

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 1716

INTRODUCER: Senator Boyd

SUBJECT: Citizens Property Insurance Corporation

DATE: January 19, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	Pre-meeting
2.			AEG	
3.			FP	

I. Summary:

SB 1716 makes statutory changes to facilitate the transition of Citizens Property Insurance Corporation from an organizational structure where Citizens policies are held in three different accounts (a personal lines account, commercial account, and a coastal account) to a structure where all Citizens policies are held in a single account (the Citizens account).

The bill revises Citizens eligibility criteria for any dwelling or rental property that is not a primary residence. The bill defines a “primary residence” as a dwelling that is the policyholder’s primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year. The bill would no longer require that an offer of coverage from a private market insurer meet the following criteria in order for such offer to render a personal lines residential risk that is not a primary residence ineligible for Citizens coverage:

- The offer must be from an authorized insurer;
- The policy offered by the authorized insurer must provide comparable coverage to that provided in a Citizens policy; and
- The premium for coverage from the authorized insurer is not more than 20 percent greater than the Citizens premium for a new Citizens policy or, for a current Citizens policyholder, the Citizens renewal premium.

The bill allows surplus lines insurers that have an “A” financial strength rating from A.M Best to make “take-out” offers to personal lines residential policyholders on both primary and non-primary residences if the surplus lines insurer’s take out plan is approved by the Office of Insurance Regulation and the surplus lines insurer’s personal lines residential risk program is managed by a Florida resident surplus lines broker. A surplus lines take-out offer would render a primary residence ineligible only if it offers comparable coverage to the Citizens policy and is at a rate that is not more than 20 percent higher than the Citizens rate for the risk. A risk that is not a primary residence would be rendered ineligible upon receipt of the take-out offer regardless of

policy terms and so long as the rate charged was approved by the OIR as part of the take-out plan.

The bill also allows surplus lines insurers meeting the aforementioned criteria to make take-out offers of commercial residential coverage (an example of which is a condominium association policy) that render the risk ineligible for Citizens if the take-out offer is at the surplus lines insurer's approved rate and the policy includes wind coverage. Under current law, only offers from authorized or admitted insurers will such risks ineligible for Citizens, and only if the policy offered by the insurer provides comparable coverage to a Citizens policy and the premium for such policy is not more than 20 percent greater than the Citizens premium for a new Citizens policy or, for a current Citizens policyholder, the Citizens renewal premium.

The bill limits to primary residences the policyholder choice provisions of s. 627.3517, F.S., which generally¹ provide a Citizens personal lines residential policyholder the right to remain with their agent if the agent is unable or unwilling to accept an appointment with the assuming insurer.

The bill applies provisions governing agent commissions when an agent is unwilling or unable to accept an appointment with an authorized insurer that has made a successful take-out offer to an agent for a risk that is a non-primary residence or a commercial residential risk if the agent fails to be licensed as a surplus lines agent that has made a successful take-out offer. In that situation the insurer assuming the policy must pay the producing agent the greater of the insurer's usual and customary agent commission or Citizens' usual and customary agent commission.

The bill also:

- Revises the signed acknowledgment of potential policyholder surcharge and assessment liability that agents must obtain from an applicant for Citizens coverage for the purpose of conforming the revised surcharge and assessment liabilities associated with the reorganization of Citizens into a single account.
- Provides that only licensed agents holding appointments by at least three authorized insurers that are actually writing or renewing property insurance in this state may be appointed by Citizens as its licensed agents.
- Provides that the executive director of Citizens is the Agency head of Citizens for purposes of procurement bid protests under s. 287.057, F.S., and authorizes the executive director to appoint a designee to act on his or her behalf for all purposes under the that statute.
- Deletes language prohibiting the application of the Division of Administrative Hearing's bond requirements related to Citizens bid protest hearings.
- Authorizes Citizens to exempt from assessment liability the policyholders of a surplus lines carrier that takes policies out of Citizens under a depopulation program.
- Allows licensed surplus lines agents access to confidential and exempt claims files for the purpose of considering whether to write a risk currently insured by Citizens.
- Authorizes Citizens to share its claims data with the National Insurance Crime Bureau (NICB), so long as the NICB maintains the confidentiality of certain documents.

¹ Policyholder choice does not apply to new applicants for Citizens coverage who receive an offer from an authorized insurer through the Citizens clearinghouse under s. 627.3518, F.S.

