HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 835 Citizens Property Insurance Corporation
SPONSOR(S): Insurance & Banking Subcommittee; Wood
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 1 N, As CS	Callaway	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

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. It is not a private insurance company.

As of January 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies extending approximately $418 billion of property coverage to Floridians. Citizens insures over 444,000 residential and commercial policies in Florida's coastal areas and over 835,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas.

The bill contains numerous changes to Citizens. Changes include:

- creating an Inspector General for Citizens who reports to the Financial Services Commission,
- precluding Citizens' policyholders from renewing insurance with Citizens if an insurer in the private market will insure the property for a premium up to five percent more than the Citizens' renewal premium,
- precluding Citizens from insuring property with a dwelling replacement cost or a condominium unit that has a dwelling and contents replacement cost of $500,000 or more, implemented over a six year period,
- precluding Citizens from insuring major structures for which a building permit for new construction is applied for on or after July 1, 2014, or for which a building permit for a substantial improvement of the structure is applied for on or after July 1, 2014, and which is located seaward of the coastal construction control line or within the Coastal Barrier Resources System,
- authorizing Citizens to require repair of damaged property, instead of paying to replace it, and
- authorizing insurers taking policies out of Citizens to use Citizens' policy forms for three years which will allow these insurers to insure the property with reduced coverage and to require repair of the property instead of paying to replace it.

The bill has no impact on state or local government. The bill should reduce the number of policies in Citizens. This also reduces the amount of potential losses for Citizens which, in turn, decreases the likelihood and amount of a deficit in Citizens causing assessments on Citizens' and non-Citizens' policyholders. Some current Citizens' policyholders will no longer be able to obtain insurance in Citizens and will have to purchase insurance in the private market which may be more expensive than Citizens' insurance. Citizens and insurers taking policies out of Citizens will be able to ensure damaged property is repaired. Insurers taking policies out of Citizens will be able to reduce their exposure on the policies by insuring them for the reduced coverage offered by Citizens for three years. However, policyholders previously insured by Citizens who are taken out will not get the more comprehensive coverage offered by the insurer to its' other policyholders.

The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill contains numerous changes to Citizens Property Insurance Corporation (Citizens or corporation). Changes include:

- creating an Inspector General for Citizens,
- restricting the eligibility for insurance in Citizens based on renewal premium amount, insured value, and location of the property,
- authorizing Citizens to pay to repair or replace damaged property, and
- authorizing insurers taking policies out of Citizens to use Citizens' policy forms for three years.

Background of 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. It is not a private insurance company.

As of January 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies extending approximately $418 billion of property coverage to Floridians.[1] Citizens insures over 444,000 residential and commercial policies in Florida's coastal areas and over 835,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas. As of June 30, 2012, Citizens represented approximately 23 percent of the residential property admitted market based on number of policies.[2]

Citizens was created by the Legislature in 2002 by the merger of two existing property insurance associations: The Florida Residential Property and Casualty Joint Underwriting Association (FRPCJUA) and the Florida Windstorm Underwriting Association (FWUA). The FRPCJUA provided full-coverage personal and commercial residential property policies in all counties of Florida while the FWUA provided personal and commercial residential property wind-only coverage in designated territories.

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

1. Personal Lines Account (PLA) – Multiperil Policies[3]
   Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2. Commercial Lines Account (CLA) – Multiperil Policies
   Consists of condominium association, apartment building, homeowner's association policies, and commercial non-residential multiperil policies on property located outside the Coastal Account area; and
3. Coastal Account – Wind-only[4] and Multiperil Policies

[1] https://www.citizensfla.com/ (last viewed February 22, 2013).

[2] "Florida Property Insurance Market Analysis and Recommendations," presentation to the Senate Committee on Banking and Insurance by Locke Burt, Chairman and President, Security First Insurance Company, dated February 6, 2013. Data based on the OIR QUASR Report. Citizens represents over 21% of the market based on total insured value and 20% of the homeowner's residential market based on 2011 written premium. (See "Principle-Based Reforms for Florida's Property Insurance Market," presentation to the Senate Committee on Banking and Insurance by Kevin M. McCarty, Insurance Commissioner, Florida Office of Insurance Regulation, dated January 16, 2013.).

[3] 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.

[4] 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.

Consists of wind-only and multiperil policies for personal residential, commercial residential, and commercial non-residential issued in limited eligible coastal areas.

