

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 1087	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Regulatory Affairs Committee; Insurance & Banking Subcommittee; Bileca and others	114 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/SB 1006	<b>GOVERNOR'S ACTION:</b>	Vetoed

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**SUMMARY ANALYSIS**

CS/CS/HB 1087 passed the House on April 16, 2015 and subsequently passed the Senate on April 28, 2015.

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. Current law requires Citizens to adopt programs to reduce the number of new and renewal policies it writes. The depopulation program encourages insurance companies licensed in Florida to assume policies currently covered by Citizens, thus reducing Citizens' policy count and exposure.

The bill makes the following changes to the depopulation program:

- After January 1, 2016, a policyholder must be told when one or more insurers has expressed an interest in assuming the policyholder's policy. This will enable a policyholder to work with his or her agent to make an informed decision about insurance coverage.
- After January 1, 2016, a policy may not be taken out from Citizens unless the policyholder received information in a uniform format that he or she can use to compare takeout offers to each other and to the coverage the policyholder has with Citizens. The policyholder must receive the estimated renewal premium, the renewal coverage, including an explanation of differences, and a comparison of both the premium and coverage to the premium and coverage of the Citizens renewal policy.
- Effective July 1, 2015, a policyholder may elect not to be solicited for takeout more than once in a six-month period. In addition, the bill allows a consumer to retain eligibility for Citizens insurance through the Clearinghouse if the insurer increases its initial premium more than 10 percent above its original estimate or increases the rate on the policy more than 10 percent per year during the 36 months following takeout.

In addition, the bill:

- Provides the consumer representative on the Citizens' board with the same exemption from the conflict of interest statute that currently applies to the board members with insurance expertise;
- Authorizes additional entities to receive confidential underwriting data for the purpose of analyzing risks for underwriting and limits use of the data; and
- Requires an insurance agent to have at least one appointment with an insurer in order to retain eligibility to write insurance with Citizens.

The bill has no fiscal impact on state or local government expenditures and should have a positive impact on the private sector.

The effective date of this bill was July 1, 2015; however, this bill was vetoed by the Governor on June 2, 2015.

**I. SUBSTANTIVE INFORMATION**

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1087z1.IBS

**DATE:** June 3, 2015

## A. EFFECT OF CHANGES:

### Citizens Property Insurance Corporation

#### Background

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 March 12, 2015, Citizens is the largest property insurer in Florida with over 630,000 policies extending approximately \$197 billion of property coverage to Floridians.<sup>1</sup> Citizens insures over 278,000 residential and commercial policies in Florida's coastal areas and over 350,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas.

Citizens was created in 2002 when the Legislature combined the state's two insurers of last resort, 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 property insurance in three separate accounts:<sup>2</sup>

- Personal Lines Account – personal residential<sup>3</sup> multiperil<sup>4</sup> policies.
  - With wind coverage, on properties located outside the Coastal Account area; and
  - Without wind coverage, on properties located within the Coastal Account Area.
- Commercial Lines Account – commercial residential<sup>5</sup> and commercial non-residential policies.
  - With wind coverage, on properties located outside the Coastal Account area; and
  - Without wind coverage, on properties located within the Coastal Account Area.
- Coastal Account – personal residential, commercial residential, and commercial non-residential wind-only<sup>6</sup> and multiperil policies<sup>7</sup> for properties in limited eligible coastal areas.<sup>8</sup>

At the time of its creation, Citizens handled approximately 602,000 policies. The policy count peaked in November 2012 at nearly 1.5 million—about 26 percent of the Florida residential market.<sup>9</sup> Factors that drove the increase included the catastrophic hurricane season of 2004-2005;<sup>10</sup> subsequent changes in law authorizing broader coverage and expanded eligibility for Citizens coverage (thereby placing it in more direct competition with the voluntary market)<sup>11</sup> and granting agents and policyholders greater control in programs implemented by Citizens to reduce its policy count; and a court order requiring Citizens to assume policies from three insolvent companies.

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<sup>1</sup> CITIZENS PROPERTY INSURANCE CORPORATION, *Book of Business: Policies in Force*, <https://www.citizensfla.com/about/bookofbusiness/> (last visited March 20, 2015).

<sup>2</sup> s. 627.351(6)(b)2., F.S.

<sup>3</sup> Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

<sup>4</sup> A multiperil 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. Multiperil property insurance policies may include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

<sup>5</sup> Commercial residential policies include condominium association, apartment building, and homeowner's association policies

<sup>6</sup> 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.

