

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill creates “The Citizens Property Insurance Corporation Mission Review Task Force” and provides membership for such. It requires the Chief Financial Officer to annually report on the impact to Florida of a specified hurricane event. It also authorizes the Florida Building Commission (commission) to amend the Florida Building Code to provide stronger building standards related to wind protection. Further, the bill requires local governments to enforce the wind-borne debris protections and structural standards provided by in the American Society of Civil Engineers Standard 7, 2002 edition.

Maintain Public Security – The bill increases the physical security of buildings against hurricane winds and windborne debris.

B. EFFECT OF PROPOSED CHANGES:

Citizens Property Insurance Corporation (Citizens)

In 2002, the Florida Legislature created Citizens Property Insurance Corporation (Citizens) which combined the then existing Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates under the direction of an 8-member Board of Governors. The Governor, Chief Financial Officer, the Senate President, and the Speaker of the House of Representatives each appoint two members of the Board who serve for 3-year terms.¹

Citizens offers three types of property and casualty insurance in three separate accounts: 1) Personal Lines Account (PLA) which covers homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies; 2) Commercial Lines Account (CLA) covering condominium associations, apartment buildings and homeowners associations; and 3) High-Risk Account (HRA) which covers personal lines windstorm-only policies, commercial residential wind-only policies and commercial non-residential wind-only policies.²

As of December 31, 2007, Citizens provided coverage to over 1.3 million policyholders, making Citizens the largest insurer in Florida. The number of policyholders in the three accounts are: PLA – 845,857; CLA – 12,911, and HRA – 446,181.³

Eligibility for Coverage in Citizens

Property that is unable to find property insurance coverage in the private market is able to obtain property insurance in Citizens. However, if a *new applicant* to Citizens is offered coverage from an insurer in the private market at its approved rate, the property is not eligible for a Citizens’ policy, unless the private market insurer’s premium is more than 15 percent greater than the premium for comparable coverage from Citizens. However, a *policyholder* of Citizens remains eligible for coverage in Citizens regardless of any offer of coverage from a private market insurer. This allows a policyholder to choose to stay in Citizens and to reject any “take-out” offers from the voluntary market. But, the voluntary market may continue to “keep out” policies from Citizens, provided the premium is no more than 15 percent greater than Citizens’ premium.

¹ s. 627.351(6)(c)4., F.S. (2007).

² HB 1A (Ch. 2007-1, L.O.F.) authorized Citizens to offer multi-peril policies in the HRA account and in August 2007 Citizens began offering such policies.

³ <http://www.citizensfla.com/> (last viewed January 11, 2008).

Beginning January 1, 2009, homes insured for \$1 million or more are ineligible for coverage in Citizens.⁴ Homes insured for \$1 million or more by Citizens before January 1, 2009 can remain in Citizens for another 3 years if the homeowner annually gets three declinations of coverage from surplus lines insurers and one from an authorized insurer. However, such property can only be covered in the high-risk account and will be considered “non-homestead property.” By January 1, 2012, Citizens will not insure any home insured for \$1 million or more.

Beginning January 1, 2009, a home insured for \$750,000 or more that is located in the wind-borne debris region is not eligible for coverage in Citizens unless the home has opening protections compliant with the Florida Building Code for new construction.⁵

In addition, starting January 1, 2009, all newly constructed buildings within 500 feet landward or seaward of the Coastal Construction Control Line will be ineligible for coverage in Citizens.⁶ The Coastal Construction Control Line Program, authorized by the Legislature and administered by the Department of Environmental Protection, prohibits new construction within a certain distance from the water line in order to protect beaches and dunes. Buildings between 500 feet and 2,500 feet from the landward side of the Line must be built to the “code plus” building standard developed by the Florida Building Commission in order to be eligible for property insurance in Citizens. However, if the “code plus” building standard is not developed by January 1, 2009, the buildings must be built to the Miami-Dade Building Code.

Deficits and Assessments

If Citizens incurs a deficit, it must levy assessments. The first assessment levied as soon as the deficit is determined and is levied against policyholders of nonhomestead property⁷ insured by Citizens. This assessment is levied against the premium of each Citizens’ nonhomestead policyholder up to 10 percent of premium in each account. Thus, if all accounts levied the maximum assessment, the Citizens nonhomestead policyholder would pay a 30 percent assessment of their premium. If the assessment against nonhomestead Citizens’ policyholders is insufficient to cover the deficit, Citizens must levy an assessment against all its policyholders (nonhomestead and homestead). The assessment levied is at policy issuance or renewal and is up to 10 percent of premium in each account, meaning the maximum assessment under this levy is 30 percent per Citizens policyholder.

