

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: CS/CS/SB 1630

INTRODUCER: Ethics and Elections Committee; Banking and Insurance Committee; and Senator Flores

SUBJECT: Operations of the Citizens Property Insurance Corporation

DATE: February 24, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Carlton</u>	<u>Roberts</u>	<u>EE</u>	<u>Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1630 makes the following changes regarding Citizens Property Insurance Corporation (Citizens):

Citizens Depopulation

- Requires Citizens to make changes, by January 1, 2017, to their plan of operation as it relates to take-out agreements made with private insurers.
- Requires Citizens to establish six cycles for which take-out offers can be made by private insurers to Citizens' policyholders.
- Requires private insurers to offer similar coverage comparable to Citizens and must agree that their initial premium will be within ten percent of the estimated premium submitted with the take-out offer.
- Requires private insurers must include in their take-out offers to Citizens policyholders, a comparison of coverages and rate between the insurer's policy and Citizens policy.
- Requires Citizens to compile a list of companies that have shown interest in depopulating a policy and to make available to the agent of record.
- Allows a Citizens policyholder, who accepts a take-out offer, the ability to reapply to Citizens and be treated as a renewal through the clearinghouse if within 36 months of leaving Citizens their premium is increased above the rate allowed in the bill.

Citizens Agent Appointments

- Requires that agents who write business for Citizens must also hold an appointment with an admitted carrier that is currently writing or renewing policies in the state.

Other Provisions

- Allows the consumer representative to the Citizens Board of Governors to be afforded the same conflict of interest exemption as other board members.
- Allows Citizens to share underwriting and claims files data with entities that have obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines insurance agent. Such data may only be used for the development of takeout plans or rating plans. General lines agents are prohibited from using Citizens' underwriting files and claims files for the direct solicitation of policyholders.

Public Model

Allows Citizens to use a combination of the public model and private models when calculating the windstorm portion of rates.

The bill has no fiscal impact to state funds.

The bill is effective July 1, 2016.

II. Present Situation:

Citizens Property Insurance Corporation (Citizens)

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.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 that administers its Plan of Operations. The Plan of Operations 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.

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

² s. 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 each appoint two members.

Citizens offers property 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 Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.

The Commercial Lines Account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

The Coastal Account offers personal residential, commercial residential and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.⁶

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.⁷ Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens. For new policies applying with Citizens, any private market offer through the clearinghouse for similar coverage that is not greater than 15 percent of Citizens' rate makes the policy ineligible for coverage with Citizens. Additionally, a renewal Citizens policy that receives any private market offer through the clearinghouse for similar coverage that is equal to or less than Citizens' rate is ineligible for coverage with Citizens.

Citizens Board of Governors

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 Chief Financial Officer, President of the Senate, and Speaker of the House of Representatives each appoint two members of the board, with one member appointed chair by the Chief Financial Officer (CFO). The Governor appoints

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

⁵ s. 627.351(6)(b)2b., F.S.

⁶ In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.

⁷ s. 10, ch. 2013-60 L.O.F.

three members, one of whom serves as a consumer representative.⁸ 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.⁹ 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 half of the board members are required by law to have insurance expertise in order to sit on the board.¹⁰

Agent Appointments

Section 627.351(6)(c)14., F.S., requires Citizens to appoint as its licensed agents only those agents who also hold an appointment with an insurer, who at the time of the agent's initial appointment by Citizens, is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state. As a result of the "initial appointment" language, there are many agents appointed by Citizens who currently do not hold an appointment with another private insurance company. As a result, these agents only try to place business in Citizens regardless if the policy should be submitted to the insurer of last resort.

Hurricane Loss Models

In 1995, the Legislature established the Florida Commission on Hurricane Loss Projection Methodology (Commission) to serve as an independent body within the State Board of Administration.¹¹ Section 627.0628, F.S., lists the 12 members who make up the commission¹². The Commission is to adopt findings on the accuracy or reliability of the methods, standards, principles, models, and other means used to project hurricane losses. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards.

