

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 Appropriations

BILL: SB 1770
 INTRODUCER: Banking and Insurance Committee
 SUBJECT: Property Insurance
 DATE: April 2, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow/Burgess	Burgess	BI	BI SPB 7018 as introduced
2.	Betta	DeLoach	AGG	Fav/CS
3.	Betta	Hansen	AP	Pre-meeting
4.				
5.				
6.				

I. Summary:

SB 1770 enacts changes to property insurance laws including Citizens Property Insurance Corporation (Citizens).

The bill has an insignificant impact on revenues and expenditures to the state relating to processing rate filings and should reduce the liability of Citizens. In addition, the Florida Catastrophe Risk Capital Access Facility could need an indeterminate amount of funding to begin its operations before it becomes self sufficient. See Section V.

The changes to property insurance laws made by the bill include:

- Renames the Florida Hurricane Catastrophe Fund Finance Corporation to the State Board of Administration Finance Corporation.
- Creates a Florida Catastrophe Risk Capital Access Facility within the State Board of Administration to help insurers identify global capital available for additional coverage options around the various layers of the Florida Hurricane Catastrophe Fund (CAT Fund).
- Subjects Citizens Property Insurance Corporation to bad faith claims.
- Exempts Citizens from “exchange of business” restrictions, to facilitate the operations of the clearinghouse.
- Requires the Office of Insurance Regulation (OIR) to calculate and publish an annual property insurance inflation factor where property insurance rates filed below the inflation factor are to be deemed non-excessive by the OIR.
- Allows insurance companies to include in their rate filing reinsurance that is purchased to cover potential shortfalls in the Florida Hurricane Catastrophe Fund.

- Requires the Florida Commission on Hurricane Loss Projection Methodology to review the accuracy of hurricane models used to establish wind mitigation discounts.
- Allows the OIR to hold a public hearing for a rate filing when the filing exceeds 15 percent in counties where the office determines there is not a reasonable degree of competition.
- Allows insurers to use consent to rate for up to 10 percent of commercial policies enforce and up to five percent for personal policies enforce in counties where the office determines there is not a reasonable degree of competition.
- Redefines Citizens' mission to be non competitive through the use of a clearinghouse to ensure Citizens' coverage is only available to eligible applicants.
- Restructures the corporation's executive director's authority in relation to the board.
- Requires Senate confirmation of board members, except those appointed by the Speaker of the House of Representatives.
- Reduces the maximum Citizens' policy limit from \$2 million to \$1 million, and further reduces this amount by \$100,000 a year for five years.
- Prohibits Citizens from covering structures commencing construction after July 1, 2013, that are seaward of the coastal construction control line, unless built to code-plus.
- Allows Citizens to enter into risk-sharing agreements with private insurers.
- Clarifies a private company's offer within 15 percent of Citizens' rate makes both new and renewal policies ineligible for Citizens.
- Requires agents to certify and document a continued effort to seek private market placement for their policyholders that are in Citizens.
- Prohibits agent commissions on ineligible policies placed in Citizens after January 1, 2014.
- Requires Citizens to disclose potential surcharge and assessment liabilities with each renewal notice.
- Expands the Auditor General's operational audit and requires it be conducted annually.
- Requires Citizens' board to contract with an independent auditing firm to perform a full management audit of the corporation on a biannual basis.
- Allows Citizens to consider any non discriminatory approaches to reducing policies including a surplus note program that includes participation by mutual companies.
- Subjects Citizens to s. 287.057, F.S., pertaining to the procurement of commodities or contractual services.
- Requires Citizens rates must be actuarially sound, include an appropriate risk load factor and not compete with the private market. A noncompetitive rate is defined as the highest rate among the top 20 insurers writing in a given territory but where OIR sees no competitive market exists, rates must be actuarially sound.
- Requires all new policies, all personal lines residential non-wind policies that are non-homestead, non-renter occupied homes with a replacement cost over \$300,000 and nonresidential commercial policies be placed at the higher of the top 20 rate or an actuarially sound rate.
- Requires rates for personal lines residential wind-only policies that are non-homestead, non-renter occupied homes with a replacement cost over \$1 million on July 1, 2013, \$800,000 on January 1, 2014 and \$600,000 on January 1, 2015, be placed at the top 20 rate or actuarially sound, whichever is greater.
- Applies the glide path percentage by territory and not policy.
- Allows an increase of three percent for Citizens to purchase additional reinsurance and decreases by three percent (one percent per account) the Citizens policy surcharge.

- Requires Citizen's board to recommend to the Legislature a process in which policyholders with documented financial needs can receive some rate relief.
- Requires that all new and renewal applications, excluding commercial residential, must be submitted to the clearinghouse before the corporation can bind or renew coverage.
- Requires that any assignment of benefits for property insurance must comply with the policy conditions.
- Provides for an additional process by which the OIR may approve property and casualty forms, except for workers compensation filings.
- Except as otherwise expressly provided in this act, this act shall take effect July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 215.555, 624.155, 626.752, 627.062, 627.0628, 627.0629, 627.171, 627.351, 627.405, and 627.410, F.S.

This bill creates sections 215.5551, 627.3518, and 627.4102, Florida Statutes.

II. Present Situation:

Citizens Property Insurance Corporation (Citizens)

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.¹ Citizens 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 Governors³ (board) that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. Citizens is subject to regulation by the Florida Office of Insurance Regulation.