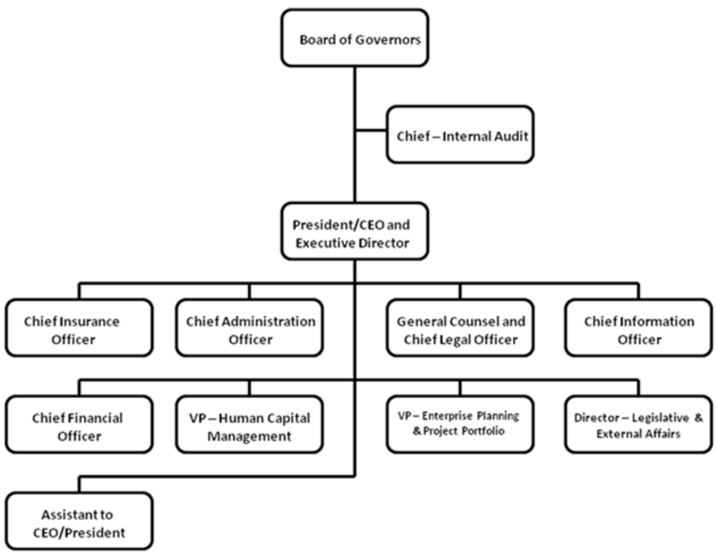
Citizens' Inspector General

Citizens operates under the direction of an eight member Board of Governors (Board). The Governor, Chief Financial Officer, Senate President, and Speaker of the House of Representatives each appoint two members of the Board, with one member appointed chair by the Chief Financial Officer. Board members serve three year staggered terms.[5] At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. The board members are not Citizens' employees and are not paid.

Only the Citizens' President/CEO/Executive Director and the Chief of Internal Audit report directly to the Citizens' Board. The following senior managers report directly to the President/CEO/Executive Director:

- Chief Insurance Officer,
- Chief Administration Officer,
- General Counsel and Chief Legal Officer,
- Chief Information Officer,
- Chief Financial Officer,
- Vice President of Human Capital Management,
- Vice President of Enterprise Planning and Project Portfolio, and
- Director of Legislative and External Affairs.

An organizational chart of the senior managers at Citizens is as follows:



Citizens does not currently have an inspector general and is not required by law to have one. However, the Chief of Internal Audit has job duties and responsibilities similar to an inspector general. The Chief of Internal Audit position was created in Citizens in 2006.[6] Citizens' first Chief of Internal Audit started in January, 2007. The position has been filled almost continuously since that time, with Citizens employing four Chiefs of Internal Audit since 2007.[7]

Generally, the duties of the Chief of Internal Audit include: fostering and promoting accountability and integrity in Citizens; holding the Citizen's leadership, management and staff accountable for efficient, cost-effective operation; and preventing, identifying, and eliminating fraud, waste, corruption, illegal acts, and abuse. Specific duties and responsibilities for the position are contained in s. 627.351(6)(i),

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[5] s. 627.351(6)(c)4., F.S.

[6] See Section 15, Ch. 2006-12, L.O.F.

[7] The Chief of Internal Audit position was not filled between 6/9/2007 and 11/4/2007 due to a lapse between the resignation of one Chief and the hiring of a replacement.

F.S. The Chief of Internal Audit carries out his duties primarily through audits, management reviews and investigations.

From December 2010 until October 2012, Citizens also had an Office of Corporate Integrity (Office).[8] The Office handled employee complaints, particularly those that could indicate ethics violations and internal fraud. From December 2010 until July 2012, the employees in this office reported to Citizens' General Counsel and Chief Legal Officer. Thereafter, they reported to the Citizens' Chief of Internal Audit. The Office was disbanded by Citizens' Board in October 2012, but its functions were absorbed by other Citizens' staff, including the Office of Internal Audit, the Ethics Officer, and the Employee Relations Office.[9]

Governor's Inspector General Report

In September 2012, Governor Rick Scott asked his Office of the Chief Inspector General (Inspector General) to review travel expenses incurred by Citizens' Board members, Senior Managers, and employees to determine whether the expenses were incurred in accordance with Citizens' travel policies.[10] The Governor requested the review after newspapers published articles relating to Citizens' employees' travel expenses.[11] The Inspector General issued a report on February 14, 2013.[12] The report found travel expenses incurred by Citizens' Board and staff were generally compliant with the Citizens' travel policies in effect when the travel was incurred. But, the Inspector General also found Citizens' travel policies were ambiguous and lacked specific requirements to ensure travel was necessary and conducted in the most economical manner. Additionally, the report noted the policies allowed for travel expenses in excess of the State of Florida travel guidelines. The Inspector General recommended Citizens be required to follow state travel laws and that Citizens' travel policies be updated to reflect that state travel laws apply to Board Members, Senior Managers, and all employees. The Inspector General also recommended Citizens enhance their internal controls to address the findings in the report.

