

**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.)

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Prepared By: The Professional Staff of the Committee on Ethics and Elections

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BILL: CS/SB 1630

INTRODUCER: Banking and Insurance Committee and Senator Flores

SUBJECT: Operations of the Citizens Property Insurance Corporation

DATE: February 12, 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>Pre-meeting</u>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1630 makes the following changes with regards to 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 10 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, or modeling company. Such data may only be used for the development of takeout plans. General lines agents will no longer be allowed access to Citizens records.

### **Public Model**

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

## **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.<sup>1</sup> Citizens is not a private insurance company.<sup>2</sup> 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 Governors<sup>3</sup> (board) 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.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.<sup>4</sup> Assets may not be commingled or used to fund losses in another account.<sup>5</sup>

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<sup>1</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>2</sup> s. 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

<sup>3</sup> The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives.

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

<sup>5</sup> s. 627.351(6)(b)2b., F.S.

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 by 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.<sup>6</sup>

The Citizens Property Insurance Corporation policyholder eligibility clearinghouse program was established by the Legislature in 2013.<sup>7</sup> 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, 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 (CFO). The Governor appoints three members, one of whom serves as a consumer representative.<sup>8</sup> Board members serve 3-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

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<sup>6</sup> 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.

<sup>7</sup> s. 10, ch. 2013-60 L.O.F.

<sup>8</sup> s. 627.351(6)(c)4.a., F.S.

statute that applies to public officers and agency employees.<sup>9</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 half of the board members are required by law to have insurance expertise in order to sit on the board.<sup>10</sup>

### **Agent Appointments**

Section 627.351(6)(c)14., F.S., requires Citizens must 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.<sup>11</sup> Section 627.0628, F.S., lists the 12 members who are to make up the commission. 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.

#### ***Public Hurricane Loss Model – Citizens***

The Public Hurricane Model was approved by the Florida Legislature in the General Appropriates Act for fiscal year 2000-2001, and was directed to contract with the Florida University System.<sup>12</sup> The Financial Services Commissions 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.<sup>13</sup>

Section 627.351(6)(n)3., F.S., requires Citizens must use the Public Model as the minimum benchmark when establishing rates. Citizens has found in certain territories the Public Model

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<sup>9</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>10</sup> s. 627.351(6)(c)4.a., F.S.

<sup>11</sup> s. 627.0628, F.S.

<sup>12</sup> s. 2226, ch. 2000-166, L.O.F.

<sup>13</sup> <http://www.floir.com/sitedocuments/flpublichurricanemodel.pdf> (Last visited Feb. 2, 2016).

ends up being the highest 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.<sup>14</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>15</sup>

### **Takeout Bonus Agreements**

Section 627.3511, F.S., was created by the Legislature in 1995<sup>16</sup> 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 Property Insurance Corporation.

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.

### **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. In addition to the requirements of the approved plan, the OIR has on occasion required additional requirements to be included in such takeout agreements. According to the OIR, 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.<sup>17</sup> 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.<sup>18</sup>

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<sup>14</sup> s. 627.351(6)(x)2., F.S.

<sup>15</sup> *Id.*

<sup>16</sup> s. 10, ch. 95-276, L.O.F.

<sup>17</sup> Information received from the OIR on March 19, 2015. (On file with the Banking and Insurance Committee)

<sup>18</sup> *Id.*

## 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.<sup>19</sup> Policyholders whose policies are selected for takeout are sent a letter notifying them of the pending takeout and provided instructions on how they can elect (opt-out) to remain with Citizens, if eligible and should they wish to do so. 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 encourage 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 a policy count of 1,472,391 policies insured. As of January 19, 2016, Citizens reports their policy count was at 484,788 policies insured.<sup>20</sup> Much of the success of Citizens reduction in size is the result of depopulation through takeout agreements. From 2012 through 2015, a total of 1,332,108 policies were removed for Citizens and placed into the private market through the use of the current takeout agreement process.<sup>21</sup>

## Citizens Glide Path Rates

Citizens rates for coverage are required to be actuarially sound and are subject to the rate standards for property and casualty insurance in s. 627.062, F.S., except as otherwise provided. 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 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges.<sup>22</sup> The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the FHCF coverage, pursuant to s. 215.555(5)(b), F.S.

## Citizens Eligibility

Eligibility for Citizens 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 made ineligible though the clearing house 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 renewal Citizens policy is made ineligible though the Clearing House if they receive an offer from a participating carrier at a rate that is no greater than the current rate being charged by Citizens.

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<sup>19</sup> s. 627.351(6), F.S.

<sup>20</sup> Citizens Policy Inforce Weekly Summary Report, March 16, 2015.

<sup>21</sup> <https://www.citizensfla.com/about/depopininfo.cfm?type=stats&show=pdf&link=/shared/depop/documents/2015.pdf> (Last visited Jan. 27, 2016).

<sup>22</sup>s. 627.351(6)(n)6., F.S.

### ***36 Month Reapplication Exception***

In 2013, CS/SB 1770 passed the Legislature and was approved by the Governor. The bill created the clearinghouse 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 had 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, 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 and in his veto message stated “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.”<sup>23</sup>

### **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.

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 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.

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<sup>23</sup> <http://www.flgov.com/wp-content/uploads/2015/06/Transmittal-Letter-6.2.15-HB-1087.pdf> (Last visited Jan. 27, 2016).

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

- The establishment of 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.
- The requirement that 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.
- The requirement that private insurers must agree to offer similar coverage to that being offered by Citizens and that their initial premium will be within 10 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.
- The requirement that Citizens must 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.
- Must 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 10 percent glide path cap imposed on Citizens policies.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

Article I, section 24(c) of the Florida Constitution requires each public records exemption to be enacted in a bill that only contains provisions related to the right of the public to access government records and meetings and to inspect or copy public records. Such bills must provide a state of public necessity justifying the exemption and require a two-thirds affirmative vote of each house for passage. Lines 708, 711 and 712 eliminates public records access for general lines agents currently allowed to receive such records. The bill, by restricting access to public records, may violate the above-referenced constitutional requirements. Expanding the list of persons who may receive currently exempt records does not require a separate bill or necessity statement, as granting additional access to public records comports with the right of the public to inspect public records guaranteed in the Florida Constitution.



C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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 10 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 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 6 cycles from 3 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 3 years.
- Relocates the 36 month renewal option to 627.3518, F.S.

- B. **Amendments:**

None.