

²² Citizens Property Insurance Corporation, *supra* note 19.

²³ Sections 627.351.(6)(b)3.i.(I) and 627.351.(6)(c)21., F.S. *See also*, Citizens Property Insurance Corporation, *supra* note 19.

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. 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.²⁴ 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 corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.²⁵

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.²⁶

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 20 percent or more.²⁷ 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.²⁸

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.²⁹ Structures with a dwelling replacement cost of \$700,000 or more, or a single

²⁴ Section 627.351(6)(b)3.a., F.S.

²⁵ Section 627.351(6)(b)3.d., F.S.

²⁶ See Citizens Property Insurance Corporation *Revised Underwriting Manuals*, <https://www.citizensfla.com/-/20160329-revised-underwriting-manuals> (last visited Jan. 22, 2022).

²⁷ Section 627.351(6)(c)5., F.S.

²⁸ Section 627.351(6)(c)5., F.S.

²⁹ Section 627.351(6)(a)3., F.S.

condominium unit that has a combined dwelling and contents replacement cost of \$700,000 or more, are not eligible for coverage with Citizens.³⁰ 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.³¹

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.³² In 2016, the Legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to takeout agreements.³³ 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;³⁴
- 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.³⁵ 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.³⁶

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.,

³⁰ Section 627.351(6)(a)3.d., F.S.

³¹ 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 Jan. 22, 2022). *See also* Section 627.351(6)(a)3.d., F.S., and Citizens Property Insurance Corporation, *Update to Maximum Coverage Limits, November 12, 2019* <https://www.citizensfla.com/-/2019-roof-permits-acceptable-for-fbc-credits> (last visited Feb. 8, 2022).

³² Section 627.351(6)(q)3.a., F.S.

³³ Chapter 2016-229, L.O.F.

³⁴ 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.

³⁵ FLA. CONST. art. I, s. 24(a).

³⁶ *Id.*

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.³⁷ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.³⁸ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Confidentiality of Citizens' Underwriting and Claims Files

Section 627.351(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 Florida 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; and
- 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.

The public records exemption authorizes the sharing of certain files and information for the purpose of depopulating Citizens. If an authorized insurer is considering underwriting a risk insured by Citizens, relevant underwriting files and confidential claims files may be released to the insurer if the insurer agrees in a sworn writing to maintain the confidentiality of the files. Citizens may also release such files to the staff and board of governors of the market assistance plan established by s. 627.3515, F.S., who also must maintain confidentiality, and may share such files with authorized insurers considering writing those risks if the authorized insurer agrees to maintain confidentiality. Citizens may also release the name, address, and phone number of a residential property owner or insured, the location of the risk, rating information, loss history, and policy type to an entity that has obtained a permit to become an authorized insurer, a reinsurer under s. 624.610, F.S., a licensed reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines agent. The recipient of such information must maintain confidentiality.

Insurer Insolvency

Federal law specifies insurance companies cannot file for bankruptcy and are instead subject to state laws regarding receivership.³⁹ Insurers are either "rehabilitated" or "liquidated" by the state.

³⁷ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022),

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=2022&DocumentType=The+Rules+Of+The+House+of+Representatives&FileName=2020-2022+House+Rules+-+Edition+1.pdf> (last visited Jan. 22, 2022).

³⁸ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

³⁹ The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is

Typically, insurers are put into liquidation when the company is or is about to become insolvent;⁴⁰ whereas, insurers are placed in rehabilitation⁴¹ for numerous reasons, one of which is the insurer is impaired or failed to comply with an order of the Office of Insurance Regulation (OIR) to address an impairment of capital or surplus or both. The goal of rehabilitation is to return to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay off the company's debts and outstanding insurance claims.