<u>Governor's Response to the Inspector General Report</u>

In response to the Inspector General Report on Citizens' travel expenses, Governor Scott proposed four reforms.[13] First, the Governor recommended Citizens immediately change their travel guidelines to comply with official state travel restrictions. Second, he recommended Citizens' Board members to change their travel policy to prohibit any international travel. Third, he suggested Citizens' travel policy be further tightened to allow only essential employees to attend board meetings. Lastly, the Governor recommended Citizens have its own independent statutory Inspector General to enforce existing rules and any additional reforms needed. On January 18, 2013, Citizens' President/CEO/Executive Director publically provided support for an Inspector General at Citizens.[14] In a February 13, 2013 written response to the Inspector General's report, Citizens' President/CEO/Executive Director stated Citizens would implement changes to the corporation's travel and expense procedures to more closely mirror the travel guidelines applicable to state agencies.[15]

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[8] The Office of Corporate Integrity began as the Office of Corporate Compliance within the Administration/Human Resources Department in Citizens. The Office of Corporate Compliance was established in June 2008.

[9] Press Release from Citizens dated October 18, 2012, available at https://www.citizensfla.com/about/pressreleases.cfm?show=text&link=/shared/press/articles/new/10_18_2012.cfm&showyear=2012 (last viewed January 22, 2013). The Office was disbanded by the Citizens' Board upon a recommendation of the Audit Committee of the Board.

[10] The Inspector General reviewed approximately 350 expense reports of travel and travel related expenses for Citizens' eight Board members, 13 Senior Managers and 18 other employees.

[11] "Expense reports for Citizens Property Insurance's top executives how lavish spending," August 26, 2012, available at http://www.tampabay.com/news/business/banking/expense-reports-for-citizens-property-insurances-top-executives-show/1247636 (last viewed January 22, 2013); "Citizens Property Insurance interim president chalks up almost $10,000 in travel expenses in two months," June 20, 2012, available at http://www.tampabay.com/news/business/banking/citizens-property-insurance-interim-president-chalks-up-almost-10000-in/1236203 (last viewed January 22, 2013).

[12] Executive Office of the Governor Office of the Chief Inspector General, Report No. 2013-10, Citizens Property Insurance Corporation Travel Review, dated February 14, 2013, on file with the Insurance & Banking Subcommittee.

[13] http://www.flgov.com/2013/01/17/statement-from-governor-rick-scott-regarding-inspector-general-report-on-citizens-corporate-travel/ (last viewed January 22, 2013). The statement was issued in response to the Inspector General's preliminary report issued January 15, 2013.

[14] https://www.citizensfla.com/about/pressreleases.cfm?show=text&link=/shared/press/articles/new/01_18_2013.cfm (last viewed January 22, 2013).

[15] Executive Office of the Governor Office of the Chief Inspector General, Report No. 2013-10, Citizens Property Insurance Corporation Travel Review, dated February 14, 2013, on file with the Insurance & Banking Subcommittee.

Effect of Proposed Changes Relating to Citizens' Inspector General
Section 20.055, F.S., establishes the Office of Inspector General in each state agency and specifies the duties and responsibilities of that office. This law also outlines who appoints each state agency's inspector general and the chain of command, job qualifications, auditing requirements and reporting requirements for an agency's inspector general.

The definition of "state agency" in the inspector general statute does not include Citizens and the bill changes that definition to include Citizens as a state agency. Thus, current law establishing the Office of Inspector General in each state agency would apply to Citizens and require Citizens to have an inspector general. In addition, all the duties, responsibilities, qualifications, and auditing and reporting requirements required of state agency inspector generals would also apply to the Citizens' Inspector General. The Citizens' Inspector General will have more extensive duties and responsibilities than the Citizens' Chief of Internal Audit, although some statutory duties and responsibilities of these two positions overlap.

Under the bill, the agency head for the purposes of Citizens' Inspector General is the Financial Services Commission, comprised of the Governor and Cabinet.[16] Thus, the Financial Services Commission will hire, fire, and supervise the Citizens' Inspector General.

Citizens' Financial Resources to Pay Claims[17]
Citizens' financial resources 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.

Citizens projects the corporation will have $6.2 billion in surplus to pay claims during the 2012 hurricane season. In addition, Citizens could be reimbursed $6.9 billion for claims it pays by the Florida Hurricane Catastrophe Fund and $1.5 billion from private reinsurers claims paid in the Coastal Account. Thus, the maximum amount Citizens has to pay claims without levying assessments for the 2012 hurricane season is approximately $14.6 billion.[18]

As of January 31, 2013, Citizens' total exposure is over $418 billion. Citizens estimates the 1-in-100 year hurricane would cost almost $24 billion.[19] The $9.4 billion difference between Citizens' resources

[16] s. 20.121(3), F.S.

[17] All Citizens' projections about claims paying capacity for the 2012 hurricane season are found in meeting materials from Citizens presented at the Insurance & Banking Subcommittee meeting held on January 15, 2013. Citizens has not finalized its plan of finance for risk transfer and liquidity for 2013, although it has approval from their governing board to seek risk transfer of $1.75 billion for 2013 for the Coastal Account with the risk transfer methods of continuation of 2012 capital market transactions and private reinsurance, replacement of 2012 traditional reinsurance, and new capital market transactions. The board also approved a $600 million pre-event liquidity financing program for the Coastal Account. No risk transfer methods were requested or approved for the PLA and CLA due to the significant amount of surplus in these accounts. (See meeting materials from the Citizens' Board of Governors meeting on February 14, 2013, available at https://www.citizensfla.com/about/mDetails_boardmtgs.cfm?event=504&when=Past (last viewed February 22, 2013)).