Citizens Accounts

Citizens offers three types of property and casualty insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.⁴ Assets may not be commingled or used to fund losses in another account.⁵ The three Citizens accounts are:

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

² Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

³ The Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives appoint two members each.

⁴ The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

⁵ Section 627.351(6)(b)2b., F.S.

- Personal Lines Account (PLA): Statewide account offering multiperil policies covering homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.
 - Policies in Force: 838,143.
 - In Force Premium: \$1,379,410,864.
 - Total Exposure: \$175,864,284,312.
- Coastal Account (COASTAL): Coastal area account offering personal residential wind-only policies, commercial residential wind-only policies and commercial nonresidential wind-only policies issued in limited eligible coastal areas. In addition, Citizens began offering personal and commercial residential multiperil policies in the Coastal account in August of 2007.
 - Policies in Force: 438,642.
 - In Force Premium: \$1,144,655,922.
 - Total Exposure: \$191,101,715,209.
- Commercial Lines Account (CLA): Statewide account offering multiperil policies covering commercial residential-condominium associations, apartment buildings and homeowners associations; and commercial non-residential policies.
 - Policies in Force: 8,016.
 - In Force Premium: \$200,296,331.
 - Total Exposure: \$38,748,152,744.

The total of all accounts combined is as follows:⁶

- Policies in Force: 1,284,801.
- In Force Premium: \$2,724,363,117.
- Total Exposure: \$405,714,152,265.

Citizens Financial Resources

“Citizens’ financial resources include insurance premiums, investment income, operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. As of December 13, 2013, Citizens will have an accumulated surplus of approximately \$6.34 billion. For the 2013 hurricane season Citizens will have purchased \$1.75 billion in private reinsurance coverage along with the \$5.73 billion in mandatory layer reinsurance from the FHCF. For the 2013 hurricane season Citizens’ probable maximum loss (PML) from a 1-in-100 year event is \$20.42 billion.”

If a deficit occurs in a Citizens account, Citizens is authorized to levy assessments on its policyholders and on each line of property and casualty line of business other than workers’ compensation insurance and medical malpractice insurance.⁷ The assessments Citizens may impose and their sequence is as follows:

⁶ Citizens weekly report as of 3/1/2013 on file with committee staff.

⁷ 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.

- Citizens Surcharge - Requires up to 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied on each of the three Citizens' accounts with a maximum assessment of 45 percent of premium.
- Regular Assessment - If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers (except medical malpractice and workers comp). The assessment may be recouped from policyholders through a rate filing process of up to two percent of premium or two percent of the deficit, whichever is greater. This assessment is not levied against Citizens' policyholders.
- Emergency Assessment - Requires any remaining deficit for either of Citizens three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers comp), but including Citizens' policyholders. This assessment is levied up to 10 percent of premium or 10 percent of the deficit per account, whichever is greater. The maximum emergency assessment that can be levied against Florida's varicose insurance policyholders is 30 percent per policy.

Citizens Rates

Citizens rates for coverage are required to be actuarially sound and are subject to the rate standards for property and casualty insurance in s. 627.062, F.S., except as otherwise provided.⁸ From 2007 until 2010, Citizens rates were frozen by statute⁹ 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.¹⁰ Citizens must implement an annual rate increase which does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the FHCF coverage, pursuant to s. 215.555(5)(b), F.S.

Florida Hurricane Catastrophe Fund

The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt fund that contracts with each admitted residential property insurer to provide reimbursement for losses caused by hurricanes.¹¹ The FHCF is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention (deductible). All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The FHCF is authorized by statute to sell \$17 billion of mandatory layer coverage. Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the

⁸ Section 627.351(6)(n)1., F.S.

⁹ Section 627.351(6)(n)4., F.S.

¹⁰ Ch. 2009-87; s.10, L.O.F.

¹¹ Section 215.555, F.S.

fund. For example, if an insurer paid 10 percent of the total premium paid in a contract-year, then that insurer would be eligible to receive up to 10 percent of the mandatory layer of coverage (\$1.7 billion of the \$17 billion mandatory layer). Insurers that experience multiple hurricanes causing loss during the contract year may receive reimbursement from the FHCF for losses that exceed the applicable retention. The insurer's full retention is applied to each hurricane causing the two largest losses for that insurer. For each other covered event resulting in losses, the insurer's retention is only one-third of the full retention.

The FHCF provides insurers an additional source of reinsurance that is significantly less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers. The FHCF must charge insurers the actuarially indicated premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

Private Reinsurance

A direct insurance writer will often spread its risk by purchasing reinsurance coverage from a private reinsurance carrier as an addition to the mandatory coverage the direct insurer must purchase through the FHCF. Currently some insurers purchase private reinsurance within the covered layers of the FHCF to insure against any short falls of the fund but the costs associated with purchasing such additional coverage may not be passed on to the policy holders. A reinsurance contract will specify the layer of the direct writer's risk that is shifted to the reinsurer and the premium that the direct writer must pay the reinsurer to assume the risk. The premium costs associated with the purchase of reinsurance are ultimately passed on to policyholders.