- Authorizes Citizens to acquire patents, trademarks, and copyrights on work products and take action to enforce its rights therein.
- Provides that the eligibility requirements detailed in s. 627.3518, F.S., the Citizens clearinghouse statute, only apply to primary residences as defined by the bill.
- Makes technical and clarifying changes.

II. Present Situation:

Citizens Property Insurance Corporation—Overview

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.² Citizens is not a private insurance company.³ 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).⁴

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by a nine member Board of Governors (board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.⁵ The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.⁶ The Governor appoints an additional member who serves solely to advocate on behalf of the consumer.⁷ Citizens is subject to regulation by the Office of Insurance Regulation (OIR).

Current Policies

As of November 30, 2023, Citizens reports 1,260,430 policies in-force with a total exposure of \$562.5 billion.⁸ That is a reduction of over 74,000 policies and \$23.3 billion in exposure from October 31, 2023.

Eligibility for Insurance in Citizens

Citizens is required to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provide specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property.⁹ Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility

² The term “admitted market” means insurance companies licensed to transact insurance in Florida.

³ Section 627.351(6)(a)1., F.S.

⁴ Section 2, ch. 2002-240, Laws of Fla.

⁵ Section 627.351(6)(a)2., F.S.

⁶ Section 627.351(6)(c)4.a., F.S.

⁷ Section 627.351(6)(c)4., F.S.

⁸ Corporate Analytics Business Overview, September 20, 2023 Report, p.1 <https://www.citizensfla.com/documents> (last visited January 10, 2024).

⁹ Section 627.351(6)(c)5., F.S.

requirements set out in their underwriting rules. These rules are approved by the OIR and are set out in Citizens' underwriting manuals.¹⁰

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.¹¹ The coverage offered by the private insurer must be comparable to Citizens' coverage.

A residential policyholder may not renew insurance in Citizens if an authorized insurer offers to insure the property at a premium no more than 20 percent greater than the Citizens' renewal premium.¹² The insurance coverage offered from the private market insurer must be comparable to the insurance from Citizens in order for the eligibility requirement for renewal premium to apply.¹³

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.¹⁴ 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.¹⁵ 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.¹⁶

Citizens "Glidepath" Rates

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006.¹⁷ In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under the original established glidepath, 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 changes and surcharges.¹⁸ In 2021, the Legislature revised this glidepath to increase it one percent per year to up to 15 percent, as follows:¹⁹

- 11 percent for 2022.

¹⁰ See Citizens Property Insurance Corporation, *PIF Standard Summary Report for Period Ending Nov. 30, 2023 (December 6, 2023)* (On file with the Florida Senate Banking and Insurance Committee).

¹¹ Section 627.351(6)(c)5., F.S.

¹² Section 627.351(6)(c)5.a., F.S.

¹³ *Id.*

¹⁴ Section 627.351(6)(a)3., F.S.

¹⁵ Section 627.351(6)(a)3.d., F.S.

¹⁶ The OIR, Final Order Case No: 165625-14, Dec. 22, 2014, <https://www.flair.com/siteDocuments/Citizens165625-14-O.pdf>; See also Section 627.351(6)(a)3.d., F.S., and Citizens, *Update to Maximum Coverage Limits*, Nov. 12, 2019, <https://www.citizensfla.com/-/2019-roof-permits-acceptable-for-fbc-credits> (all sites last visited January 10, 2024).

¹⁷ Section 15, ch. 2006-12, Laws of Fla.

¹⁸ Section 10, ch. 2009-87, Laws of Fla.

¹⁹ Section 627.351(6)(n)5., F.S.

- 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.²⁰ In addition to the overall glidepath 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.²¹ The glidepath does not apply to policies written on or after November 1, 2023, that:

- Do not cover a primary residence;
- New policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631; or
- Subsequent renewals of those policies.²²

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.²³ In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.²⁴ Under Florida law, if the Citizens' Board of Directors determines a Citizens' account has a projected deficit, Citizens is authorized to levy assessments²⁵ on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.²⁶

Citizens' Accounts

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

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

²⁰ Section 627.351(6)(n)7., F.S.

²¹ Section 627.351(6)(n)6., F.S.

²² Section 627.351(6)(n)8., F.S.

²³ Citizens, *2023 Rate Kit*, <https://www.citizensfla.com/documents/> (last visited January 10, 2024).

²⁴ Citizens, *Insurance/Insurance 101/Assessments*, <https://www.citizensfla.com/assessments> (last visited January 10, 2024).

²⁵ Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums.