In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies. This process involves the initiation of a delinquency proceeding⁴² and the placement of an insurer under the control of the DFS as the receiver. The DFS, as receiver, has many responsibilities related to outstanding debts and insurance claims, which include collecting all debts and money due to the insurer for the good of policyholders and creditors alike, evaluating and paying claims with available assets, and assisting in the transition of policyholders to other insurance coverage.⁴³

If an insurer is placed under liquidation, Citizens may, if ordered by a court of competent jurisdiction, assume policies or otherwise provide coverage for policyholders of said insurer under such forms, rates, terms, and conditions as the corporation deems appropriate. Such forms, rates, terms, and conditions are subject to approval by the OIR.

III. Effect of Proposed Changes:

Section 1 revises s. 627.021, F.S., to specify the current inapplicability of the Rating Law under ch. 627, F.S., to surplus lines insurance placed pursuant to the Surplus Lines Law under ss. 626.913-626.937, F.S., does not apply to provisions of the Rating Law that are specifically stated to be applicable to surplus lines insurance.

Section 2 amends s. 627.351(6), F.S., to revise criteria for Citizens eligibility, provide an escalating cap to the Citizens policyholder surcharge, limit producing agent commissions, authorize surplus lines insurers to develop Citizens "take-out" plans, and provide additional exceptions to a public records exemption.

Combining of Personal Lines Accounts (PLA), Commercial Lines Account (CLA), and Coastal Accounts

The bill revises s. 627.351(6)(b)2.b., F.S., to make it a requirement, rather than an option, for Citizens Property Insurance Corporation (Citizens) to merge its PLA, CLA, and Coastal Accounts if financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are no longer

consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).

⁴⁰ Section 631.061, F.S.

⁴¹ Section 631.051, F.S.

⁴² Section 631.031, F.S.

⁴³ Florida Department of Financial Services, *Overview of Liquidation under Chapter 631, Florida Statutes*, <https://www.myfloridacfo.com/division/receiver/guide-to-the-receivership-process/liquidationsummary> (last visited December 29, 2021).

outstanding. Presently, these obligations are still outstanding, so this provision would not have an immediate effect.

Surcharge Levied on Citizens' Policyholders for Projected Account Deficits and For Primary Residence Policies

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; and
- 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.

Citizens' Glide Path Rates

The bill amends s. 627.351(6)(n), F.S., which sets for the standards for Citizens rates. The bill limits the application of the Citizens "glide path" to personal lines residential policies covering an insured's primary residence and any single commercial lines residential policy. "Glide path" is the term commonly used to refer to the statutory limitation on rate increases that may be imposed on an individual Citizens policyholder. Under the glide path, the maximum rate increase that may be imposed on any single policy, excluding coverage changes and surcharges, is 11 percent for 2022.⁴⁴ This limit on rate increases is notwithstanding the requirement that rates for Citizens coverage must be actuarially sound and are subject to the standards of s. 627.062, F.S., of the Rating Law.

The bill defines primary residence as "means a risk that has a dwelling replacement cost of less than \$700,000 or a single condominium unit that has a combined dwelling and contents replacement cost of less than \$700,000 and the insured has represented such dwelling as its permanent home." Spouses are limited to having only one primary residence insured with Citizens.

Revision to Eligibility for Coverage with Citizens Regarding Renewal Premiums

The bill revises s. 627.351(6)(c)5.a., F.S., to state that for a personal lines residential policy, it is ineligible for renewal with the Citizens if a an offer of coverage is received from an authorized insurer, unless that offer presents a premium is more than 20 percent greater than the renewal premium for comparable coverage from Citizens.

⁴⁴ The maximum rate increase will increase by one percent for each subsequent year until it reaches 15 percent for 2026.

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 current 11 percent limit on annual rate increases (which will increase by one percent each year to 15 percent in 2026).

Limitations on Commissions

In the 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.

