

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 Fiscal Policy

BILL: CS/CS/SB 594

INTRODUCER: Fiscal Policy Committee, Community Affairs Committee and Senator Martin

SUBJECT: Property Insurance

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Knudson	BI	Favorable
2.	Hackett	Ryon	CA	Fav/CS
3.	Thomas	Yeatman	FP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 594 adds wind uplift prevention to the list of windstorm mitigation measures undertaken by policyholders to reduce hurricane losses that must be evaluated for purposes of mitigation discounts on residential property insurance rate filings. Wind uplift occurs if the air pressure below the roofing system is higher than the air pressure above the roofing system.

The bill also exempts condominium unit owner policies from the flood insurance requirement for Citizens Property Insurance Corporation personal lines property coverage, exempts certain policies from rate increase limitations, and revises the provision requiring flood insurance coverage by specified dates to base the dates by which flood insurance coverage must be obtained on the dwelling replacement cost instead of property value.

The bill authorizes Citizens Property Insurance Corporation to adopt policy forms providing for claim disputes to come before the Division of Administrative Hearings.

The bill provides a \$750,000 nonrecurring appropriation from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to conduct a wind-loss mitigation study.

Except as otherwise provided, the bill takes effect upon becoming a law.

II. Present Situation:

Regulation of Property Insurance Rates

Part I of ch. 627, F.S., the Rating Law,¹ governs property, casualty, and surety insurance covering the subjects of insurance resident, located, or to be performed in this state.² The rating law provides that the rates for all classes of insurance it governs may not be excessive, inadequate, or unfairly discriminatory.³ Though the terms “rate” and “premium” are often used interchangeably, the rating law specifies that “rate” is the unit charge that is multiplied by the measure of exposure or amount of insurance specified in the policy to determine the premium, which is the consideration paid by the consumer.⁴

All insurers or rating organizations must file rates with the Office of Insurance Regulation (OIR) either 90 days before the proposed effective date of a new rate, which is considered a “file and use” rate filing, or 30 days after the effective date of a new rate, which is considered a “use and file” rate filing.⁵

Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The OIR makes that determination in accordance with generally acceptable actuarial techniques and considers the following:

- Past and prospective loss experience;
- Past and prospective expenses;
- The degree of competition among insurers for the risk insured;
- Investment income reasonably expected by the insurer;
- The reasonableness of the judgment reflected in the rate filing;
- Dividends, savings, or unabsorbed premium deposits returned to policyholders;
- The adequacy of loss reserves;
- The cost of reinsurance;
- Trend factors, including trends in actual losses per insured unit for the insurer;
- Conflagration and catastrophe hazards;
- Projected hurricane losses;
- Projected flood losses, if the policy covers the risk of flood;
- The cost of medical services, if applicable;
- A reasonable margin for underwriting profit and contingencies; and
- Other relevant factors that affect the frequency or severity of claims or expenses.⁶

Florida Commission on Hurricane Loss Projection Methodology

Projected hurricane losses in a rate filing must be estimated using a model or method found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology

¹ Section 627.011, F.S.

² Section 627.021(1), F.S.

³ Section 627.062(1), F.S.

⁴ Section 627.041, F.S.

⁵ Section 627.062, F.S.

⁶ Section 627.062(2)(b), F.S.

(Commission).⁷ The Commission consists of 12 members with expertise in the elements used to develop computer models to estimate hurricane and flood loss. Members of the Commission include State University System faculty experts in insurance finance, statistics, computer system design, meteorology, and structural engineering; three actuaries; the insurance consumer advocate; the Director of the Florida Hurricane Catastrophe Fund; the Executive Director of Citizens Property Insurance Corporation; and the Director of the Division of Emergency Management.⁸

Residential Property Insurance Mitigation Credits, Discounts, or Other Rate Differentials

Residential property insurance rate filings must account for mitigation measures undertaken by policyholders to reduce hurricane losses.⁹ Specifically, the rate filings must include actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties.¹⁰ Upon their filing by an insurer or rating organization, the OIR determines the discounts, credits, other rate differentials and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation,¹¹ which in turn may be used in rate filings under the rating law. Windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength.¹²