If the two assessments against Citizens’ policyholders are insufficient to cover the deficit, Citizens can assess non-Citizens’ policyholders via regular and emergency assessments. Regular and emergency assessments are levied on all lines of property and casualty insurance, including automobile insurance, but not workers’ compensation or medical malpractice.⁸ The maximum regular assessment is 10 percent per account, for a maximum total assessment of 30 percent of premium per non-Citizens’ policyholder. Citizens also assesses its own policyholders for a regular assessment in the form of a Citizens policyholder surcharge. If there is still a deficit after a regular assessment, Citizens levies an emergency assessment up to 10 percent per account. Thus, the maximum total emergency assessment is 30 percent. This assessment is levied on Citizens’ and non-Citizens’ policyholders.

⁴ s. 627.351(6)(a)5., F.S. (2007).

⁵ s. 627.351(6)(a)8., F.S. (2007).

⁶ s. 627.351(6)(a)6., F.S. (2007).

⁷ Property that is not homestead property as defined in s. 627.351(6) is “nonhomestead property.” The definition of “homestead property” in s. 627.351(6) is more expansive than the definition used for ad valorem tax purposes.

Section 627.351(6)(a)4. defines “homestead property” as: a) a property granted a homestead tax exemption under ch. 196, F.S., b) property for which the owner has a written lease with a renter for a term of at least 7 months and which is insured by Citizens for \$200,000 or less; c) an owner occupied mobile home permanently affixed to real property, owned by a Florida resident, and either granted a homestead tax exemption or, if the owner does not own the land, for which the owner certifies that the mobile home is his principal place of residence; d) tenants coverage; e) commercial lines residential property; f) any county, district, or municipal hospital; not-for-profit hospital; or continuing care retirement community that is certified under ch. 651, F.S., and receives an ad valorem tax exemption under ch. 196, F.S.

⁸ The Citizens’ assessment base is substantially the same as that of the Florida Hurricane Catastrophe Fund.

Currently, Citizens' assessment base for a regular assessment is \$34 billion and its assessment base for an emergency assessment is \$37.4 billion.⁹

Prior to the 2004 hurricane season, Citizens had a surplus of about \$1.1 billion for its High Risk Account and \$700 million for the PLA/CLA combined. Citizens' claims losses related to the 2004 hurricane season amounted to more than \$2.4 billion, depleting its entire surplus in the High Risk Account. Thus, Citizens incurred a \$516 million deficit in the HRA. The other two accounts (PLA and CLA) did not incur deficits. The \$516 million deficit translated into statewide average 6.8% assessment on all non-Citizens insured homeowners in Florida. However, Citizens policyholders paid a 6.8% assessment, a "market equalization surcharge," upon renewal of their policy.

Due to the 2004 losses and deficit, Citizens started the 2005 hurricane season with no surplus in the HRA. Because this account sustained losses again in 2005 as a result of the 2005 hurricanes, as well as worsening loss development for the 2004 hurricanes (which are booked to the 2005 financial statements), Citizens incurred a deficit for the second year in a row. Citizens started the 2005 hurricane season with an estimated \$162 million surplus in the PLA and \$25.7 million surplus in the CLA.¹⁰ For 2005, Citizens deficit was almost \$1.8 billion. In the 2006 Legislative Session, the Legislature appropriated \$715 million to defray the Citizens' deficit associated with the 2005 hurricanes, making the deficit amount passed on to property owners in Florida over \$887 million. To cover the deficit, all owners of property insurance in Florida are required to pay an assessment of 1.4% of their premium for 10 years.¹¹

Rates

Citizens' rates must be actuarially sound. Effective January 1, 2009, Citizens must make a new rate filing using the actuarially sound standard.¹² The OIR will determine whether the rate filed by Citizens is "actuarially sound" and will determine what components Citizens is allowed to include in its "actuarially sound" rates. Citizens' rates are also subject to s. 627.062, F.S., which prohibits rates that are excessive, inadequate, or unfairly discriminatory and specifies factors for the Office of Insurance Regulation (OIR) to consider in making this determination. The public hurricane loss model must serve as the minimum benchmark for determining Citizens' windstorm rates.¹³

The OIR must annually establish Citizens' rates within 45 days after Citizens files recommended rates. Furthermore, Citizens is prohibited from legally challenging the OIR determination. In addition, by statute, Citizens' rates are frozen for 2007 and 2008 to the rates that were in effect on December 31, 2006. During 2007 and 2008, however, Citizens is still able to make rate filings which reduces rates further during the year; they are just not allowed to increase rates.