Rates for Policies Assumed from Unsound Insurers

The bill creates a new s. 627.351(6)(n)8., F.S., specifying when Citizens assumes a policy from an unsound insurer, the premium shall be the higher of the last premium amount charged by the unsound insurer to the policyholder or the premium that would be normally charged by Citizens to carry said risk. If an unsound insurer's premium is applied to the policy, that premium would remain in place unchanged until the rate for Citizens, that would be normally applicable, exceeds the amount last charged by the unsound insurer. The provision also defines "unsound insurer" as an insurer determined by the Office of Insurance Regulation (OIR) to be in unsound condition as defined in s. 624.80(2), F.S.⁴⁵, or an insurer placed in receivership under chapter 631, F.S.

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 allow eligible surplus lines insurers to participate in any Citizens' depopulation, take-out, or keep-out plan in the same manner and terms as an authorized insurer if Citizens' policy count more than 700,000 within the 30 days before the time a takeout offer is made by a surplus lines 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 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;⁴⁶
- Provides prominent notice to the policyholder that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association and outlines any substantial policy differences between the existing Citizens' policy and the policy the insurer is offering; and

⁴⁵ Section 624.80(2), F.S., defines "unsound condition" to mean that the OIR has determined that one or more of the following conditions exist with respect to an insurer: (a) the insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law; (b) the insurer continues to write new business when it has not maintained the required surplus or capital; (c) The insurer attempts to dissolve or liquidate without first having made provisions, satisfactory to the office, for liabilities arising from insurance policies issued by the insurer; or (d) the insurer meets one or more of the grounds in s. 631.051 for the appointment of the DFS as a receiver.

⁴⁶ The insurer also must submit such reinsurance to the OIR for review.

- 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;⁴⁷
- 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;⁴⁸
- 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.

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 that

⁴⁷ 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.

⁴⁸ 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.

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 exemption⁴⁹ under s. 626.916(1)(x)2., F.S., that allows 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 authorizes reinsurance intermediaries, eligible surplus lines insurers, or entities that have been created to seek authority to write property insurance in this state to also have access to such underwriting files and confidential claims. 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)(a) and (7)(a), F.S., to implement revisions made by **Section 2** of the bill above.

Section 5 specifies an effective date of January 1, 2023 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:

The Florida Constitution provides no state tax or fee may be imposed, authorized, or raised by the Legislature except through legislation approved by two-thirds of the membership of each house of the Legislature.⁵⁰ For purposes of this requirement, a “fee”

⁴⁹ 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.

⁵⁰ Fla. Const. art. VII, s. 19(a)-(b). The amendment appeared on the 2018 ballot as Amendment 5.

is any charge or payment required by law. This includes any fee or charge for services and fees or costs for licenses. To “raise” a fee or tax means to:⁵¹

- Increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis;
- Increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or
- Decrease or eliminate a state tax or fee exemption or credit.

A bill that imposes, authorizes, or raises any state fee or tax may only contain the fee or tax provision(s) and may not contain any other subject.⁵²

The constitutional provision does not authorize any state tax or fee to be imposed if it is otherwise prohibited by the constitution and does not apply to any tax or fee authorized or imposed by a county, municipality, school board, or special district.⁵³

Pursuant to s. 627.351(6)(a)1., F.S., Citizens was created as “integral part of the state.” To that end, a fee or charge for service, required by statute and assessed by Citizens, may qualify as a “fee” under Fla. Const. art. VII, s. 19(d)(1). CS/SB 186 contains a provision that requires a five dollar surcharge to be collected by Citizens upon the renewal of a primary residence policy. This new surcharge may qualify as a new fee under Fla. Const. art. VII, s. 19, and therefore would require a separate bill and a two-thirds affirmative vote for passage.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill revises the surcharge limits that Citizens Property Insurance Corporation (Citizens) may charge its primary residence policyholders when a Citizens’ account shortfall is projected, which may, depending on the necessity of assessing such surcharges, lead to additional insurance costs for Citizens’ primary residence policyholders. However, the collection of additional funds through the primary residence policyholder surcharge may, in some circumstances, result in less funds being necessary to collect through regular assessments or emergency assessments.