Representatives from the Office of Insurance Regulation believe there could be various opportunities in today's market for insurers in this state to access large amounts of capital for reinsurance needs, around the mandatory layers of the FHCF, at lower costs than are currently purchased in the traditional reinsurance markets. To maximize the cost savings in accessing these markets it is believed pooling the reinsurance needs of multiple companies could increase their purchasing power.

Bad Faith

Bad faith liability is premised on the concept that an insurer that handles a claim should act in good faith towards its insured and "has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business."¹² Florida recognizes two bad faith causes of actions against insurers: first party bad faith and third party bad faith. Florida first recognized Third-party bad faith at common law in 1938. Third-party bad faith protects an insured from the insurer failing to settle a claim brought by a third party in good faith and exposing the insured to a judgment in excess of policy limits. Florida courts refused to recognize a first-party bad faith tort until it was established by the Legislature in 1982 with the enactment of s. 624.155, F.S., the Civil Remedy statute.

¹² *Boston Old Colony Ins. Co. v. Gutierrez*, 386 So.2d 783 (Fla. 1980).

Section 624.155, F.S., permits any person to bring a civil action against an insurer, except Citizens Property Insurance Corporation, when the insurer commits certain acts or the insured is damaged by statutory violations¹³ of the insurer. Specifically, the insured may bring the claim when the insurer does not attempt to settle a claim in good faith when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward the insured and with due regard to the interests of the insured. A claim may also be brought if the insurer makes claims payments without identifying the coverage under which the payment is made or attempts to influence settlements under one portion of the insurance policy by refusing to promptly resolve a claim it should settle under another portion of the policy. The insurer is not liable for bad faith liability until the Plaintiff obtains adjudication in its favor at trial or on appeal, at which point insurer liability for bad faith, costs and reasonable attorney's fees attaches. The insured must prove that the insured committed bad faith in order to obtain recovery.

Public Rate Hearing

Each admitted property and casualty insurer is required to make a rate filing with the OIR.¹⁴ The insurer may file rates for approval with the OIR either 90 days before the proposed effective date ("file and use") or 30 days after the rate filing is implemented ("use and file"). Under the file and use option, the OIR must finalize its review by issuing a notice of intent to approve or disapprove within 90 days after receipt of the filing; otherwise the filing is deemed approved. Under the "use and file" option, an insurance company may implement the filing prior to approval, but may be ordered by OIR to refund to the policyholder that portion of the rate found by the OIR to be excessive. The OIR may disapprove a rate filing if it determines such rates to be "excessive, inadequate, or unfairly discriminatory" as these terms are defined. The law specifies numerous factors which the OIR must consider in making this determination. The Office must hold a public hearing for any rate filing exceeding 15 percent that is based in whole or part on data from a computer model.¹⁵

Excess Rates

Current law allows an insurer to offer to an insured a rate above the current approved rate. The insured must consent in writing to the increased rate and the signed agreement must remain on file with the Office for three years.¹⁶ The number of policyholders who may consent to excess rates are limited to no more than 10 percent of the commercial insurance policies and no more than five percent for personal lines insurance policies written or renewed by an insurer during each calendar year.¹⁷

¹³ Violations giving rise to a statutory bad faith claim are s. 626.9541(1)(i), (o), or (x), F.S.; s. 626.9551, F.S.; s. 626.9705, F.S.; s. 626.9706, F.S.; s. 626.9707, F.S.; or s. 627.7283, F.S.

¹⁴ s. 627.062, F.S.

¹⁵ s. 627.0629(6), F.S.

¹⁶ s. 627.171(2), F.S.

¹⁷ Id.

Procurement of Commodities or Contractual Services

Current law regulates state agency¹⁸ procurement of personal property and services.¹⁹ The Department of Management Services is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.²⁰

Insurable Interest

Current law provides that a contract for property of insurance can only be enforced for the benefit of someone having an insurable interest in the property insured at the time of the loss.²¹ An insurable interest²² is an “actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.” The insurable interest requirement is intended to reduce moral hazard, which is present when the beneficiary will obtain greater benefit from the insurance policy proceeds than from the ongoing safety of the subject of the policy.

OIR Approval of Forms

Each basic insurance policy form,²³ unless otherwise exempted,²⁴ must be approved by the OIR before the form can be used by an insurance company.²⁵ Each form must be filed at least 30 days prior to its use in policies delivered or issued for delivery in this state. The OIR must approve or disapprove the form within 30 days or it is deemed approved.²⁶ The OIR, however, under s. 627.410(4), F.S., has the authority to exempt by order an insurance form or type of form from the approval process for as long as it deems proper²⁷ if the filing and approval process cannot be practicably applied or is not desirable or necessary for the protection of the public.²⁸

¹⁸ As defined in s. 287.012(1), F.S., “agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.

¹⁹ Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

²⁰ See ss. 287.032 and 287.042, F.S.

²¹ s. 627.405(1), F.S.

²² Historically, the English Parliament created the first insurable interest requirement in 1746, when it required an insurable interest in the life and continued operation of English ships and their crews in order to prevent life or casualty insurance from being bought as a form of gambling that has the additional effect of hoping for the death and destruction of the ship and its crew in order to win the bet. A later law was passed in 1774 that required an insurable interest for the purchase of any policy of life insurance. That law was passed primarily to stop the practice of buying life insurance on the life of elderly celebrities and persons accused of capital crimes, which was being done for gambling and entertainment purposes at the time.