⁸ s. 627.351(6)(c)4.a., F.S.

⁹ 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.

¹⁰ s. 627.351(6)(c)4.a., F.S.

¹¹ s. 627.0628, F.S.

¹² Insurance Consumer Advocate, senior employee of the State Board of Administration responsible for operations of the Florida Hurricane Catastrophe Fund, Executive Director of the Citizens Property Insurance Corporation, Director of the Division of Emergency Management, actuary member of the Florida Hurricane Catastrophe Fund Advisory Council, an employee of the office who is an actuary responsible for property insurance rate filings and who is appointed by the director of the office, a licensed professional structural engineer who is a full-time faculty member in the State University System and who has expertise in wind mitigation techniques appointed by the Governor, and five members appointed by the Chief Financial Officer which must include an expert in insurance finance who is a full-time member of the faculty of the State University System and who has a background in actuarial science, an actuary who is employed full time by a property and casualty insurer that was responsible for at least one percent of the aggregate statewide direct written premium for homeowner insurance in the calendar year preceding the member's appointment to the commission, an expert in statistics who is a full-time member of the faculty of the State University System and who has a background in insurance, an expert in computer system design who is a full-time member of the faculty of the State University System, and an expert in meteorology who is a full-time member of the faculty of the State University System and who specializes in hurricanes.

Public Hurricane Loss Model – Citizens

The Public Hurricane Model was approved by the Florida Legislature in the General Appropriations Act for Fiscal Year 2000-2001, and was directed to contract with the Florida University System.¹³ The Financial Services Commission selected the Florida International University (FIU) as the lead institution for development. On August 9, 2005, the Florida Insurance Commissioner commissioned five teams of professionals to visit the FIU campus in Miami to review the efficacy of the Public Hurricane Model. The five teams included: 1) a Meteorological Team; 2) an Engineering Team; 3) an Insured Loss Team; 4) a Computer Science Team; and 5) a Statistical Team. Based on the team's findings, the insurance commissioner recommended to the Governor on August 31, 2005, that the Public Hurricane Model was ready for use.¹⁴

Section 627.351(6)(n)3., F.S., requires that Citizens must use the Public Model as the minimum benchmark when establishing rates. Citizens has found in certain territories that the Public Model ends up being the highest rates of all the models run. By requiring Citizens to use the Public Model as the minimum benchmark means Citizens must submit rates that are higher than rates that would have been allowed under the private model results.

Citizens Underwriting and Claims Files

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.¹⁵ 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 keep the information confidential.¹⁶

Takeout Bonus Agreements

Section 627.3511, F.S., was enacted by the Legislature in 1995¹⁷ and at that time applied to the depopulation of the Residential Property and Casualty Joint Underwriting Association. After the Legislature merged the two underwriting associations to create Citizens in 2002, this section was amended to apply to the depopulation of Citizens.

Take out agreements that were approved under this section allowed for a per policy bonus to be paid to each participating insurer provided that they removed a given number of policies for a set number of years. Today, takeouts from Citizens are no longer approved through takeout bonus agreements. The last Citizens takeout bonus agreement under this section took place in November 2007.

¹³ s. 2226, ch. 2000-166, L.O.F.

¹⁴ <http://www.flour.com/sitedocuments/flpublichurricanemodel.pdf> (Last visited Feb. 2, 2016).

¹⁵ s. 627.351(6)(x)2., F.S.

¹⁶ *Id.*

¹⁷ s. 10, ch. 95-276, L.O.F.

