

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 Banking and Insurance Committee

BILL: SB 578

INTRODUCER: Senator Richter

SUBJECT: Depopulation Programs of Citizens Property Insurance Corporation

DATE: November 28, 2011 REVISED: 12/07/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	Fav/7 amendments
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Under current law, surplus lines insurers are not allowed to participate in the Citizens' depopulation program. While surplus lines insurers are statutorily allowed to operate in Florida and must meet certain requirements of the Office of Insurance Regulation (OIR), they are not required to obtain a license to operate, whereas only licensed insurers can participate in the Citizens' depopulation program. The bill would change current law to allow surplus lines insurers that meet specified financial criteria to participate in the Citizens' depopulation program without the need of obtaining a license as an admitted carrier though OIR. The bill allows policy holders in Citizens to remain in Citizens should they be selected for removal though the depopulation program by a qualified surplus lines insurer.

The bill requires a surplus lines insurer removing policies from Citizens to provide prominent notice to the Citizens' policyholder prior to the insurer assumes the policy. The notice must explain that the surplus lines policy being offered is not covered by the Florida Insurance Guaranty Association. Additionally, the surplus lines insurer must offer similar coverage to what the policy holder currently has through Citizens. The surplus lines insurer must also explain to the selected Citizens' policyholders the differences between coverage through surplus lines and Citizens. If the Citizens' policyholder were to receive an offer for insurance from both a Florida

licensed insurer and a surplus lines insurer, then the offer from the Florida licensed insurer has priority.

The bill also requires surplus lines insurers participating in the Citizens' depopulation program to deposit a specified amount of premium from the assumed policies with the Bureau of Collateral Management in the Department of Financial Services. The premium deposit can be used to pay claims of Citizens' policyholders assumed by the insurer if the surplus lines insurer were to ever become insolvent.

Lastly, the bill allows additional types of insurers and insurance entities considering depopulating Citizens to receive Citizens' underwriting and confidential claims files, but maintains current law requiring release of the files only if the receiving insurer or entity agrees in writing to maintain the confidentiality of the files.

This bill substantially amends 627.351, Florida Statutes.

II. Present Situation:

Citizens Property Insurance Corporation

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. It is not a private insurance company. As of September 30, 2011, Citizens is the largest property insurer in Florida with over 1.4 million policies extending over \$508 billion of property coverage to Floridians.¹ Citizens was created by the Legislature in 2002 by the merger of two existing property insurance associations that provided property insurance to those homeowners and businesses who could not find coverage in the private market.

Coverage

Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts within the corporation:

- Personal Lines Account (PLA) – Multi-peril Policies.² Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
- Commercial Lines Account (CLA) – Multi-peril Policies. Consists of condominium association, apartment building, homeowner's association policies, and commercial non-residential multi-peril policies on property located outside the Coastal Account area; and
- Coastal Account – Wind-only³ and Multi-peril Policies. Consists of wind-only and multi-peril policies for personal residential, commercial residential and commercial non-residential issued in limited eligible coastal areas.

¹ <https://www.citizensfla.com/>

² A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (<http://www2.iii.org/glossary/>) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

³ A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

Financial Resources

Citizens' financial resources to pay property insurance claims include both resources typically available to private insurance companies and resources uniquely available to Citizens as a governmental entity with the statutory authority to levy assessments in the event of a deficit in Citizens' financial resources. Like typical private insurance companies, Citizens' financial resources include:

- Insurance premiums;
- Investment income;
- Accumulated surplus;
- Reimbursements from the Florida Hurricane Catastrophe Fund due to Citizens' purchase of reinsurance from the Florida Hurricane Catastrophe Fund; and
- Reimbursements from private reinsurance companies if Citizens purchases private reinsurance.

Financial Resources unique to Citizens include: Citizens' policyholder surcharges, regular assessments, and emergency assessments.

Assessments

In the event Citizens incurs a deficit (i.e., its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute.⁴ The three Citizens' accounts calculate deficits and resulting assessment needs independently.

Citizens Policyholder Assessments: If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15% of premium per account in deficit, for a maximum total of 45%.⁵ This surcharge is collected over 12 months on all Citizens' policies and collected upon issuance and renewal.