²³ Statutorily required forms requiring OIR approval prior to use are basic insurance policies, annuity contracts, application forms where a written application is required and is part of the policy or contract, group certificates issued under a master contract delivered in Florida, and printed riders, endorsement forms, or forms of renewal certificates.

²⁴ Statutorily exempted forms are surety bonds or policies, riders, endorsements, or forms of unique character that are designed and used with relation to insurance upon a particular subject (other than health insurance)

²⁵ s. 627.410(1), F.S.

²⁶ The Office may extend the form review process 15 days.

²⁷ s. 627.410(4), F.S.

²⁸ Id.

In 2012, the OIR issued three orders exempting certain insurance forms from being filed and approved prior to use. The first order, issued on April 9, 2012, exempted specified commercial insurance lines²⁹ from the prior approval requirement of s. 627.410, F.S., for one year.³⁰ Instead, such commercial insurers were permitted to make an informational form filing 30 days prior to using the forms, accompanied by a notarized certification that the submitted form filing complies with Florida law and acknowledging that if the forms are not in compliance, the company is subject to appropriate regulatory action. The OIR premised its order on the rate review exemption granted these types of commercial insurance policies, that the consumers of commercial insurance products are sophisticated parties with experience in insurance transactions, and the office's high volume of commercial form filings which had taxed its review resources and resulted in a lengthier review period for many commercial forms.

The second order, issued on June 25, 2012, exempted all property and casualty insurance forms, except workers' compensation, from the prior approval requirements for one year.³¹ Insurers were permitted to make an informational filing accompanied with a notarized certification 30 days prior to using the forms. This order was predicated on findings that insurers had recently filed a historically high number of property and casualty forms with the OIR due to law changes, and that requiring OIR to review and approve forms before they could be used in the market was not practicable where the form had been diligently and thoroughly reviewed by the insurer for quality and legal sufficiency. The third OIR order issued on December 2, 2012, provided a clarification relating to the insurer's certification of compliance, but otherwise did not change the order of June 25, 2012.

Since the first order exempting certain commercial insurance forms from OIR filing and approval, the OIR has received 4,765 form filings that qualify for the exemption. Out of the qualifying filings, 939 filings opted to be exempt from the filing and approval process. Accordingly, to date, approximately 20 percent of the form filings have utilized the exemption.

Representatives from the OIR indicate that over 90 percent of all property and casualty insurance form filings contain a violation of Florida Law that must be addressed prior to the filing being approved. The lines of business that historically have the highest indices of non-compliant forms are the automobile and property lines of business (both personal and commercial), which OIR representatives opined likely stem from the high number of regulations that apply to these lines, the frequency of regulatory changes, and perhaps a high incidence of litigation.

²⁹ The commercial lines exempted by the order from the form review process were those that are exempted from prior rate review by s. 627.062(3)(d), F.S. The categories of commercial risks exempted from prior rate review are (a) Excess or umbrella, (b) surety and fidelity, (3) boiler and machinery and leakage and fire extinguishing equipment, (d) errors and omissions, (e) directors and officers, employment practices, fiduciary liability, and management liability, (f) intellectual property and patent infringement liability, (g) advertising injury and Internet liability insurance, (h) property risks rated under a highly protected risks rating plan, (i) general liability, (j) nonresidential property, except for collateral protection insurance, (k) nonresidential multiperil, (l) excess property, (m) burglary and theft, and (n) any other commercial lines that the OIR determines should not be subject to prior rate review because a competitive market for such existence exists, such insurance is similar to other types of exempt insurance, or if the exemption will improve the general operational efficiency of the office.

³⁰ Office of Insurance Regulation, *Order Exempting Specified Forms From The Requirements of Section 627.410, Florida Statutes*, (April 9, 2012).

³¹ Office of Insurance Regulation, *Order Exempting Specified Forms From The Requirements of Section 627.410, Florida Statutes*, (June 25, 2012).

III. Effect of Proposed Changes:

Section 1 amends s. 215.5551, F.S., and renames the Florida Hurricane Catastrophe Fund Finance Corporation to the State Board of Administration Finance Corporation.

Section 2 creates s. 215.5551, F.S., which establishes the Florida Catastrophe Risk Capital Access Facility (Facility) within the State Board of Administration, effective July 1, 2013. The major purpose of the Facility is to help small domestic property insurers access the global risk capital markets and risk transfer mechanisms. The facility will perform four functions:

- Aggregate the demand for risk finance from global capital markets among smaller volume domestic property insurance companies;
- Design and execute risk-transfer tools such as insurance-linked securities and other securitization models for participating insurers, and use special purpose vehicles or protected cells, onshore or offshore, as appropriate, to increase access to risk capital;
- Identify and coordinate appropriate risk-transfer products and opportunities, with an initial focus on the portion of the reinsurance market that provides layers of coverage below, alongside, and above the CAT Fund; and
- Establish and maintain contact with global risk capital market participants, institutions, and investors for the purpose of satisfying and coordinating insurer demand for additional risk capital.

The Facility is prohibited from acting as an insurer, reinsurer, or other risk-bearing entity. In conducting its affairs, the facility may not take a position in, or provide financial support for, risk-transfer transactions, be a guarantor of premium or make any other financial guarantees to participating insurers, create contractual obligations on the part of the state or levy taxes or assessments. After an initial apportionment for startup purposes, the Facility will be funded entirely by participating insurers on a pro rata basis.