[18] Citizens has also issued $5.1 billion in pre-event bonds to create additional liquidity to pay claims during the 2012 hurricane season. If these funds are used to pay claims during the 2012 hurricane season, then monies drawn must be repaid and assessments will likely be levied by Citizens to provide funds for repayment. Thus, pre-event bonding is not included in this calculation of the amount of funds Citizens has to pay claims because this calculation is the amount available to pay claims without assessing policyholders.

[19] A 1-in-100 year hurricane has a 1 percent probability of occurring. Information on probable maximum loss is contained in the meeting packet from the Insurance & Banking Subcommittee meeting on January 15, 2013.

to pay claims ($14.6 billion) and its 1-in-100 year exposure ($24 billion) would be covered by assessments levied by Citizens on its own policyholders and on policyholders of most property and casualty insurance.

Assessments Levied by Citizens

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.[20] The three Citizens' accounts calculate deficits and resulting assessment needs independently. The three types of assessments Citizens can levy are:

1. Citizens Policyholder Assessments,
2. Regular Assessments, and
3. Emergency Assessments.

Citizens Policyholder Assessments

If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15 percent of premium per account in deficit, for a maximum total of 45 percent.

Regular Assessments

If the Coastal Account incurs a deficit that the levy of a Citizens Policyholder Assessment does not cure, then Citizens may levy another assessment, a regular assessment, of up to 2 percent of premium or 2 percent of the remaining deficit in the Coastal Account.[21] The regular assessment is levied on virtually all property and casualty policies in the state, but not on Citizens' policies. The assessment is also not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

Regular assessments cannot be levied for deficits in the PLA or CLA. Only Citizens Policyholder Assessments and emergency assessments can be levied to cure deficits in these accounts.

Emergency Assessments

If the PLA or CLA incurs a deficit that a Citizens Policyholder Assessment levy does not cure, then Citizens may levy another assessment, an emergency assessment, to cure the deficit. An emergency assessment may also be levied for deficits in the Coastal Account that a Citizens Policyholder Assessment and regular assessment do not cure. Emergency assessments are limited to 10 percent of premium or 10 percent of the deficit per account, for a maximum total of 30 percent.[22] 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.

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amount and value of the property insured. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules, which are approved by the Office of Insurance Regulation (OIR), give flexibility for Citizens to denote some risks as uninsurable based on factors not enumerated in statute, such as age of home, condition and age of roof, vacant property, certain seasonal occupancy, and type of electrical wiring. The bill provides some new statutory eligibility requirements for Citizens and does not address the ones set by underwriting rule.

Eligibility Based on Premium Amount

[20] s. 627.351(6)(b)3.a.,d., and i., F.S.

[21] s. 627.351(6)(b)3.a., F.S.

[22] s. 627.352(6)(b)3.d., F.S.

A major eligibility requirement for insurance in Citizens provided in current law is a 15 percent premium restriction. This restriction prevents a homeowner from buying insurance in Citizens if an insurer in the private market offers the homeowner insurance for a premium 15 percent or less than the Citizens' premium.[23] In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage. Thus, a homeowner can buy insurance from Citizens only if the private insurer's premium is more than 15 percent than the Citizens' premium.

For policies being renewed by Citizens, the bill adds a new eligibility requirement based on premium amount. The 15 percent premium restriction, described above, imposes an eligibility requirement based on premium amount only for new policies. Thus, under current law, policies can be renewed in Citizens if a private market insurer is willing to insure the property regardless of the premium associated with the private insurer's offer. The bill makes policies being renewed by Citizens ineligible for insurance in Citizens at renewal if an insurer in the private market offers to insure the property at a premium five percent or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the five percent premium eligibility requirement to apply.

Eligibility Based on Value of Property Insured

Citizens currently has eligibility restrictions for homes and condominium units based on the value of the property insured. These restrictions are in addition to the 15 percent premium eligibility restriction. Citizens currently does not insure a home or condominium unit if the insured value of the dwelling is $1 million or more.[24]

The bill adds additional eligibility restrictions for only personal residential property based on insured value and phases in the new restrictions over six years. Personal lines residential property is primarily homeowner's, mobile homeowner's, tenant's, dwelling, condominium unit owner's, cooperative unit owner's, and similar policies.