²⁶ Accident and health insurance 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.

provided to homeowners, mobile home owners, dwellings, tenants, and condominium unit owner's policies.²⁷

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.²⁸

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.²⁹

The Legislature has authorized Citizens to combine its three accounts into a single account, which will ensure that Citizens has access to all of its assets to pay loss claims. The new account is referred to as the Citizens account and will offer the various coverages and policies provided pursuant to the three account structure.

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.³⁰ 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.³¹ An applicant for new coverage, or an insured for renewed coverage, is not eligible for coverage from Citizens if the premium offered from an authorized insurer is at or below the eligibility threshold for new personal lines residential risks of more than 20 percent.³² An applicant for coverage who was declared ineligible for coverage at renewal by Citizens in the previous 36 months must be considered a renewal under the Citizens' clearinghouse statute if the authorized insurer making the offer continues to insure the applicant and increased the rate higher than allowed under s. 627.351(6)(n)5., F.S.³³

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.³⁴ In 2016, the Legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to take-out

²⁷ See s. 627.351(6)(b)2.a., F.S.; Citizens, *Account History and Characteristics*, <https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563> (Mar. 2016) (last visited Dec. 4, 2022).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Section 10, ch. 2013-60, Laws of Fla.

³¹ Section 627.3518(2)-(3), F.S.

³² Section 627.3518(5), F.S.

³³ *Id.*

³⁴ Section 627.351(6)(q)3.a., F.S.

agreements.³⁵ 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;³⁶
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting a take-out 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 agent regarding all insurers requesting to take out the policy and 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.

Citizens Assessment Authority

Under the three account structure, in the event Citizens has insufficient funds to pay claims in any account, the corporation must impose up to a policyholder surcharge of up to 15 percent of premium. Each assessment is charged to all Citizens policyholders regardless of which account their policies are written in, thus a Citizens policyholder has a possible assessment liability of 45 percent of premium on policyholders of the corporation. If a deficit in the coastal account remains after imposition of the 15 percent policyholder surcharge for that account, Citizens must impose a 2 percent regular assessment on assessable statewide premium on private market insureds. Citizens policyholder are not subject to the 2 percent regular assessment. If the maximum policyholder surcharge is imposed (and for a Coastal Account deficit, the 2 percent regular assessment is also imposed) and Citizens is still in a deficit, then it must impose an emergency assessment of up to 10% per year, per account, on assessable statewide premium on both private market insureds and Citizens insureds. The emergency assessments of up to 10 percent per account may be imposed for as many years as is necessary to resolve the Citizens deficit.³⁷

Under the single account structure, in the event Citizens has insufficient funds to pay claims, the corporation must impose a policyholder surcharge of up to 15 percent of premium on policyholders of the corporation. If the maximum policyholder surcharge is imposed and Citizens is still in a deficit, then it must impose an emergency assessment of up to 10% per year on assessable statewide premium on both private market insureds and Citizens insureds. The emergency assessments may be imposed for as many years as is necessary to resolve the Citizens deficit.³⁸

³⁵ Chapter 2016-229, Laws of Fla.

³⁶ 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.

³⁷ Section 627.351(6)(b)3., F.S.

³⁸ Section 627.351(6)(b)5., F.S.

Citizens Flood Insurance Requirement

Citizens' personal lines residential policyholders must secure and maintain flood insurance that meets certain requirements as a condition of eligibility for Citizens coverage.³⁹ The implementation of this requirement is based on as schedule.⁴⁰ For Citizens personal lines residential policyholders whose property is located within special hazard flood zones defined by the FEMA, flood coverage must be obtained by:

- April 1, 2023 for Citizens' new policies.
- July 1, 2023 for Citizens' renewal policies.

For all other risks, the requirement to obtain flood insurance must be implemented for specified Citizens' policyholders as follows:

- March 1, 2024, for policies insuring a structure that has a dwelling replacement cost of \$600,000 or more.
- March 1, 2025, for policies insuring a structure that has a dwelling replacement cost of \$500,000 or more.
- March 1, 2026, for policies insuring a structure that has a dwelling replacement cost of \$400,000 or more.
- March 1, 2027, for all other policyholders.

The requirement to obtain flood insurance does not apply to policies that do not provide coverage for the peril of wind or to policies that provide coverage under a condominium unit owners form.⁴¹

III. Effect of Proposed Changes:

SB 1716 makes statutory changes to facilitate the transition of Citizens Property Insurance Corporation from an organizational structure where Citizens policies are held in three different accounts (a personal lines account, commercial account, and a coastal account) to a structure where all Citizens policies are held in a single account (the Citizens account).