A seven-member board of directors governs the Facility, made of one representative each from the Department of Financial Services, State Board of Administration, the Office of Insurance Regulation, Florida property insurance writers, the reinsurance community, and the financial securities industry, and the seventh member is appointed by a majority of the board. The board may employ or contract staff and professionals the board deems necessary to accomplish its purpose. There shall be no liability on the part of, and no cause of action of any nature may arise against, the facility or its agents or employees, the board of directors, or the department or office or their representatives for any action taken by them in the performance of their powers and duties under this section.

Section 3 amends s. 624.155, F.S., to allow for a civil action to be brought against Citizens Property Insurance Corporation for “bad faith” violations. This section refers to Citizens Property Insurance Corporation as an agent of the state and grants the corporation sovereign immunity protection under s. 768.28, F.S., for purposes of limiting the amount of a judgment that can be awarded should the corporation have been found by a court to have acted in bad faith.

Section 4 amends s. 626.752, F.S., exempting Citizens' clearinghouse from exchange of business restrictions when placing new and renewal business with authorized insurers in order to reduce the size of the corporation pursuant to s. 627.3511, F.S.

Section 5 amends s. 627.062, F.S., to allow insurers to include in their rate filings the cost for reinsurance that is purchased to protect against any potential shortfalls within the FHCF. Currently, companies are prevented by the Office from passing through to policyholders the cost of this layer of reinsurance. This section of the bill also requires the OIR to calculate and publish an annual property insurance inflation factor. Property insurance rates filed below the inflation factor are to be deemed non-excessive.

Section 6 amends s. 627.0628, F.S., to require that the Florida Commission on Hurricane Loss Projection Methodology (FCHLPM) review the accuracy of hurricane models used to establish wind mitigation discounts. Currently the FCHLPM is required to review all hurricane loss projection models.³² This section expands their oversight to include mitigation models used in establishing wind mitigation discounts.

Section 7 amends s. 627.0629, F.S., regarding residential property insurance rate filings. The bill revises the mandatory public hearing that currently must be held for any rate filing that exceeds 15 percent and is based on computer modeling data. Instead, the bill states that the office may hold a public hearing for a rate filing that exceeds 15 percent in counties the office determines lack a reasonable degree of competition and is based on computer modeling data. The bill also eliminates the requirement that the Office of Insurance Regulation determine the discounts, credits, rate differentials, and deductible reductions that reflect the full actuarial value of mitigation techniques and thus may be used by insurers in rate filings.

Section 8 amends s. 627.171, F.S., to allow insurers to offer consent to excess rates to any number of policy holders in counties the Office determines have a reasonable degree of competition. In counties the Office determines do not have a reasonable degree of competition, consent to excess rates is limited to no more than 10 percent of the commercial insurance policies and no more than five percent for personal lines insurance policies written or renewed by an insurer during each calendar year.

Section 9 amends s. 627.351(6), F.S., the Citizens Property Insurance Corporation statute.

Citizens Eligibility

The bill makes ineligible for Citizens coverage:

- Personal lines residential structures with a dwelling replacement cost of \$1 million or more on January 1, 2014; \$900,000 or more on January 1, 2015; \$800,000 or more on January 1, 2016; \$700,000 or more on January 1, 2017; \$600,000 or more on January 1, 2018; \$500,000 or more on January 1, 2019.
- Single condominium units with a combined dwelling and contents replacement cost of \$1 million or more on January 1, 2014; \$900,000 or more on January 1, 2015; \$800,000 or

³² s. 627.0628, F.S

more on January 1, 2016; \$700,000 or more on January 1, 2017; \$600,000 or more on January 1, 2018; \$500,000 or more on January 1, 2019.

- Personal lines residential insurance risks currently insured by Citizens that receive an offer for comparable coverage from an admitted insurer at a premium that is within 15 percent or less of the insured's Citizens premium, including policyholders removed through an assumption agreement.
- Structures located seaward of the Coastal Construction Control Line, for which a Notice of Commencement has been issued on or after July 1, 2013, that do not meet the coastal code-plus building code criteria developed and recommended by the Florida Building Commission.
- Policies that are offered Citizens coverage through a risk-sharing agreement and do not accept the offer of coverage.

Citizens Risk-Sharing Agreements

The bill authorizes Citizens to enter into risk-sharing agreements with authorized insurers, wherein the corporation agrees to retain part of the risk for a specific group of policies or specified perils within a group of policies as part of the terms for the authorized insurer removing such policies from Citizens. The terms of each risk-sharing agreement must ensure that the consideration received by Citizens is commensurate with the risk it is retaining and the risk assumed by the authorized insurer. Citizens may not share risk for bad faith. The agreement must also specify the proportion of exposure the authorized insurer reports for the FHCF and the exposure retained by Citizens, both of which may purchase FHCF coverage for the risk each bears. The risk-sharing agreement program replaces the quota-share primary insurance program currently authorized in s. 627.351(6)(c)2., F.S.