Under the bill, structures with a dwelling replacement cost or a condominium unit that has a dwelling and contents replacement cost of:

- $1 million or more cannot obtain insurance in Citizens starting January 1, 2014, but property insured by Citizens for $1 million or more on December 31, 2013 can remain insured in Citizens until the policy expires in 2014, but cannot be renewed.
- $900,000 or more cannot obtain insurance in Citizens starting January 1, 2015, but property insured for $900,000 or more on December 1, 2014 can remain insured in Citizens until the policy expires in 2015, but cannot be renewed.
- $800,000 or more cannot obtain insurance in Citizens starting January 1, 2016, but property insured for $800,000 or more on December 1, 2015 can remain insured in Citizens until the policy expires in 2016, but cannot be renewed.
- $700,000 or more cannot obtain insurance in Citizens starting January 1, 2017, but property insured for $700,000 or more on December 1, 2016 can remain insured in Citizens until the policy expires in 2017, but cannot be renewed.
- $600,000 or more cannot obtain insurance in Citizens starting January 1, 2018, but property insured for $600,000 or more on December 1, 2017 can remain insured in Citizens until the policy expires in 2018, but cannot be renewed.
- $500,000 or more cannot obtain insurance in Citizens starting January 1, 2019, but property insured for $500,000 or more on December 1, 2018 can remain insured in Citizens until the policy expires in 2019, but cannot be renewed.

Citizens does not have any eligibility restrictions based on the value of the property insured for condominium association, homeowner association, or apartment building policies and the bill does not add any such restrictions for these properties.

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[23] s. 627.351(6)(c)5.a., F.S. Commercial non-residential property is not subject to this eligibility restriction.

[24] This restriction is pursuant to an underwriting rule.

Citizens has multiple eligibility and coverage restrictions for commercial businesses, depending on where the business is located and the type of policy the business purchases from Citizens. The restrictions are contained in the underwriting rules of Citizens, not in the statute. The bill does not add any eligibility restrictions based on the value of the property insurance for commercial businesses.

Eligibility Based on Location of Property

The only eligibility for insurance in Citizens in current law based on the location of the property to be insured is the designation of wind-only zones where Citizens can provide coverage for only property damage caused by wind events. And even this eligibility does not preclude Citizens from insuring property located in a wind-only zone, but allows Citizens to restrict its coverage to damage from wind events only.

Citizens' Wind-Only Policies

Citizens provides coverage in the Coastal Account for specially designated areas, called wind-only zones,[25] which have been determined to be particularly vulnerable to severe hurricane damage. In these areas, a property owner can obtain a property insurance policy from Citizens covering property damage from only wind events and can obtain a property insurance policy from a private market insurance company covering property damage and liability from non-wind events (other peril/non-wind coverage).

The wind-only zones that currently exist have evolved over three decades, but originated with the creation of the FWUA in 1970. The FWUA was created to cover residential and commercial policyholders unable to secure windstorm coverage in the voluntary market. This coverage was limited to defined geographical areas in the state determined by the then Department of Insurance (Department). Eligibility was limited to structures in areas found by the Department, after public hearings, to meet three criteria:

- the lack of windstorm coverage in the area was deterring development, causing mortgages to be in default, and causing financial institutions to deny loans;
- the area was subject to the requirements of the Southern Standard Building Code or its equivalent; and
- extending windstorm coverage to the area was consistent with the policies and objectives of environmental and growth management.

The wind-only zones currently apply to 29 Florida counties. When the wind-only zones were established, only Monroe County was included. In 1992, when Hurricane Andrew hit South Florida, the wind-only zone did not include Miami-Dade, Broward, or Palm Beach counties. After Hurricane Andrew, the Department and the Legislature expanded the boundaries of the wind-only zones to the current ones. In July 2002, when Citizens was created, Citizens maintained the wind-only zones from the FWUA.

Coastal Construction Control Line

According to the Department of Environmental Protection (DEP), the Coastal Construction Control Line Program (CCCL) is an essential element of Florida's coastal management program.[26] It provides protection for Florida's beaches and dunes while assuring reasonable use of private property. The Coastal Construction Control Line Program protects Florida's coastal system from improperly sited and designed structures which can destabilize or destroy the beach and dune system. Adoption of a coastal construction control line establishes an area of jurisdiction in which special siting and design criteria are applied for construction and related activities. These standards may be more stringent than those that apply in the rest of the coastal building zone because during a storm event greater forces are expected to occur in the more seaward zone of the beach. Chapter 62B-33, Florida Administrative Code, provides the design and siting requirements that must be met to obtain a coastal construction control line permit. Approval or denial of a permit application is based upon a review of the potential

[25] Also called windstorm areas or windstorm boundaries.