The bill revises Citizens eligibility criteria for any dwelling or rental property that is not a primary residence. The bill defines a "primary residence" as a dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year. The bill would no longer require that an offer of coverage from a private market insurer meet the following criteria in order for such offer to render a personal lines residential risk that is not a primary residence ineligible for Citizens coverage:

- The offer must be from an authorized insurer;
- The policy offered by the authorized insurer must provide comparable coverage to that provided in a Citizens policy; and

³⁹ Section 627.351(6)(aa), F.S.

⁴⁰ *Id.*

⁴¹ Section 627.351(6)(aa)3., F.S.

- The premium for coverage from the authorized insurer is not more than 20 percent greater than the Citizens premium for a new Citizens policy or, for a current Citizens policyholder, the Citizens renewal premium.

The bill allows surplus lines insurers that have an “A” financial strength rating from A.M Best to make “take-out” offers to personal lines residential policyholders on both primary and non-primary residences if the surplus lines insurer’s take out plan is approved by the Office of Insurance Regulation and the surplus lines insurer’s personal lines residential risk program is managed by a Florida resident surplus lines broker. A surplus lines take-out offer would render a primary residence ineligible only if it offers comparable coverage to the Citizens policy and is at a rate that is not more than 20 percent higher than the Citizens rate for the risk. A risk that is not a primary residence would be rendered ineligible upon receipt of the take-out offer regardless of policy terms and so long as the rate charged was approved by the OIR as part of the take-out plan.

The bill also allows surplus lines insurers meeting the aforementioned criteria to make take-out offers of commercial residential coverage (an example of which is a condominium association policy) that render the risk ineligible for Citizens if the take-out offer is at the surplus lines insurer’s approved rate and the policy includes wind coverage. Under current law, only offers from authorized or admitted insurers will such risks ineligible for Citizens, and only if the policy offered by the insurer provides comparable coverage to a Citizens policy and the premium for such policy is not more than 20 percent greater than the Citizens premium for a new Citizens policy or, for a current Citizens policyholder, the Citizens renewal premium.

The bill limits to primary residences the policyholder choice provisions of s. 627.3517, F.S., which generally⁴² provide a Citizens personal lines residential policyholder the right to remain with their agent if the agent is unable or unwilling to accept an appointment with the assuming insurer.

The bill applies provisions governing agent commissions when an agent is unwilling or unable to accept an appointment with an authorized insurer that has made a successful take-out offer to an agents for a risk that is a non-primary residence or a commercial residential risk if the agent fails to be licensed as a surplus lines agent that has made a successful take-out offer. In that situation the insurer assuming the policy must pay the producing agent the greater of the insurer’s usual and customary agent commission or Citizens’ usual and customary agent commission.

The bill also:

- Revises the signed acknowledgment of potential policyholder surcharge and assessment liability that agents must obtain from an applicant for Citizens coverage for the purpose of conforming the revised surcharge and assessment liabilities associated with the reorganization of Citizens into a single account.
- Provides that only licensed agents holding appointments by at least three authorized insurers that are actually writing or renewing property insurance in this state may be appointed by Citizens as its licensed agents.

⁴² Policyholder choice does not apply to new applicants for Citizens coverage who receive an offer from an authorized insurer through the Citizens clearinghouse under s. 627.3518, F.S.

- Provides that the executive director of Citizens is the Agency head of Citizens for purposes of procurement bid protests under s. 287.057, F.S., and authorizes the executive director to appoint a designee to act on his or her behalf for all purposes under the that statute.
- Deletes language prohibiting the application of the Division of Administrative Hearing's bond requirements related to Citizens bid protest hearings.
- Authorizes Citizens to exempt from assessment liability the policyholders of a surplus lines carrier that takes policies out of Citizens under a depopulation program.
- Allows licensed surplus lines agents access to confidential and exempt claims files for the purpose of considering whether to write a risk currently insured by Citizens.
- Authorizes Citizens to share its claims data with the National Insurance Crime Bureau (NICB), so long as the NICB maintains the confidentiality of certain documents.
- Authorizes Citizens to acquire patents, trademarks, and copyrights on work products and take action to enforce its rights therein.
- Provides that the eligibility requirements detailed in s. 627.3518, F.S., the Citizens clearinghouse statute, only apply to primary residences as defined by the bill.
- Makes technical and clarifying changes.
- Provides an effective date of July 1, 2024.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill should revert to current law at lines 2656-2661, which correctly refers to the replacement value of a dwelling for purposes of implementing the requirement that Citizens personal lines policyholders maintain flood insurance.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.351, 627.3511, and 627.3518.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.