Takeout Non-Bonus Agreements

In January of 2008, Citizens Board of Governors adopted a takeout non-bonus plan that was approved by the Office of Insurance Regulation (OIR) in March of that year. Since that time, most takeout agreements between Citizens and private carriers have occurred under this plan. The OIR has on occasion required stipulations in takeout agreements in addition to the requirements of the approved plan. Until 2009, the OIR required private carriers that removed policies from Citizens through a takeout agreement to write the risk at a rate below the rate of Citizens at that time.¹⁸ Additionally, in November of 2013, the OIR began requiring takeout companies to provide information to the policyholder detailing a rate comparison between the Citizens rate and the private insurer's rate.¹⁹

Depopulation

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.²⁰ Policyholders whose policies are selected for takeout are sent a letter notifying them of the pending takeout and, if eligible, they are provided instructions on how they can elect (opt-out) and remain with Citizens. Policyholders who do not opt-out within the opt-out timeframe will receive a Notice of Assumption, a non-renewal from Citizens, and a Certificate of Assumption. The policyholder still has an additional timeframe from the receipt of these notices to elect to remain with Citizens. Citizens encourages policyholders who receive private-market offers to consider them carefully and discuss the advantages of such coverage with their agents. Accepting an offer from a private insurer can decrease a Citizens policyholder's potential of assessment.

In November 2011, Citizens reported it had issued 1,472,391 policies. As of January 19, 2016, Citizens reported it had issued 484,788 policies insured.²¹ Much of the success of Citizens reduction in size is the result of depopulation through takeout agreements. From 2012 through 2015, 1,332,108 policies were removed for Citizens and placed into the private market through the use of the current takeout agreement process.²²

Citizens Glide Path Rates

Citizens' rates for coverage are required to be actuarially sound and, except as otherwise provided in s. 627.351(6), are subject to the rate standards for property and casualty insurance in s. 627.062, F.S. From 2007 until 2010, Citizens rates were frozen by statute 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. Citizens must implement an annual rate increase which, except for sinkhole coverage, does not exceed ten percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges.²³ The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In

¹⁸ Information received from the OIR on March 19, 2015. (On file with the Banking and Insurance Committee)

¹⁹ Id.

²⁰ s. 627.351(6), F.S.

²¹ Citizens Policy Inforce Weekly Summary Report, March 16, 2015.

²² <https://www.citizensfla.com/about/depoinfo.cfm?type=stats&show=pdf&link=/shared/depop/documents/2015.pdf> (Last visited Jan. 27, 2016).

²³ s. 627.351(6)(n)6., F.S.

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 Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.

Citizens Eligibility

Eligibility for a Citizens insurance policy is for the most part verified through the clearing house, which is established in s. 627.3518, F.S. A new policy applicant to Citizens is ineligible if they receive an offer from a participating carrier at a rate that is no greater than 15 percent of the current rate being charged by Citizens. Additionally, a Citizens policy is ineligible for renewal if the policyholder receives an offer from a participating carrier at a rate that is no greater than the current rate being charged by Citizens.

36 Month Reapplication Exception

In 2013, CS/SB 1770 passed the Legislature and was approved by the Governor.²⁴ The bill created the Citizens policyholder eligibility clearinghouse program and provided Citizens policyholders made ineligible through a private market offer the ability to reapply to Citizens in certain circumstances and be treated as a renewal policyholder under s. 627.3518(5), F.S., rather than a new policyholder. The provision allows “an applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the offer of coverage pursuant to this subsection continues to insure the applicant and increases the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)6.”

In 2015, CS/CS/HB 1087 amended s. 627.351(6), F.S., to include a provision that stated “a policyholder whose policy was taken out by an insurer in the previous 36 months is considered a renewal policyholder under s. 627.3518, F.S., if the corporation determines that the insurer continues to insure the policyholder and that the initial premium of the insurer exceeded its estimated premium by more than 10 percent or the insurer increased the rate on the policy in excess of the increase allowed for the corporation under subparagraph (6)(n)6.” The Governor vetoed CS/CS/HB 1087; his veto message said “The second issue with the legislation is in regards to the provision that creates a process where the policyholder returns to Citizens even though they are currently insured by a private market insurer.”²⁵

III. Effect of Proposed Changes:

The bill allows for the consumer representative on the Citizens board to be afforded the same exemption from the conflicting employment or contractual relationship statute for public officers and agency employees as is provided in current law to other members of the Citizens board. The bill requires agents placing policies with Citizens to hold an appointment by an insurer authorized to write and is writing or renewing personal lines or commercial residential property coverage or commercial nonresidential property coverage within the state.