Wind Uplift

Wind load is an important consideration when designing a structure. Wind load is the load, in pounds per square foot, placed on the exterior of a structure by wind. This will depend on:

- The angle at which the wind strikes the structure; and
- The shape of the structure (height, width, etc.).¹³

Wind can exert three types of force on a structure—shear load, lateral load, and uplift load. Although all three forces can damage a structure, the uplift load has the greatest effect on the roofing system.¹⁴ Wind uplift occurs if the air pressure below the roofing system¹⁵ is higher than the air pressure above the roofing system. Whenever the wind blows over a roof's surface, the air pressure directly above the roof decreases, creating “negative” pressure. Wind infiltration below

⁷ Section 627.062(2)(b)11., F.S.

⁸ Section 627.0628(2)(b), F.S.

⁹ Section 627.062(2)(j), F.S.

¹⁰ Section 627.0629(1), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ *Wind Loads of Structures*, Extension Disaster Education Network, <https://campus.extension.org/mod/book/view.php?id=6418&chapterid=6747> (last accessed on March 24, 2023). *Wind Loads*, Structural Engineering Design, Fall 2003, <https://ocw.mit.edu/courses> (last accessed on March 24, 2023).

¹⁴ *What Is Wind Uplift?*, [/how-roof-uplift-testing-can-help-ensure-system-performance](#) (last accessed on March 24, 2023).

¹⁵ The term roof system refers to the air barrier or vapor retarder (if present), roof insulation (if present), and the roof membrane, flashing, and accessories. *Roofing Systems*, Tom Smith, May 10, 2016, <https://www.wbdg.org/guides-specifications> (last accessed on March 24, 2023).

the roof materials through openings creates “positive” pressure. The combination results in a “push-pull” force that can lead to the separation of roofing materials from the roof deck.¹⁶

Wind uplift is affected by:

- Building height: Higher roofs experience stronger wind velocities.
- Geographical location: Wind maps for any region can identify the local basic wind speed gust exposures to determine typical wind conditions for your home.
- Surrounding terrain: Neighboring buildings and other obstructions can break wind flow and reduce the wind effect in suburban and urban locations. Stronger wind resistance is required for roofs near large bodies of water or open terrain.
- Building openings: Openings in the building design can create higher internal pressures in a wind event.¹⁷

During strong wind events such as hurricanes, roofs will be subject to high wind uplift forces, which often leads to severe roofing component damage. The loss of roofing components could lead to rainwater intrusion and further substantial damage to the interior. Reducing wind uplift during such strong wind events by implementing targeted mitigation techniques¹⁸ can significantly reduce wind effects on buildings' roofs.¹⁹ Engineers and builders follow the applicable building code for each jurisdiction to attempt to prevent wind uplift.²⁰ The standards vary based on building location and likelihood of exposure to high winds.²¹

Citizens Property Insurance Corporation—Overview

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.²² Citizens is not a private insurance company.²³ 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).²⁴

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors (board) that administers its Plan of Operations. The Plan of

¹⁶ *Id.*

¹⁷ Understanding Wind Uplift Ratings for Roofing, Mark Gallant, May, 31 2021, <https://www.decra.com/blog/> (last accessed on March 24, 2023).

¹⁸ There are multiple products that are promoted as valuable in mitigating wind uplift, for example: pavers, adhesives, fasteners, clamps, underlayments, and spray foam insulation.

¹⁹ *Aerodynamic Mitigation of Wind Uplift on Low-Rise Building Roof Using Large-Scale Testing*, Frontiers in Built Environments, January 15, 2020, <https://www.frontiersin.org/articles/10.3389/fbuil.2019.00149/full> (last accessed on March 24, 2023).

²⁰ *How Wind Uplift can Affect a Commercial Building's Roof*, Certified Commercial Property Inspectors Association, <https://ccpia.org/how-wind-uplift-can-affect-a-commercial-buildings-roof/> (last accessed on March 24, 2023).

²¹ *Id.* Changes to Florida's treatment of wind load were made in the 7th edition of the Florida Building Code in 2020. See Wind Loads- Impacts from ASCE 7-16 (June 2020), <https://www.ecf-fl.org/resources/> (last accessed on March 24, 2023).