⁵¹ Fla. Const. art. VII, s. 19(d).

⁵² Fla. Const. art. VII, s. 19(e).

⁵³ Fla. Const. art. VII s. 19(c).

The bill provides Citizens' residential policyholders become ineligible for Citizens' personal lines residential coverage upon receiving an offer from an authorized insurer for comparable coverage that is not 20 percent greater than the renewal premium for comparable Citizens' coverage. This will result in ineligibility for some Citizens' policyholders, and up to 20 percent higher premiums for some such customers when their policy is taken out of Citizens. However, to the extent this change serves to depopulate Citizens it will reduce the likelihood Citizens will need to impose policyholder surcharges and assessments upon a deficit in a Citizens account.

Provisions of the bill allowing surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans, when Citizens' policy count reaches 700,000 policies, 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. However, policyholders covered by surplus lines insurance would not have the protection afforded by Florida Insurance Guaranty Association (FIGA) when an authorized insurer becomes insolvent.

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, under certain conditions, 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 should result in further depopulation of policies, which will reduce the amount of risk insured by Citizens and the possibility of assessments.

VI. Technical Deficiencies:

Section 2 revises s. 627.351(6)(b)2.b. to require Citizens Property Insurance Corporation (Citizens) to combine its Personal Lines Account (PLA), Commercial Lines Account (CLA), and Coastal Account once certain financial obligations are satisfied. In order to effectuate this change, and maintain Citizens' current authorities, additional substantive and conforming changes to statute may be needed, including revising:

- Section 627.351(6)(b)2.a. which specifies all revenues, assets, liabilities, losses, and expenses of the Citizens be divided into its PLA, CLA, and Coastal Accounts; and
- Section 627.351(6)(c) providing Citizens plan of operation which specifies the types of lines which may be written under the PLA, CLA, and Coastal Accounts.

VII. Related Issues:

A proposed provision in the bill limits the commissions Citizens Property Insurance Corporation (Citizens) may pay to producing agents of record 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. If Citizens is unable to obtain information regarding the commissions paid by such insurers, Citizens may be unable to calculate the statutorily required limit of producing agent commissions.

VIII. Statutes Affected:

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

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 by Appropriations Subcommittee on Agriculture, Environment, and General Government on February 16, 2022:

The committee substitute:

- Revises the application of the Citizens’ rate increase restriction glide path to only apply to personal lines residential policies covering the policyholder’s primary residence and single commercial lines residential policies; and
- Removes the five dollar policy surcharge collected upon renewal of all policies listed as primary residences.

CS by Banking and Insurance on January 25, 2022:

The CS makes several substantive revisions to the bill:

- Requires that Citizens Property Insurance Corporation (Citizens) merge their Personal Lines, Commercial Lines, and Coastal Accounts if financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are no longer outstanding.
- Provides that when Citizens Property Insurance Corporation assumes a policy from an unsound insurer, the premium shall be the higher of the last premium amount charged by the unsound insurer to the policyholder or the premium that would be normally charged by Citizens to carry said risk. If an unsound insurer’s premium is applied to the policy, that premium would remain in place unchanged until the rate for Citizens, that would be normally applicable, exceeds the amount last charged by the unsound insurer.
- Creates a \$5 surcharge upon renewed Citizens’ primary residence policies and revises the definition of “primary residence” to limit it to only a dwelling with a replacement cost of less than \$700,000 or a single condominium unit that has a combined dwelling and contents replacement cost of less than \$700,000.

- Specifies that a risk is not eligible for coverage with Citizens unless the premium for renewal coverage from an authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens.
- Specifies that for a surplus lines insurer to participate in a takeout program as specified in the original bill, the policy count of Citizens must be more than 700,000 properties. Also specifies that, for risks that have 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, such risks are not eligible for coverage by Citizens offered comparable coverage from a qualified surplus lines insurer at a premium no greater than that of Citizens.

B. Amendments:

None.