<sup>7</sup> Effective July 1, 2014, Citizens may no longer offer new commercial residential policies providing multiperil coverage, but may continue to renew existing policies. (s. 627.351(6)(b)2.a.(III), F.S.)

<sup>8</sup> These include areas eligible for coverage by the FWUA as those areas were defined on January 1, 2002. (s. 627.351(6)(a)2., F.S.)

<sup>9</sup> CITIZENS PROPERTY INSURANCE CORPORATION, *Press Release: How low can it go? Citizens is at its smallest since its creation in 2002* (March 18, 2015) (on file with the House Insurance & Banking Subcommittee).

<sup>10</sup> Four hurricanes hit Florida in each year resulting in \$39 billion in estimated gross losses.

<sup>11</sup> FLORIDA HOUSE OF REPRESENTATIVES, *Staff Analysis HB 7077, 7* (March 26, 2007), available at <http://myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=36814> (last visited March 20, 2015).

### Citizens Clearinghouse

The Legislature created the Clearinghouse in 2013<sup>12</sup> to ensure that new applications for insurance through Citizens and policies that are coming up for renewal are assessed to determine if appropriate coverage is available in the private market. A new policy is ineligible for coverage in Citizens if a private company offers comparable coverage with a premium that is up to 15 percent higher than the Citizens premium. A policy is ineligible for renewal coverage through Citizens if a private company offers comparable coverage at or below Citizens' premium. A policy that is taken out of Citizens at renewal through the Clearinghouse is eligible to return through the Clearinghouse if, during the 36 months after takeout, the new insurer increases the policyholder's rate more than 10 percent in any year. Under this provision, a policyholder would then return to Citizens, unless the policyholder receives a new offer in the private market at or below Citizens' rate.

### History of Depopulation<sup>13</sup>

Current law requires Citizens to adopt programs to reduce the number of insured properties and to decrease its financial exposure.<sup>14</sup> The depopulation program encourages insurance companies licensed in Florida to assume policies currently covered by Citizens, thus reducing Citizens' policy count and exposure.<sup>15</sup>

Initially, the Citizens depopulation program paid insurers either dollar amount or percentage bonuses for the removal of policies. The bonus program ended in 2006, however, when the Legislature restricted the bonus amount to \$100 per policy and required the insurer to renew the policy for at least five years. In 2007, the Legislature amended the law to allow policyholders to remain eligible for coverage with Citizens, even if they received an offer of coverage from another insurer. As a result, a policyholder remains eligible for coverage through the end of the assumption period, which enables the policyholder, in effect, to "opt-out" of any assumption.<sup>16</sup> The 2007 Legislature also clarified the authority of a policyholder to retain his or her agent regardless of any takeout offer.<sup>17</sup> An agent must be appointed by the insurer for the insurer to assume a policy. If a policyholder's agent declines appointment, the policy cannot be assumed.

The depopulation programs for personal and commercial residential policies in place now were adopted by the Citizens board and approved by the Office of Insurance Regulation (OIR) in 2008.<sup>18</sup> A program for commercial nonresidential was adopted in 2012. All programs are non-bonus and specify the number of policies an insurer must takeout during the contract period and require the insurer to retain the policy for a minimum of three years. To create further incentive for insurers to participate in the program, Citizens revised the plans in 2012 to remove the requirement that insurers pay Citizens the 16 percent ceding commission.<sup>19</sup>

The following reflects the history of policies removed since 2003.

<p style="text-align: center;"><b>Citizens Depopulation Policy Types and Exposure Removed (2003 – to present*)</b></p>
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<sup>12</sup> See ch. 2013-60, s. 10, Laws of Fla.

<sup>13</sup> CITIZENS PROPERTY INSURANCE CORPORATION, *History of Depopulation* (Feb. 2012), available at [https://www.citizensfla.com/about/mDetails\\_boardmtgs.cfm?show=PDF&link=/bnc\\_meet/docs/431/01A\\_Historical\\_Report\\_of\\_Depopulation\\_Activity.pdf&event=431&when=Past](https://www.citizensfla.com/about/mDetails_boardmtgs.cfm?show=PDF&link=/bnc_meet/docs/431/01A_Historical_Report_of_Depopulation_Activity.pdf&event=431&when=Past) (last visited March 20, 2015).

<sup>14</sup> s. 627.351(q)3.a., F.S.

<sup>15</sup> See generally s. 627.3511, F.S.

<sup>16</sup> See ch. 2007-90, s. 11, Laws of Fla.; s. 627.351(6)(c)5., F.S.

<sup>17</sup> See ch. 2007-90, s. 14, Laws of Fla.; s. 627.3517, F.S.