Citizens may act as a reinsurer or cedent under a risk sharing agreement or excess of loss agreement. If Citizens is the reinsurer, the insurance policy forms and endorsements of the admitted insurer must be approved by the office, cover all perils that are the subject of the agreement, and cover at least the same limits as the Citizens policies being replaced. Risk sharing agreements must be filed by the authorized insurer with the OIR for review and approval prior to the execution of the agreement, but are not subject to the requirements of a take-out or keep-out program under the Citizens statute or s. 627.3517, F.S.

Executive Director

The bill requires the executive director of the corporation to be appointed by the Governor and Chief Financial Officer. The Senate must confirm the executive director during the legislative session following the initial appointment. The Senate must reconfirm the executive director after every election or reelection of the Governor and Chief Financial Officer. The bill allows the executive director to act with the concurrence of the board on matters currently acted upon by the board.

Board Members

The bill requires the Senate to confirm the board members appointed by the Governor, Chief Financial Officer and the President of the Senate. The bill further limits board members current

three-year term to no more than two terms, excluding any remainder of a term served due to vacancy. The Chief Financial Officer shall designate one appointee as board chair for the purpose of presiding over the orderly conduct of meetings, but an appointee can serve no more than one term as chair.

Citizens Surplus Note Agreements

The bill authorizes the corporation to adopt programs for the removal of policies from the corporation through a loan from the corporation to an insurer secured by a surplus note. The corporation can require such provisions as are necessary and reasonable. The surplus note is subject to the review and approval by the OIR. The corporation can establish standards for the program, including the maximum size of a loan, capital matching requirements, the relationship between the aggregate number of policies or loss exposure to the amount of the loan, retention requirements, and limitations on the number of insurers receiving loans. The bill provides that if a loan secured by a surplus note is provided to a new mutual insurance company, the corporation can: require the board of the new mutual insurer to have a majority of independent board members; restrict the ability of the new mutual insurer to convert to a stock insurer; establish a capital match requirement of up to \$1 of private capital for each \$4 of the loan, and; limit the eligibility of a new mutual insurer for a waiver of the ceding commission.

Citizens Insurance Agents

The bill requires each Citizens agent to maintain documentation that warrants and certifies that alternative coverage was annually sought for each risk placed in Citizens by the agent in accordance with s. 627.3518, F.S. Effective January 1, 2014, an agent who places an ineligible policy in Citizens will not receive agent commissions.

Audits of Citizens

The bill requires the Auditor General to annually conduct an operational audit of Citizens that evaluates management's performance, rather than every three years. The scope of the audit is expanded to include financing arrangements made to address a 100-year probable maximum loss; personnel costs and administration; and underwriting, including processes designed to ensure compliance with policy eligibility requirements of law. A copy of the audit must be provided to the Citizens board of directors, the President of the Senate, the Speaker of the House of Representatives, each member of the Financial Services Commission, and the Office of Insurance Regulation.

The Citizens board must contract with an independent auditing firm to conduct a performance audit of the corporation every two years. The performance audit must include an evaluation, within the context of insurance industry best practices, of Citizens' strategic planning processes, the functionality of Citizens' organizational structure, the compensation levels of senior management, and the overall management and operations of Citizens. A copy of the audit must be provided to the Citizens board of directors, the President of the Senate, the Speaker of the House of Representatives, each member of the Financial Services Commission, and the Office of Insurance Regulation. The initial audit must be completed by June 1, 2014.

Other Citizens Provisions

The bill amends the required Acknowledgment of Potential Surcharge and Assessment Liability form that must be signed by each Citizens applicant. The revised form provides notice that each Citizens policyholder is subject to the policyholder surcharge of up to 45 percent of premium, that eligibility for Citizens coverage is predicated on first trying to obtain private market coverage, and that private market insurance rates are regulated and approved by the State.

Section 10 amends s. 627.351(6)(e) subjecting Citizens Property Insurance Corporation to s. 287.057 F.S., relating to the purchasing of commodities and contractual services. Services provided by tradepersons or technical experts to assist a licensed adjuster in the evaluation of individual claims are not subject to the procurement requirements of this section. Additionally, the procurement of financial services providers and underwriters must be made pursuant to s. 627.3513. The bill requires that any person affected by the corporation's decision or intended decision to award a contract must file a written notice of protest within 72 hours after the corporation posts its notice of decision. A formal written notice must be filed within 10 days of the date the notice to protest is filed. The formal written protest must state with particularity the facts and law upon which the protest is based. Upon receipt of a formal written protest that has been timely filed, the corporation must stop the solicitation or contract award process until the subject of the protest is resolved by final board action unless the executive director sets forth in writing particular facts and circumstances that require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare. The corporation must provide an opportunity to resolve the protest by mutual agreement between the parties within seven business days after receipt of the formal written protest. If the subject of a protest is not resolved by mutual agreement within seven business days, the corporation's board must place the protest on the agenda and resolve it at its next regularly scheduled meeting. The protest must be heard by the board at a publicly noticed meeting in accordance with procedures established by the board. In a protest of an invitation-to-bid or request-for-proposals procurement, submissions made after the bid or proposal opening which amend or supplement the bid or proposal may not be considered. In protesting an invitation-to-negotiate procurement, submissions made after the corporation announces its intent to award a contract, reject all replies, or withdraw the solicitation that amends or supplements the reply may not be considered. Unless otherwise provided by law, the burden of proof rests with the party protesting the corporation's action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the corporation's board must conduct a de novo proceeding to determine whether the corporation's proposed action is contrary to the corporation's governing statutes, the corporation's rules or policies, or the solicitation specifications. The standard of proof for the proceeding is whether the corporation's action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended corporation action to reject all bids, proposals, or replies, the standard of review by the board is whether the corporation's intended action is illegal, arbitrary, dishonest, or fraudulent.