Regular Assessments: Upon the exhaustion of the Citizens Policyholder Assessment for a particular account, Citizens may levy a regular assessment of up to 6% of premium or 6% of the deficit per account, for a maximum total of 18%.⁶ The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies. The assessment is also not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

Emergency Assessments: Upon the exhaustion of the Citizens Policyholder Assessment and regular assessment for a particular account, Citizens may levy an emergency assessment of up to 10% of premium or 10% of the deficit per account, for a maximum total of 30%.⁷ This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies. However, this assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

⁴ s. 627.351(6)(b)3.a.,d., and i., F.S.

⁵ s. 627.351(6)(b)3.i., F.S.

⁶ s. 627.351(6)(b)3.a. and b., F.S.

⁷ s. 627.352(6)(b)3.d., F.S.

Depopulation

Under current law, Citizens is authorized to develop and maintain a depopulation program to reduce the number of its insured properties and to decrease its financial exposure.⁸ The depopulation program encourages insurance companies licensed in Florida to assume policies currently covered by Citizens, thus reducing Citizens' policy count and exposure. However, current law allows a Citizens' policyholder to choose to remain in Citizens even though the policyholder receives an offer of coverage (assumption) from an insurance company in the private market. Furthermore, a Citizens' policyholder cannot be removed from Citizens by a private insurer licensed in Florida if the policyholder's insurance agent is not appointed by the insurer removing the policy from Citizens.⁹

The following table outlines Citizens' recent depopulation statistics:
Depopulation of Citizens Property Insurance¹⁰

Year	Number of Policies	Exposure
2003	28,219	\$ 8,140,681,906
2004	158,416	\$ 30,663,076,480
2005	293,684	\$ 53,658,840,059
2006	67,853	\$ 15,637,589,369
2007	247,887	\$ 68,259,426,361
2008	385,084	\$ 106,870,490,165
2009	149,645	\$ 37,784,506,743
2010	59,792	\$ 13,888,913,857

Surplus Lines Insurance

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks which are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code and thus do not obtain a certificate of authority from the Office of Insurance Regulation to transact insurance in Florida.¹¹ Rather, surplus lines insurers are "unauthorized" or "nonadmitted" insurers, but are eligible to transact surplus lines insurance under the surplus lines law as "eligible surplus insurers."¹² The OIR determines whether a surplus lines insurer is "eligible" based on statutory guidelines.¹³ Eligibility requirements¹⁴ reviewed by the OIR for surplus lines

⁸ s. 627.351(6)(q)3., F.S.

⁹ See s. 627.3517, F.S.

¹⁰ <https://www.citizensfla.com/about/depoinfo.cfm> (last viewed October 26, 2011).

¹¹ s. 624.09(1), F.S., defines "authorized" insurer.

¹² s. 624.09(2), F.S. defines "unauthorized" insurer, s. 626.914(2), F.S., defines "eligible surplus lines insurer," and s. 626.918, F.S., provides eligibility for surplus lines insurers.

¹³ s. 626.918(2), F.S.

¹⁴ s. 626.918, F.S.

include: Eligibility is requested in writing for the insurer by the Florida Surplus Lines Service Office; Insurer is authorized for the prior 3 years in the state or country of its domicile to write the kinds of insurance the insurer wants to write in Florida (with limited exceptions); Insurer provides the OIR with its current annual financial statement; Insurer meets surplus requirements (delineated below); and Insurer has a good reputation relating to payment of claims and policyholder service. Generally, a surplus lines insurer must have and maintain surplus of \$15 million or more in order to obtain and maintain eligibility.¹⁵ In addition, an insurer formed outside the U.S. must have and maintain in the U.S. a trust fund containing at least \$5.4 million. The OIR has no duty or responsibility to determine the actual financial condition or claims practice of surplus lines insurers; a finding of eligibility by the OIR only means the surplus lines insurer appears to be financially sound and to have satisfactory claims practice.¹⁶ The OIR must withdraw the eligibility of a surplus lines insurer if the OIR has reason to believe the insurer is insolvent or in unsound financial condition, does not make reasonable prompt payment of claims, or does not meet the statutory guidelines for eligibility (including maintenance of \$15 million in surplus). The OIR may withdraw the eligibility of a surplus lines insurer if the insurer willfully violates a statute or rule.¹⁷