[26] A homeowner's guide to the Coastal Construction Control Line Program is available online. (See link for "Homeowners Guide to Coastal Construction Control Line (CCCL) Program," available at http://www.dep.state.fl.us/beaches/publications/index.htm#cccl, last viewed February 21, 2013).

impacts to the beach dune system, adjacent properties, native salt resistant vegetation, and marine turtles.[27]

The DEP established the coastal construction control line by evaluating historical weather data (including past hurricanes which impacted the area under study, tide cycles, offshore bathymetry, erosion trends, upland topography, and existing vegetation and structures) using appropriate engineering predictive models and scientific principles to determine the upland limits of the effect of a one-hundred year coastal storm.[28] Importantly, the coastal construction control line is not a setback line or line of prohibition for construction. Rather, new construction as well as additions, remodeling, and repairs to existing structures are allowed seaward of the control line; however, such structures and activities, unless exempt by rule or law, require a CCCL permit from the DEP. An interactive map showing the coastal construction control line is available online.[29]

Coastal Barrier Resources System

The Coastal Barrier Resources Act (CBRA or Act)[30] was passed in 1982 and reauthorized in 1990, 2000 and 2005.[31] Under CBRA, some undeveloped land located on coastal barriers is designated by the Secretary of the Interior as CBRA units in the Coastal Barrier Resource System (CBRS). The Act does not prohibit or regulate development of land in the CBRS, it simply precludes land owners from obtaining federal financial assistance for development of coastal barrier land. The Act encourages the conservation of hurricane prone, biologically rich coastal barriers by restricting federal expenditures that encourage development, such as federal flood insurance, road building, disaster relief, and wastewater systems. Areas within the CBRS can be developed if the private developer or other non-federal party bears the full cost of development. Between 1982 and 2010, the CBRA saved over $1 billion in federal dollars.[32]

The U.S. Fish and Wildlife Service is the federal agency responsible for implementing CBRA. There are more than 3.1 million acres of coastal barrier habitat designated within the CBRS. The CBRS covers 2,500 miles of shoreline along the Atlantic and Gulf coasts, Great Lakes, Puerto Rico, and U.S. Virgin Islands.[33] The official CBRS maps are available online.[34] A 2007 Government Accountability Office report estimated 84 percent of the CBRA units in the CBRS remain undeveloped and 13 percent of the units have had minimal levels of development since they were included in the CBRS.[35] Florida has 128 units in the CBRS totaling 677,334 acres, and 454 shoreline miles.[36]

The CBRS boundaries are depicted on U.S. Geological Survey topographic quadrangle maps which are, on average, 30 years old. With three exceptions, only Congress has the authority to change CBRA boundaries to include or exclude specific property. The exceptions allow the Secretary of the Interior to change the boundaries for (1) voluntary additions to the CBRS by property owners, (2) additions of excess federal property to the CBRS, and (3) the required CBRA 5-year review that solely considers changes to the CBRS by natural forces such as erosion or accretion.[37]

In 2011, the U.S. Fish and Wildlife Service partnered with the Federal Emergency Management Agency to initiate a review of the entire CBRS for changes that resulted from natural forces such as erosion or accretion (the required 5-year review) and to digitally convert the existing CBRS maps. The first batch

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[27] http://www.dep.state.fl.us/beaches/programs/ccclprog.htm (last viewed February 21, 2013).

[28] Some major storm effects, including wind and flooding may penetrate much farther inland than the control line, however the magnitude of the forces associated with those effects is considerably less than those which are anticipated seaward of the control line.

[29] See link for "How to determine if you (sic) property is seaward of the CCCL using 'Map Direct'," available at http://www.dep.state.fl.us/beaches/publications/index.htm#cccl (last viewed February 21, 2013).

[30] Public Law 97-348.

[31] http://www.fws.gov/CBRA/Act/Legislation.html (last viewed March 7, 2013).

[32] http://www.fws.gov/CBRA/Act/index.html (last viewed March 6, 2013).

[33] http://www.fws.gov/coastalbarrier.html (last viewed March 6, 2013).

[34] http://www.fws.gov/CBRA/Maps/index.html (last viewed March 7, 2013).

[35] http://www.fws.gov/coastalbarrier.html (last viewed March 7, 2013).

[36] Link to Florida map on http://www.fws.gov/CBRA/Maps/index.html#LocatorMaps (last viewed March 11, 2013).

[37] U.S. Fish & Wildlife Service Report to Congress: John H. Chafee Coastal Barrier Resources System Digital Mapping Pilot Project, available from the Report to Congress link at http://www.fws.gov/coastalbarrier.html (last viewed March 7, 2013).

of map conversion is completed and covers Delaware, South Carolina, Texas, and one county in Florida. Also, the U.S. Fish and Wildlife Service is currently finalizing versions of comprehensively revised CBRS maps to correct mapping errors, add qualifying land and aquatic habitat to the CBRS, and replace the outdated base maps, The revisions cover land in Alabama, Florida, and Rhode Island and will be presented for congressional consideration. The Fish and Wildlife Service is also developing a new interactive mapper to provide the public with more accessible and accurate CBRS data and maps.[38]