<sup>18</sup> The OIR has responsibility for the financial oversight and regulation of assumptions and the approval of new insurers to assume policies.

<sup>19</sup> A fee charged by a reinsurance company to the original issuer of a policy or group of policies being ceded to the reinsurer to cover business and administrative costs and a percentage of the profits from the premiums collected. INVESTORWORDS, *Ceding Commission* [http://www.investorwords.com/19018/ceding\\_commission.html](http://www.investorwords.com/19018/ceding_commission.html) (last visited March 20, 2015).

	PLA PRM	Coastal PRM	Coastal PRW	CLA CRM	Coastal CNRW, CRW	Total # of Policies	
Year	# of Policies	# of Policies	# of Policies	# of Policies	# of Policies	# of Policies	Exposure Removed
2003	28,219		-			28,219	\$ 8,140,681,906
2004	145,959		12,457			158,416	\$ 30,663,076,480
2005	218,128		75,556			293,684	\$ 53,658,840,059
2006	26,225		41,628			67,853	\$ 15,637,589,369
2007	247,887		-			247,887	\$ 68,259,426,361
2008	362,964	21,519	-	601		385,084	\$ 106,870,490,165
2009	132,803	16,842	-	-		149,645	\$ 37,784,506,743
2010	57,561	2,231	-	-		59,792	\$ 13,888,913,857
2011	45,827	7,750	-	-		53,577	\$ 14,473,700,490
2012	252,968	24,034	-	-		277,002	\$ 75,927,165,347
2013	301,383	37,368	19,567	-	7,449	365,767	\$ 112,265,410,122
2014	323,167	44,779	43,686	2,493	2,498	416,623	\$ 117,530,082,371
*2015	66,785	14,867	13,368	387	-	95,407	\$ 19,186,004,850
TOTAL	2,209,876	169,390	206,262	3,481	9,947	2,598,956	\$ 674,285,888,120

\*As of February 19, 2015

### Depopulation Procedure

The depopulation programs are administered on a monthly cycle according to the following sequence of events:

- The OIR issues a consent order approving authorized admitted carriers to participate in a specific assumption.<sup>20</sup>
- Citizens provides a data file of policies in force to an approved carrier (takeout company or TOC) to use to select policies for assumption.
- The TOC solicits new agent appointments or notifies appointed agents if the TOC wishes to assume any of an agent's policies.<sup>21</sup>
- The TOC provides Citizens with the list of policies it has selected to assume and a list of policies assigned to agents who did not respond to the TOC's solicitation or declined to be appointed.
- Citizens reviews the takeout lists of the participating TOCs and sends each TOC the policy selections it is assigned to assume. If more than one TOC has selected the same policy for removal, Citizens uses an algorithm<sup>22</sup> to assign the duplicate selections.
- Each TOC reviews and may reweight<sup>23</sup> its list. The TOC sends the reweighted list to Citizens.
- Citizens then sends a letter of encouragement<sup>24</sup> to all policyholders on a TOC's final mailing list and notifies those policyholders whose agents did not respond to the TOC's solicitation or declined to be appointed.

<sup>20</sup> To assume policies from Citizens, admitted carriers must submit documentation to the OIR verifying that they meet required standards and have the financial resources and business plan in place to properly pay claims.

<sup>21</sup> Agents are not required to contact the policyholder regarding the offer and are not permitted to opt out of an assumption on the policyholder's behalf.

<sup>22</sup> The depopulation algorithm attempts to allocate the policies to the various takeout companies by a methodology that groups the duplicates based on the number of companies that has selected them; sorts the policies within each batch by policy form, zip code, and total premium; and assigns each policy to one of the TOCs that has selected it in a way that equitably allocates premium among the companies. (CITIZENS PROPERTY INSURANCE COMPANY, *Depopulation Algorithm Allocation* (Nov. 15, 2013), available at <https://www.citizensfla.com/about/depopininfo.cfm?type=links&show=pdf&link=/shared/depop/documents/AlgorithmAllocationExplanation.pdf> (last visited March 20, 2015).

<sup>23</sup> If the list does not have a desirable ratio of policies, for example is too heavily weighted in one geographic area, the TOC may remove policies from the list. This process is called reweighting.

<sup>24</sup> Prior to February 2015, Citizens sent the letter of encouragement after the TOC had sent its offer letter. When some policyholders received the offer letter, they discarded the letter without reading it, since the letter was not from a person or company familiar to the policyholder. In other cases, the policyholder may have read the TOC letter, but not understood the significance of the opt out requirement. As a result, Citizens changed the timing of its letter of encouragement.