²² The term “admitted market” means insurance companies licensed to transact insurance in Florida.

²³ Section 627.351(6)(a)1., F.S.

²⁴ Section 2, ch. 2002-240, Laws of Fla.

Operations is reviewed and approved by the Financial Services Commission.²⁵ The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.²⁶ Citizens is subject to regulation by the Office of Insurance Regulation.

Citizens offers property insurance through three different accounts: a personal lines account, a commercial lines account, and a coastal account.

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multi-peril coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind damage in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile home owners, dwellings, tenants, and condominium unit owners policies.²⁷

The Commercial Lines Account (CLA) offers commercial lines residential and non-residential 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 non-residential policies covering business properties.²⁸

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 multi-peril policies.²⁹

Flood Insurance

The Flood Disaster Protection Act of 1973 (FDPA)³⁰ prohibits lending institutions from making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home located in special flood hazard areas and in which flood insurance has been made available under federal law, unless the building or mobile home is covered by flood insurance in an amount equal to the outstanding principal balance of the loan or the maximum limit of coverage available.

Under Florida law, an authorized insurer may issue a policy for flood insurance coverage,³¹ but homeowners' insurance policies typically do not cover flood losses.³² Although private flood insurance may be obtained by endorsement or a separate policy, this requirement is generally

²⁵ Section 627.351(6)(a)2., F.S.

²⁶ Section 627.351(6)(c)4.a., F.S.

²⁷ See s. 627.351(6)(b)2.a., F.S.; Citizens, *Account History and Characteristics*, <https://www.citizensfla.com/documents/> (Mar. 2016) (last visited Feb. 16, 2023).

²⁸ *Id.*

²⁹ *Id.*

³⁰ 42 U.S.C. s. 4012a.(b).

³¹ Section 627.715(1), F.S.

³² Disaster Rally, *National Flood Insurance Program – How to Be Eligible*, [National Flood Insurance Program - How to Be Eligible \(disasterrally.com\)](https://disasterrally.com) (last visited Feb. 20, 2023).

satisfied with coverage obtained through the National Flood Insurance Program (NFIP) which is managed by Federal Emergency Management Agency (FEMA).³³ The NFIP offers flood insurance coverage for buildings and content which must be purchased separately with separate deductibles. For residential property, the maximum coverage amount is \$250,000 for the building and \$100,000 for the contents and, for commercial property, the maximum coverage for building and building contents is \$500,000 each.³⁴

Flood Zones

The National Flood Insurance Program with the Federal Emergency Management Administration (FEMA) maintains flood maps to show a community's risk of flooding. The map provides flood zones to designate the flooding risks. Flood risk areas that are designated with the letters B, C, and X on the FEMA flood maps are moderate to low-risk flood areas and have a reduced but not completely removed flood risk. One in three insurance claims come from moderate to low-risk flood areas. Flood risk areas that are designated with the letters A or V on the FEMA flood maps have the highest risk of flooding. Owners of properties that are in a high-risk zone and have a federally backed mortgage are required to purchase flood insurance as a condition of the loan.³⁵

Flood Notice

An insurer that issues or renews a homeowner's insurance policy without flood coverage must include the following statement with the policy documents:

“FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER’S INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE AGENT.”

Citizens Flood Insurance Requirement

Section 627.351(6)(aa), F.S., requires Citizens personal lines residential policyholders to secure and maintain flood insurance that meets certain requirements as a condition of eligibility for Citizens coverage. There is a timetable for implementation of the flood insurance coverage requirement for personal lines residential Citizens policyholders. For Citizens personal lines residential policyholders whose property is located within special hazard flood zones defined by the FEMA, flood coverage must be obtained by:

- April 1, 2023 for Citizens' new policies.
- July 1, 2023 for Citizens' renewal policies.

³³ The Office of the Comptroller of the Currency, *Flood Disaster Protection Act: Guidance Regarding Lapse and Extension of FEMA's Authority to Issue Flood Insurance Contracts*, Jun. 9, 2010, [Flood Disaster Protection Act: Guidance Regarding Lapse and Extension of FEMA's Authority to Issue Flood Insurance Contracts | OCC \(ots.gov\)](#) (last visited Feb. 16, 2023).