Effect of Proposed Changes Relating to Eligibility Based on Location of Property

The bill adds an eligibility restriction for insurance in Citizens based on the location of the property. Under the bill, major structures for which a building permit for new construction is applied for on or after July 1, 2014 or for which a building permit for a substantial improvement of the structure is applied for on or after July 1, 2014, and which is located seaward of the coastal construction control line or within the CBRS will be ineligible for insurance in Citizens. The definition of "major structure" that is contained in s. 161.54, F.S., is the one that applies to Citizens' eligibility. Generally, this definition defines houses, mobile homes, apartment buildings, condominiums, and certain types of businesses as "major structures." The definition of "substantial improvement" that is also contained in s. 161.54, F.S., is the one that applies to Citizens' eligibility. Generally, this definition makes any repair, reconstruction, rehabilitation, or improvement to a structure that costs 50 percent or more of the market value of the structure to be a "substantial improvement." The statutory definition contains additional parameters and guidance and exclusions.

<u>Payment of Replacement Costs In Property Insurance Claims</u>

Property insurance claims are adjusted on the basis of replacement costs or actual cash value, whichever method is provided in the property insurance policy. Property insurers must offer policyholders an option for replacement cost coverage.[39] If a claim is adjusted by the actual cash value method, the policyholder is paid the depreciated value of the property damaged or lost that is being replaced or repaired.

Until 2005, if a claim was adjusted by the replacement cost method, insurers could make an initial payment on the claim based on the actual cash value of the claim and require the policyholder to complete the repair before the insurer paid the balance of the full replacement cost. Following the multiple hurricanes of 2004 and 2005, regulators received complaints from policyholders who were given the actual cash value of the property damaged or lost, but could not afford to fund the balance necessary to make the repairs or replacements. In 2005, the Legislature addressed this issue by requiring if a claim was adjusted by the replacement cost method, the insurer must pay the full replacement cost up front, whether or not the policyholder replaces or repairs the damaged property.

Requiring insurers to pay the full replacement cost under replacement cost policies, without holding back depreciated value until the property is replaced or repaired, benefits policyholders who can collect such payments and then decide whether to actually replace or repair the property. But, this also likely increases loss payments by insurers and could cause an increase in fraudulent claims, both of which may increase premiums. Paying replacement costs whether the dwelling or property is replaced may also result in damaged property not being repaired, which could negatively impact financial institutions that hold mortgages and the secondary mortgage market.

In 2011, legislation was enacted which again changed the way replacement costs are paid in property insurance claims.[40] Under current law, for partial dwelling losses, the insurer must initially pay at least the actual cash value of the claim, less any insurance deductible. The remaining amount owed on the claim (i.e., the difference between the initial amount paid and the replacement cost) is paid by the insurer periodically as the repair work is done and expenses are incurred by the policyholder. For total dwelling losses, the insurer must pay full replacement cost up front without reservation or holdback of any depreciation, whether or not the policyholder replaces the dwelling (the same as the 2005 law).

[38] "CBRA Turns 30 on October 18, 2002", available at http://www.fws.gov/coastalbarrier.html (last viewed March 7, 2013).

[39] s. 627.7011, F.S.

[40] Section 19, ch. 2011-39, L.O.F.

For personal property losses (i.e., contents), there are two options for replacement cost coverage. The first option requires the insurer to pay full replacement cost up front without reservation or holdback of any depreciation, whether or not the policyholder replaces or repairs the personal property damaged or destroyed (the same as the 2005 law). The second option requires the insurer to initially pay the actual cash value of the claim with the remaining amount owed on the claim (i.e., the difference between the initial amount paid and the replacement cost) paid by the insurer as receipts are provided by the policyholder for the purchase of property that is replaced. The policyholder cannot be required to advance payment to replace the personal property lost. The insurer is not required to offer policyholders the second option for replacement cost coverage but is required to offer the first option. If the insurer decides to offer the second option, the policyholder must be given notice of the receipt submission process required to receive full payment of replacement costs under the policy and must be given an actuarially reasonable premium credit or discount for purchasing the policy.

Effect of Proposed Changes Relating to Repair or Replacement of Damaged Property by Citizens

The bill provides an exception to the current law regarding payment of replacement costs for Citizens and for those private insurers who take policies out of Citizens. The bill allows Citizens to decide whether to repair or replace damaged property (dwelling and personal property) with like kind and quality property in lieu of paying the policyholder the value of the damaged property. To do so, Citizens must file a policy form with the OIR for approval.[41] Furthermore, the bill allows insurers who take policies out of Citizens to use Citizens' policy forms for three years without approval from the OIR to use the forms. Thus, if Citizens chooses to adopt a policy form allowing the corporation to repair property in lieu of paying the policyholder outright for the damage, then for three years, private insurers will be able to repair property in lieu of payment for any policy removed from Citizens without regulatory oversight or approval of the practice.