III. Effect of Proposed Changes:

The bill would allow surplus lines insurers meeting specified criteria to take part in Citizens' depopulation program. Only surplus lines insurers meeting three financial criteria would be allowed to take policies out of Citizens. The criteria are designed to ensure that only financially sound surplus lines insurers can participate in the Citizens' depopulation program. The OIR will determine if the surplus lines insurer meets the specified financial criteria for participation in the depopulation program and must approve the surplus lines insurer's depopulation plan.

First, the bill requires the surplus lines insurer wanting to participate in Citizens' depopulation to maintain \$50 million in surplus. Current law requires surplus lines insurers to maintain surplus of only \$15 million in order to be eligible to write insurance in Florida. Thus, the bill provides increased surplus requirements for those surplus lines insurers that take policies out of Citizens. The increased surplus will protect against insolvency of the insurer and make it more likely policyholder claims can be paid if an insolvency occurs.

Second, the insurer must also maintain an A.M. Best Financial Strength Rating of A- or better in order to take policies out of Citizens. Surplus lines insurers are not required in current law to maintain a certain A.M. Best rating in order to be eligible to write insurance in Florida.

Third, the bill requires a surplus lines insurer wanting to participate in Citizens' depopulation to have financial resources to cover the insurer's 100-year probable maximum loss at least twice in a hurricane season. Historically, the OIR has required authorized insurers to have financial resources to cover the insurer's 100-year probable maximum loss at least once in a hurricane season. However, instead of implementing a 100-year reinsurance requirement for all authorized insurers, recently the OIR implemented reinsurance requirements based on a review of an

¹⁵ s. 626.918(1)(d)1.a., F.S.

¹⁶ s. 626.918(4), F.S.

¹⁷ s. 626.919, F.S.

insurer's financial picture and exposure. Thus, reinsurance requirements can vary among authorized insurers.

Under the bill, a surplus lines insurer removing policies from Citizens must provide prominent notice to the Citizens' policyholder, before the insurer assumes the policy, that the surplus lines policy is not covered by the Florida Insurance Guaranty Association (FIGA). Generally, FIGA pays claims of policyholders insured by licensed Florida insurers if the insurer becomes insolvent. Because insurance written by surplus lines insurers are not covered by FIGA, if the insurer becomes insolvent, claims will be paid solely from the assets of the insurer, and claim payment, in full or in part, is not guaranteed.

A surplus lines insurer wanting to take a policy from Citizens must offer the Citizens' policyholder a policy with similar coverage to his or her Citizens' policy and must notify the Citizens' policyholder of the differences in coverage offered by the insurer and Citizens. In addition, the insurer must comply with the requirements in current law for licensed insurers that take policies out of Citizens.¹⁸ If the Citizens' policyholder receives an offer for insurance from both a Florida licensed insurer and a surplus lines insurer, then the offer from the Florida licensed insurer has priority.

The bill expands the provision in current law allowing release of Citizens' underwriting and confidential claims files to certain insurers. Current law allows insurers wanting to take policies out of Citizens to obtain underwriting and claims information on policies in Citizens. This is allowed so the insurer can decide which Citizens' policies to assume based on the insurer's exposure, financial picture, and business plan. The information can be released by Citizens only if the insurer agrees in writing to maintain the confidentiality of the files.

The bill allows additional types of insurers and insurance related entities considering depopulating Citizens to receive Citizens' underwriting and confidential claims files. Under the bill, reinsurance intermediaries, eligible surplus lines insurers, and entities created to seek authority to write property insurance are allowed to receive Citizens' files. The bill maintains current law requiring release of the files only if the receiving insurer or entity agrees in writing to maintain the confidentiality of the files.

Surplus lines insurers assuming policies from Citizens must deposit a certain amount of premium from the assumed policies with the Bureau of Collateral Management in the Department of Financial Services. The Bureau of Collateral Management is part of the Division of Treasury. The Chief Financial Officer has fiduciary responsibility over the Division of Treasury.¹⁹

The Division of Treasury has three bureaus:

- The Bureau of Funds Management;
- The Bureau of Collateral Management; and
- The Bureau of Deferred Compensation.