Section 11 requires the purchasing of commodities and contractual services by Citizens Property Insurance Corporation commenced before October 1, 2013, be governed by the law in effect on September 30, 2013.

Section 12 amends s. 627.351(6)(n), F.S., to create new rating standards for Citizens' policyholders. The bill requires that Citizens rates are to be actuarially sound and not competitive with those charged in the admitted voluntary market. Actuarially sound rates are to be established by including an appropriate catastrophe risk load factor that reflects Citizens' actual risk exposure. Except when applied to mobile homes, rates are defined as not competitive with the voluntary market if the average rates of the corporation for each rating territory are no lower than the average rates charged by the insurer that had the highest average rate in that rating territory among the 20 admitted insurers with the greatest total direct written premium in the state for that line of business in the preceding year. As applied to mobile homes, rates are defined as not competitive with the voluntary market if the average rates of the corporation for each rating territory are no lower than the average rates charged by the insurer that had the highest average rate in that rating territory among the five admitted insurers with the greatest total direct written premium in the state for that line of business in the preceding year.

Actuarially sound rates are to be applied to new and renewal policies covered by the corporation in territories where the OIR determines there is not a reasonable degree of competition.

Rates that are not competitive with the voluntary market must be charged by Citizens to:

- New policyholders;
- Renewal non-wind policyholders that have a dwelling replacement cost of \$300,000 or greater;
- Renewal wind-only policyholders that have a dwelling replacement cost greater than \$1 million on July 1, 2013; \$800,000 on January 1, 2014; \$600,000 on January 1, 2015.
- Non-homestead personal residential properties that are not occupied by renters as a permanent resident.

The bill provides that Citizens shall also implement a rate increase of up to three percent, to be used to purchase catastrophe reinsurance or other risk transfer mechanisms. The increase must reflect the actual cost of the catastrophe reinsurance or other risk transfer mechanisms. In any year for which this three percent increase is imposed, Citizens must allow a corresponding three percent decrease, one percent per account, from the Citizens policyholder surcharge, if any is imposed.

The bill provides that Citizens is to certify to OIR that its rates are in compliance with statutory requirements, but if any adjustment is necessary to ensure compliance, the corporation must implement the adjustment and file its revised rates with the OIR. If the OIR then determines that the rates are out of compliance, the OIR will require Citizens to amend its rates in its next rate filing.

The bill provides that Citizens must provide recommendations to the Legislature on how to provide relief for policyholders who demonstrate a financial need to pay the full cost of their premiums.

Section 13 creates s. 627.3518, F.S., to recognize that the corporation currently has authority to establish a clearinghouse to determine the eligibility of new and renewal risks who are seeking coverage. The bill requires the corporation to implement such a clearinghouse by July 1, 2013.

The bill requires that all new and renewal applications, excluding commercial residential, must be submitted to the clearinghouse before the corporation can bind or renew coverage. The clearinghouse:

- Must develop an application process to facilitate private insurers in determining whether or not to make an offer of coverage through the clearinghouse.
- Must enter into contracts with Florida property insurance companies to participate in the clearinghouse and must accept appointments from voluntary market insurers.
- Must require all new and renewal applicants to be submitted to the clearinghouse to see if there are any offers of coverage from an authorized insurer.
- Must require all new applications for coverage to be subject to a 48-hour period that allows a private insurer participating in the clearinghouse to select applicants for coverage.
- Allows an applicant to accept an offer from a surplus lines insurer if the applicant does not receive an offer of coverage from admitted insurers.
- May charge a reasonable fee as a percentage of an agent's commission to offset the costs of the clearinghouse. Insurers participating in the clearinghouse are not required to pay a fee or use the clearinghouse.

All licensed insurers are authorized to participate in the clearinghouse. Insurers making offers of coverage through the clearinghouse are allowed, but not required, to appoint the agent whose customer is bound and underwritten through the clearinghouse for as long as that policy remains with the insurer. If the insurer does not appoint the agent, it must enter into a limited agency agreement with the agent who is not appointed. If an insurer makes an offer for an applicant whose agent is an exclusive agent, that agent can give the applicant an opportunity to accept coverage from an insurer with whom the agent has a limited servicing agreement. All agents must maintain the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the clearinghouse.

The corporation is authorized to recognize private entities that independent agents may elect to use as an alternative to the clearinghouse. The alternative option cannot be used as a replacement for the clearinghouse. Neither the clearinghouse nor an alternative private entity can prohibit insurers from electing to participate in more than one program, but an insurer participating in the private entity alternative must also participate in the clearinghouse.

Section 14 amends s. 627.405, F.S., by specifying that a property insurance policyholder may assign the benefits from contract, subject to the conditions in the policy.

Section 15 amends s. 627.410, F.S., making technical changes.