- The TOC then sends a letter in a form approved by the OIR to policyholders indicating that the TOC is extending an offer to assume the policyholder's coverage and notifying the policyholder of the right to reject or opt out of the offer. The letter may include a link to a coverage comparison chart on the OIR's website.

A policyholder selected for a takeout does not need to take any additional action to be assumed by the takeout company. If the policyholder takes no action, the policyholder and the policyholder's mortgage company, if any, will receive a Notice of Assumption and Nonrenewal and Certificate of Assumption verifying that the policy has been assumed by the takeout company and that the takeout company will make a renewal offer before the current policy expires. Currently, 59 percent of private-market offers are accepted for takeout.

A policyholder who wishes to remain with Citizens must take action to opt out of the assumption by returning the opt out form provided with the takeout offer to the TOC. A policyholder has 30 days prior to and following an assumption to complete the opt out process.

A Citizens policy that is assumed by a TOC is, as of the date of assumption, direct insurance issued by the TOC. The TOC is liable to pay any claims that may arise, although Citizens continues to service the policy. During the period before the policy expires, Citizens pays to the TOC unearned premiums on the policy that it has received adjusted to reflect any changes in coverage or conditions as may occur during the period. Forty-five days before the Citizens policy expires, the TOC issues the initial offer on renewal coverage with the premium amount. At this time (or any time after the assumption and prior to the policy's expiration) the policyholder may return to Citizens, unless the Clearinghouse presents an offer of coverage with a premium equal to or less than the Citizens renewal premium.<sup>25</sup>

The TOC is required to offer renewals with substantially similar coverage as the assumed policies. The TOC's renewal rate must be filed and approved by the OIR and may be higher than what Citizens charged for the assumed policy. Citizens encourages TOCs "to assume policies for which the renewal rate is expected to be at or lower than the [Citizens] rate; thereby increasing insured participation in the assumption."<sup>26</sup>

### Consumer Complaints Related to Depopulation<sup>27</sup>

In 2014, 595,738 takeout offer letters were mailed to consumers. During the same time period Citizens received 10,195 depopulation related phone calls from consumers, 242 written complaints and 1,072 written inquiries (not expressing dissatisfaction, which is the statutory definition of a complaint). The result is a total of 11,510 consumer contacts in response to 595,738 offers mailed. This represents less than a 2 percent complaint/inquiry ratio on the takeout offers made.

### Depopulation Work Group

In December 2014, Citizens established a depopulation work group as one of a series of changes to the depopulation program to provide policyholders with more information in deciding whether to accept a TOC offer or to remain with Citizens. The work group includes representatives from the OIR, insurance agents, private insurers, and consumer advocates. In its preliminary meeting, the work group discussed options for increasing consumer choice; providing consumers and agents with more information regarding takeout offers and standardizing the information; and improving consumer satisfaction.

### Effect of the Bill on Depopulation

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<sup>25</sup> CITIZENS PROPERTY INSURANCE CORPORATION, *Agent Technical Bulletin: New Process for Returning a Risk to Citizens After Assumption/Depopulation/Takeout*, ATB # 014-14 (September 16, 2014), available at [https://www.citizensfla.com/agent/ac\\_techbulletins.cfm?show=pdf&year=2014&link=/shared/IE/IE002-14.pdf](https://www.citizensfla.com/agent/ac_techbulletins.cfm?show=pdf&year=2014&link=/shared/IE/IE002-14.pdf) (last visited March 21, 2015).

<sup>26</sup> CITIZENS PROPERTY INSURANCE CORPORATION, *Depopulation Guide for Takeout Companies*, (Feb. 20, 2013) (on file with the House Insurance & Banking Subcommittee).

<sup>27</sup> E-mail from Christine Turner Ashburn, Vice President for Communications, Legislative and External Affairs, Citizens Property Insurance Corporation, RE: Takeout complaints (March 18, 2015) (on file with the House Insurance & Banking Subcommittee).

The bill requires Citizens to revise the depopulation program to address a series of issues identified by the work group and others which are aimed at maximizing the free market principles of competition and consumer choice and encouraging full participation by insurers, policyholders, and agents.

- *Transparency*

Currently, TOCs are required to provide consumers with information about the premium amount, but may do so either by including the estimate in the takeout letter or providing the consumer with a telephone number to call for more information. Coverage information is made available through links to the OIR website. Currently, the information TOCs provide to agents about policies they may wish to assume is not provided in a standard format.

The bill prohibits any policy from being taken out from Citizens after January 1, 2016 unless the policyholder received information in a uniform format that he or she can use to compare takeout offers to each other and to the coverage the policyholder has with Citizens. The policyholder must receive the estimated renewal premium, the renewal coverage, including an explanation of differences, and a comparison of both the premium and coverage to the premium and coverage of the Citizens renewal policy.