³⁴ The FEMA, National Flood Insurance Program, *Understanding Your Policy Terms*, [Flood Insurance Coverage, Deductibles Explained \(floodsmart.gov\)](#) (last visited Feb. 16, 2023).

³⁵ The FEMA, National Flood Insurance Program, *What is a flood map?*, [FEMA Flood Maps Explained \(floodsmart.gov\)](#) (last visited Feb. 17, 2023).

For all other risks, the requirement to obtain flood insurance must be implemented for specified Citizens' policyholders as follows:

- March 1, 2024, for policies insuring property to a limit of \$600,000 or more.
- March 1, 2025, for policies insuring property to a limit of at least \$500,000 but less than \$600,000.
- March 1, 2026, for policies insuring property to a limit of at least \$400,000 but less than \$500,000.
- March 1, 2027, for all other policyholders.

III. Effect of Proposed Changes:

Section 1 amends s. 627.0629, F.S., to add wind uplift prevention to list of windstorm mitigation measures undertaken by policyholders to reduce hurricane losses that must be evaluated for purposes of mitigation discounts on residential property insurance rate filings.

This section takes effect July 1, 2023.

Section 2 amends s. 627.351, F.S., to:

- Exempt policies covering condominium units from the flood insurance requirement imposed on residential policies issued by Citizens.
- Provide that the rate increase limitations on Citizens policies do not apply to policies that do not cover a primary residence or policies where coverage was last provided by an insolvent insurer. However, rate increases on these type policies may not be charged more than 50 percent above, and may not be charged less than, the established rate for the corporation which was in effect 1 year before the date of the application.
- Revise the provision requiring flood insurance coverage by specified dates to base the dates by which flood insurance coverage must be obtained on the replacement cost of the residential structure, rather than total property value. The applicable dates and values remain the same.
- Authorizes Citizens to adopt policy forms providing for claim disputes to come before the Division of Administrative Hearings.

Section 3 provides a \$750,000 nonrecurring appropriation from the Insurance Regulatory Trust Fund to the OIR to conduct a wind-loss mitigation study. The study is required to evaluate roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protections, and window, door, and skylight strength. The finds of the study shall be reported to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Commissioner of Insurance Regulation no later than July 1, 2024. The OIR may use a portion of the funds appropriated to contract separately with building code experts in order to effectuate the bill and develop rules to be adopted by the Financial Services Commission.

Section 4 provides that, except as otherwise provided, the bill takes effect upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The addition of wind uplift prevention measures to the list of windstorm mitigation measures undertaken by policyholders to reduce hurricane losses that must be evaluated for purposes of mitigation discounts on residential property insurance rate filings may lead to greater use of these measures by property owners. This could lead to less damage from windstorms and lower insurance premiums.

C. Government Sector Impact:

The bill authorizes Citizens Property Insurance Corporation to adopt policy forms providing for claim disputes to come before the Division of Administrative Hearings. It is anticipated that, while incurring expenses for this alternative dispute resolution process, it will realize cost savings through the reduction in litigation costs.

The bill provides a \$750,000 nonrecurring appropriation from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to conduct a wind-loss mitigation study.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 627.0629 and 627.351 of the Florida Statutes.

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 Fiscal Policy on April 13, 2023:

The committee substitute makes the following changes:

- Authorizes Citizens Property Insurance Corporation to adopt policy forms providing for claim disputes to come before the Division of Administrative Hearings.
- Provides a \$750,000 nonrecurring appropriation from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to conduct a wind-loss mitigation study.

CS by Community Affairs on March 29, 2023:

The committee substitute:

- Exempts policies covering condominium units from the flood insurance requirement imposed on residential policies issued by the Citizens Property Insurance Corporation.
- Provides that the rate increase limitations on Citizens policies do not apply to policies that do not cover a primary residence or policies where coverage was last provided by an insolvent insurer.
- Revises the provision requiring flood insurance coverage by specified dates to base the dates by which flood insurance coverage must be obtained on the replacement cost of the residential structure, rather than total property value.

B. Amendments:

None.