Section 16 creates s. 627.4102, F.S., which allows an alternative mechanism to the current form filing and approval process required by s. 627.410, F.S. The bill specifies that except for workers' compensation forms, all property and casualty forms are exempt from the requirements of s. 627.410, F.S., if they meet the requirements of s. 627.4102, F.S., which are:

- The form must be electronically submitted to the OIR in an informational filing 30 days before delivery of the form within the state.
- The informational filing must include a certification of compliance signed by the insurer's president, chief executive officer, general counsel, or an employee of the insurer responsible for the filing on behalf of the insurer. The bill specifies the language that must be included in the certification.
- If the form is not in compliance with state laws and rules, the form filing is subject to the prior approval requirements of s. 627.410, F.S.
- For a renewal policy that contains a change, a Notice of Change in Policy Terms form must be included as a part of the informational filing.

July 1, 2013, is the effective date of the bill, except as otherwise expressly provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The Citizens' clearinghouse would need to have a public records exemption to protect certain policyholder information from public disclosure.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill authorizes Citizens' clearinghouse to charge a reasonable fee as a percentage of an agent's commission to offset the costs of the clearinghouse.

B. Private Sector Impact:

Subjecting Citizens Property Insurance Corporation to bad faith may allow claimants to obtain judgments in excess of contract limits in certain instances. To the extent that this impacts overall claims, it may be added to post-catastrophe assessments in the years for which an assessment is levied.

The bill allows insurance companies to use the property insurance inflation factor published annually by OIR, in lieu of a full rate examination. The use of the published inflation factor could have the effect of inducing some insurance companies to seek an increase that is within the factor in order to avoid a full rate examination.

The bill allows insurance companies to include in their rate filings the cost of private reinsurance purchased to cover potential shortfalls in the amount of reimbursement obtained from the FHCF. To the extent that primary insurers avail themselves of this provision, it could increase the direct written rates, but it could also increase the assurance that the direct writer will be able to meet its obligations to policyholders.

The bill limits eligibility for obtaining coverage from Citizens to those properties with a replacement cost of \$1 million or more on January 1, 2014; \$900,000 or more on January 1, 2015; \$800,000 or more on January 1, 2016; \$700,000 or more on January 1, 2017; \$600,000 or more on January 1, 2018; \$500,000 or more on January 1, 2019. This provision will require those affected properties to find coverage in the private market, but it will reduce the exposure of other Florida property and casualty insurance policyholders who are subject to assessments to cover Citizens' excess losses.

Currently, an applicant seeking new coverage from Citizens is not eligible for coverage if the applicant has received an offer from a private admitted carrier that is within 15 percent of the rate offered by Citizens for comparable coverage. The bill applies this same eligibility standard to policyholders seeking to renew with Citizens, and requires every new and renewal applicant, excluding commercial residential, to go through a clearinghouse that is created to assure that Citizens does not cover anyone who can obtain reasonable coverage in the private market. These provisions could require some current Citizens' policyholders to purchase coverage in the private market, but it could reduce the exposure of other Florida property and casualty insurance policyholders who are subject to assessments to cover Citizens' excess losses.

The bill requires that all new policies, non-homestead non-renter occupied properties, non-wind policy homes with a replacement cost of over \$300,000 and wind-only policy homes with a replacement cost over \$1 million on July 1, 2013, \$800,000 on January 1, 2014 and \$600,000 on January 1, 2015, be charged a rate that is noncompetitive with the private market (highest of the top 20 insurers writing in a given territory) or an actuarially sound rate. This provision will increase the ability of the private insurance market to compete for customers who currently are likely to obtain coverage with Citizens. The changes are also likely to reduce the policy count of Citizens, thus reducing the likelihood of assessment. The change will raise the rates for Citizens current policyholders affected by this provision, and will require all new policyholders to pay higher Citizens premiums than under current law.

Application of the Citizens glide-path by territory will result in some Citizens policyholders incurring rate increases in excess of 10 percent. Accordingly, such policyholders will be brought closer to paying an actuarially sound rate.

C. Government Sector Impact:

The costs associated with the operations of the Florida Catastrophe Risk Capital Access Facility will be funded from participating insurers on a pro rata basis.

The bill requires the OIR to calculate and publish an annual property insurance inflation factor and can be accomplished within existing resources. The use of the published inflation factor will reduce the resources necessary to perform an in-depth rate analysis on the companies that use the factor in lieu of a full rate filing. The amount of this reduction is dependent on the number of companies that forgo the full examination and is indeterminate.

The bill removes from the OIR the responsibility to determine the amount of rate discount that is applicable for wind mitigation techniques. This will decrease the expenditures of the OIR over time.

Current law requires the Auditor General to perform an audit of Citizens Property Insurance Corporation once every three years. The bill requires an annual audit by the Auditor General and can be absorbed with existing resources. Additionally, there is a cost to Citizens associated with the requirement that they contract with a private auditing firm every two years. This is estimated to cost \$400,000 and will be added to their overall operating expense.

The Citizens three percent increase to purchase additional reinsurance and associated three percent decrease in the Citizens policyholder surcharge will increase the funds available for Citizens to pay claims in the event of a hurricane. This will reduce the likelihood of assessments on policyholders to fund a deficit in a Citizens account.

Allowing property and casualty insurers to certify forms as complying with Florida law in lieu of obtaining prior approval from the OIR, will result in a decrease in workload for the OIR and will reduce its funding needs in the future.

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:

None.