¹⁸ s. 627.351(6)(q)3., F.S.; s. 627.3511, F.S.; s. 627.3517, F.S.

¹⁹ See s. 17.52, F.S.; s. 17.54, F.S.; s. 17.55, F.S.

The Bureau of Collateral Management is a centralized deposit location for specialized handling of regulatory collateral deposits. Regulatory collateral deposits are required by state agencies as a condition of doing business or acts of guarantee. For 2010, the Bureau's asset management staff was responsible for maintaining regulatory collateral deposits for 1,885 combined accounts representing in excess of \$17 billion dollars.²⁰

The premium deposit can be used to pay claims of Citizens' policyholders assumed by the insurer if the surplus lines insurer becomes insolvent. The surplus lines insurer must make an accounting of the premium deposit with OIR at the time of the initial deposit and quarterly thereafter. The accounting must evidence the amount of the premium on deposit is accurate. If the deposit amount is too low, then the insurer must deposit additional funds. If the deposit amount is too high, then the insurer must receive a refund of the excess funds.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurance written by surplus lines insurers is often more expensive than insurance written by licensed insurers and by Citizens. Thus, Citizens' policyholders who choose to be taken out of Citizens to obtain insurance from a surplus lines insurer could pay more for insurance. However, the bill does not force Citizens' policyholders out of Citizens when a surplus lines insurer wants to insure their property. Obtaining insurance with a surplus lines insurer instead of Citizens is the policyholder's choice. Thus, if the cost of insurance

²⁰ Division of Treasury Annual Report 2010 available at <http://www.myfloridacfo.com/treasuryannual/2010/> (last viewed October 24, 2011).

from the surplus lines insurer is more than the insurance from Citizens or more than the policyholder wants to pay, then the policyholder can remain in Citizens. A Citizens' policyholder opting to move from Citizens to a surplus lines insurer would no longer incur a Citizens Policyholder Assessment if Citizens runs a deficit. However, the policyholder would still incur regular and emergency assessments as policyholders of property and casualty surplus lines insurers are assessed for Citizens' deficits.

C. Government Sector Impact:

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

Barcode 163542 by Banking and Insurance on December 7, 2012:

The amendment changes the effective date of the bill to upon becoming law.

Barcode 252080 by Banking and Insurance on December 7, 2012:

A technical amendment which corrected the name for the Bureau of Collateral Management within the Department of Financial Services.

Barcode 589860 by Banking and Insurance on December 7, 2012:

The amendment clarified the timing when an insurer must deposit additional funds with the Commissioner of Insurance.

Barcode 621564 by Banking and Insurance on December 7, 2012:

Allows entities who have filed an application with the Office of Insurance Regulation to begin receiving policy data for the purpose of take outs from Citizens.

Barcode 721946 by Banking and Insurance on December 7, 2012:

A technical amendment adding “authorized insurer” as opposed to “admitted carrier.”

Barcode 914512 by Banking and Insurance on December 7, 2012:

The amendment requires surplus lines carriers seeking approval from the Office of Insurance Regulation must first:

- Provide biographical affidavits, fingerprint cards and criminal history reports on all officers and directors of the insurer and its parent or holding company.
- Complete a service of process consent and agreement form executed by the insurer.
- Provide proof that the insurer has been eligible or authorized insurer for not less than 3 years.
- Provide duly authenticated copy of the insurer's current audited financial statement, in English, with all monetary values therein expressed in United States dollars.
- A complete certified copy of the latest official financial statement required by the insurer's domiciliary state, if applicable.
- A copy of the United States trust account agreement, if applicable.

The amendment further details when the surplus lines insurer participating in the takeout program must deposit amounts equal to the unearned premium with the Department of Financial Services in order to protect the policy holders in the event of insolvency by the insurer.

Barcode 769920 by Banking and Insurance on December 7, 2012:

The amendment removes the requirement that the surplus lines insurer notify the policy holder that the policy offered is not covered by the Florida Insurance Guaranty Association.