- *Consumer Choice*

Currently, a consumer is not given the opportunity to choose from among TOCs when more than one has indicated an interest in assuming the consumer's policy. Instead, Citizens assigns the policy to one TOC using an algorithm and only that company solicits the consumer.

The bill requires Citizens to revise the depopulation programs to maximize policyholder options and to encourage greater participation by policyholders and agents. After January 1, 2016, a policyholder must be told when one or more insurer has expressed an interest in assuming the policyholder's policy. This will enable a policyholder to work with his or her agent to make an informed decision about insurance coverage.

- *Consumer Satisfaction*

Because the depopulation process cycles each month, a single policyholder may receive more than one offer from different companies in any given year. This can be confusing and can result in "takeout fatigue," thereby reducing the chances that a consumer who has opted out once will accept a subsequent takeout offer. In addition, some reported takeout offers are substantially higher than Citizens renewal rates. A consumer who fails to opt out, particularly a consumer whose insurance is paid from escrow by a mortgage holder, may lose Citizens coverage and incur substantial costs for some period of time before realizing the full consequences of what has happened.

Effective July 1, 2015, the bill allows a consumer to elect not to be solicited for takeout more than once in a six-month period. In addition, the bill allows a consumer to retain eligibility for Citizens insurance through the Clearinghouse if the insurer increases its initial premium more than 10 percent above its original estimate or increases the rate on the policy more than 10 percent per year during the 36 months following takeout. The effect is to extend the same rate protection that applies to takeouts through the Clearinghouse to takeouts through the depopulation program.

## **Board of Governors of Citizens Property Insurance Corporation**

Citizens operates under the direction of a nine-member Board of Governors (board). The board members are not Citizens' employees and are not paid. 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.

At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. By law, board members with the required insurance expertise fall within the exemption in the conflicting employment or contractual relationship statute that applies to public officers and agency employees.<sup>28</sup> Thus, these board members can maintain employment in the private sector in jobs involving business with Citizens without violating the conflict of interest statute because the board member is required by law to have insurance expertise in order to sit on the board.

There is also a consumer representative on the board that is appointed by the Governor.

#### Effect of the Bill on the Composition of the Citizens Board

The bill provides the consumer representative on the Citizens' board with the same exemption from the conflicting employment or contractual relationship statute for public officers and agency employees that currently applies to the board members with insurance expertise.

### **Underwriting Files of Citizens Property Insurance Corporation**

Current law allows Citizens to share confidential underwriting and claims files with an insurer that is contemplating underwriting a risk insured by the corporation, provided the insurer executes a notarized agreement to retain their confidentiality.<sup>29</sup> The corporation may also make specified information from the underwriting and claims files available to general lines insurance agents. Such information is limited to the name, address, and telephone number of the property owner or insured; the location of the risk; rating information; loss history; and policy type. The law requires the agent to retain the confidentiality of the information.<sup>30</sup>

#### Effect of the Bill on Underwriting Files of Citizens Property Insurance Corporation

The bill expands the list of who may receive information from the confidential underwriting and claims files to include an entity which has obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, or modeling company. The information made available to these entities is the same information available to a licensed general lines agent. The information may be used for the sole purpose of analyzing risks for underwriting in the private insurance market and must be kept confidential. In addition, the bill expressly prohibits the use of the data by any of the authorized users for direct solicitation of policyholders.

### **Appointment of Agents by Citizens Property Insurance Corporation**

Current law requires that Citizens appoint only those agents who, at the time of their initial appointment, are authorized to write and writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage.

#### Effect of the Bill on Appointment of Agents by Citizens Property Insurance Corporation

The bill revises the law to require that Citizens appoint only those agents who have and maintain at least one appointment with a separate insurer to write or to renew the types of policies offered by Citizens.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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<sup>28</sup> Board members of Citizens fall under the definition of "public officer" in s. 112.313(1), F.S., because that definition includes any person appointed to hold office in any agency, including serving on an advisory board. "Agency" is defined in s. 112.312, F.S.

<sup>29</sup> s. 627.351(6)(x)2., F.S.

<sup>30</sup> *Id.*

None

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provision in the bill that allows properties to remain eligible for Citizens coverage if a TOC increases its initial premium more than 10 percent above its original estimate or increases its rate more than 10 percent per year during the 36 months after takeout will limit the risk of consumers experiencing substantial and unanticipated rate increases in their insurance coverage.

D. FISCAL COMMENTS:

None.