Use of Citizens' Policy Forms by Private Insurers

Recently, Citizens has significantly reduced the coverage on the property they insure and reduced the policy limits on certain coverage.[42] For example, Citizens no longer insures screen enclosures or carports. It does not write builder's risk insurance[43] anymore. And, Citizens now has a 10% mandatory sinkhole deductible and a policy limit for personal liability of $100,000, instead of $300,000. Some insurers in the private market have made coverage reductions similar to some of the ones made by Citizens, but no private insurer has made all of the reductions Citizens has made. To effectuate the coverage changes, Citizens changes their policy forms to delineate the reduced coverage and obtains approval of the form change from the OIR. Once a policy is issued or renewed after the effective date of the new policy form, the reduced coverage applies to the property insured by the policy.

The bill allows insurers who take policies out of Citizens to use Citizens' policy forms for three years without approval from the OIR to use the forms. Thus, insurers taking property policies from Citizens will be able to insure that property with the same reduced coverage Citizens insured the property for, instead of the more comprehensive coverage the insurer uses for property not taken from Citizens. Additionally, insurers will be able to insure the property with reduced coverage without obtaining approval from the OIR.

B. SECTION DIRECTORY:

Section 1: Amends s. 20.055, F.S., relating to agency inspectors general.

Section 2: Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 3: Provides an effective date of July 1, 2013.

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[41] Section 627.410, F.S., generally requires all insurance forms to be filed with the OIR for approval before an insurer uses the form.

[42] See Presentation to the Financial Services Commission by Citizens Property Corporation, dated June 26, 2012, available at https://www.citizensfla.com/about/mediaresources.cfm (last viewed February 22, 2013).

[43] Builder's risk insurance is a property policy designed to provide coverage for buildings while under construction. http://buildersriskinsurance.org/ (last viewed February 22, 2013).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The changes made by the bill restricting the eligibility for insurance in Citizens should reduce the number of policies in Citizens. Reducing the number of policies in Citizens decreases the amount of losses experienced by Citizens. Decreasing the amount of losses lessens the likelihood of a deficit for Citizens, which in turn, reduces the probability and amount of assessments on Citizens' and non-Citizens' policyholders.

Further restricting eligibility for insurance in Citizens, by premium comparison at renewal, by the insured value of the property, or by the location of the property will force some Citizens' policyholders into the private or surplus lines market for property insurance. These markets could charge more for insurance than Citizens which would increase the premiums for some current Citizens' policyholders.

As of December 31, 2012, Citizens writes almost 7,500 policies in the personal lines account and approximately 28,600 policies in the Coastal Account with a building coverage limit of $500,000 or more. Starting January 1, 2020, these policies will no longer obtain coverage in Citizens (after the phase out period in the bill fully takes effect).

Allowing insurers who take policies out of Citizens to use Citizens' policy forms which provide for reduced coverage on the insured property reduces the insurers' exposure for those policies for the three years the insurer is allowed to use the forms. However, policyholders previously insured by Citizens who are taken out by an insurer in the private market will not get the more comprehensive coverage offered by the insurer to its' other policyholders.

For damaged property covered by a Citizens' policy form that requires the property to be repaired instead of replaced, the Citizens' policyholder will not receive payment for replacement cost of the damaged property as allowed under current law. However, Citizens will be able to ensure the property insured is repaired. Former Citizens' policyholders who are taken out of Citizens by insurers in the private market and these insurers will have the same impact for three years as the insurers are allowed to use Citizens' policy forms for three years.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the PCS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2013, the Insurance & Banking Subcommittee considered a proposed committee substitute, adopted one amendment to the proposed committee substitute, and reported the bill favorably with a committee substitute. The proposed committee substitute deleted the originally filed bill in its entirety and replaced it with all new provisions. The new provisions added by the proposed committee substitute:

- created an Inspector General for Citizens who reports to the Financial Services Commission,
- precluded Citizens' policyholders from renewing insurance with Citizens if an insurer in the private market will insure the property for a premium up to five percent more than the Citizens' renewal premium,
- precluded Citizens from insuring property with a dwelling replacement cost or a condominium unit that has a dwelling and contents replacement cost of $500,000 or more, implemented over a six year period,
- precluded Citizens from insuring newly constructed property seaward from the coastal construction control line starting July 1, 2014,
- authorized Citizens to require repair of damaged property, instead of paying to replace it, and
- authorized insurers taking policies out of Citizens to use Citizens' policy forms for three years which will allow these insurers to insure the property with reduced coverage and to require repair of the property instead of paying to replace it.

The amendment adopted to the proposed committee substitute changed the provision in the proposed committee substitute relating to precluding Citizens from insuring newly constructed property seaward from the coastal construction control line. Under the amendment, for building permits applied for on or after July 1, 2014, Citizens cannot insure newly constructed major structures or major structures that are substantially improved and that are located seaward from the coastal construction control line or in the Coastal Barrier Resources System.

The staff analysis is updated to reflect the committee substitute.