²⁴ Chapter 2013-60, Laws of Florida.

²⁵ <http://www.flgov.com/wp-content/uploads/2015/06/Transmittal-Letter-6.2.15-HB-1087.pdf> (Last visited Jan. 27, 2016).

The bill allows Citizens to use a combination of the public model and private models when calculating the windstorm portion of rates.

The bill expands the list of those 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, a licensed rating organization, a modeling company, or a licensed general lines insurance agent. The information made available to these entities is the same information available to licensed general lines agents. The information may be used only for the purposes of analyzing risks for underwriting in the private insurance market or developing a rating plan and must be kept confidential. In addition, the bill expressly prohibits the use of the data by any of the authorized users, and licensed general lines insurance agents, for direct solicitation of policyholders.

The bill requires Citizens by January 1, 2017, to amend its plan of operations relating to take-out agreements made with private insurers. The amended plan must:

- Establish six cycles for which take-out offers can be made by private insurers to Citizens' policyholders. The provision is intended to decrease the number of solicitations that Citizens policyholders receive pursuant to take-out offers. Proponents of the provision have expressed concern that policyholders who intend to remain with Citizens are sometimes inundated with takeout offers that the policyholder then must affirmatively decline. The bill does not define the length of such cycles or at what times during the year such cycles may occur.
- Require that private insurers include in their take-out offers to Citizens policyholders, a comparison of coverages and rates between the insurer's policy and Citizens policy.
- Require that private insurers agree to offer similar coverage to that being offered by Citizens and that their initial premium must be within ten percent of the estimated premium submitted with the take-out offer. The term "initial premium is somewhat unclear as it could refer to the premium charged by the insurer upon the takeout, or the premium charged at first renewal.
- Require that Citizens compile a list of companies that have shown interest in depopulating a policy and must make the list available to the agent of record. The provision is intended to facilitate the placement of Citizens policies with private market insurers.
- Allow a Citizens policyholder, who accepts a take-out offer, the ability to reapply to Citizens and be treated as a renewal through the clearinghouse if within 36 months of leaving Citizens their premium is increased above the rate estimated in the initial take-out letter or exceeds the ten percent glide path cap imposed on Citizens policies.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/CS/SB 1630, policyholders in certain territories could see their wind rates lowered with the combining of the results from the public and private model findings.

More private entities will have access to Citizens data which will better help them analyze risks and trends in Florida's insurance market. This may facilitate greater accuracy in underwriting practices and further facilitate the depopulation of Citizens.

Citizens' policyholders who accept take-out offers from private insurers and whose rates are then increased above the Citizens glide path, within 36 months of leaving Citizens, will have the ability to reapply with Citizens and be rated as a renewal through the clearinghouse. The premiums paid by such policyholders, if ultimately insured by Citizens, will not be greater than the premiums such policyholders would have paid if continuously insured by Citizens. Citizens premium increases are generally limited to no greater than ten percent annually, with exceptions, under s. 627.736(6)(n), F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Ethics and Elections on February 16, 2016:

The committee substitute differs from the original in that it:

- Allows Citizens to make its underwriting files and confidential claims files available to licensed rating organizations;
- Requires that licensed rating organizations only use underwriting and confidential claims files for the purpose of developing rating plans; and
- Prohibits a licensed general lines insurance agent from using Citizens' underwriting files and confidential claims files for the direct solicitation of policyholders.

CS by Banking and Insurance on February 1, 2016:

The committee substitute:

- Removes section 1 pertaining to multiline discounts.
- Allows Citizens to use a combination of the public model and private models when calculating windstorm rates.
- Increases to six cycles from three cycles when take-out offers can be made to Citizens policyholders from private insurers.
- Removes a provision pertaining to the use of Citizens forms for three years.
- Relocates the 36 month renewal option to 627.3518, F.S.

- B. **Amendments:**

None.