Task Force on Citizens Property Insurance Claims Handling and Resolution

HB 1A created the Task Force on Citizens Property Insurance Claims Handling and Resolution (Citizens' Claims Handling Task Force). The Citizens' Claims Handling Task Force is in existence until the end of the 2006-2008 legislative biennium and is directed to study issues relating to how Citizens currently handles, adjusts, and disposes of its claims in order to recommend improvement in such. It is required to report two times to the Legislature, the Governor, and the Chief Financial Officer on its findings. The first report was issued on July 2, 2007 and an interim report was issued on October 10, 2007. The first report established milestones for the closure of Citizens' 2004/2005 hurricane claims,

⁹ Meeting packet for House Jobs and Entrepreneurship Council meeting on January 10, 2008.

¹⁰ Personal communication from a representative of Citizens on file with the Insurance Committee.

¹¹ The assessment is applied to policies issued or renewed on or after July 1, 2007. In addition, the assessment percentage rate may change annually, depending on the previous years collections and fluctuations to the direct written premium base. See 2005 Citizens Property Insurance Corporation Emergency Assessment presentation available at <http://www.citizensfla.org/index.asp>.

¹² s. 627.351(6)(m), F.S. (2007).

¹³ In accordance with s. 3627.351(6)(m)3., F.S., the public hurricane model serves as the minimum benchmark for Citizens' windstorm rates only after the Florida Commission on Hurricane Loss Projection Methodology finds the model accurate and reliable. On August 17, 2007 the Commission found the public model acceptable under the 2006 Commission Standards. (See Florida Commission on Hurricane Loss Projection Methodology Report to the Florida House of Representatives entitled Comparison of Hurricane Loss Projection Models dated November 5, 2007).

and the training of contracted independent claims adjusters and insurance agents. The interim report was an update to the first report. The second report, due July 1, 2008, must provide findings and recommendations about how Citizens can more efficiently and timely handle, adjust, and dispose of future claims.

Proposed Changes Relating to the Citizens Mission Review Task Force

The bill creates "The Citizens Property Insurance Corporation Mission Review Task Force" (Task Force). The Task Force's charge is to analyze and compile data pertinent to developing a report specifying the statutory and operational changes needed for Citizens to operate as a state created, noncompetitive residual market. The report is to be submitted to the Governor and the Legislative presiding officers by January 31, 2009.

The bill delineates specific areas the Task Force must provide recommendations on in its report to the Governor and Legislative presiding officers. The Task Force is required to hold meetings, take testimony, and conduct research to fulfill its charge.

The bill specifies the membership of the 17 member Task Force:

- Three members appointed by the House Speaker;
- Three members appointed by the Senate President;
- Three members appointed by the Governor, none of which can be affiliated with insurers; and
- Eight members representing private sector insurers, six of which represent insurance companies with specified policy counts and two of which represent insurance agents.

The bill specifies when the appointing entities must make the Task Force appointments (30 days after the effective date of the bill), when the Task Force must convene its first meeting (within one month of appointment of all Task Force members), and when the Task Force expires (no later than 60 calendar days after report submission). The bill does not allow Task Force members to receive compensation for service but allows them to receive state-allowed per diem. The Task Force is allowed to employ consultants and administrative staff. Citizens' senior staff is required to attend Task Force meetings and to cooperate with the Task Force.

Report on Hurricane Impact on Florida

The bill requires the Chief Financial Officer to annually report to the Governor and presiding officers on the economic impact on the state of a 1-in-250 year hurricane and specifies what factors the report should include.

Florida Building Commission and Florida Building Code

The Florida Building Commission¹⁴ (commission) must adopt and maintain the Florida Building Code¹⁵ (code) as the technical regulation of construction activity throughout the state.¹⁶ The commission's charge includes annual amendments and triennial updates, wherein the commission integrates previously adopted amendments, local amendments meeting a statutory threshold, and its declaratory statements with the newest edition of the model code upon which the Florida Building Code is based. The commission also is charged with several means of interpreting the code.¹⁷

¹⁴ Section 553.74(1), F.S., creates the commission within the Department of Community Affairs for administrative purposes. It is composed of 23 members appointed by the Governor and confirmed by the Senate.

¹⁵ Section 553.73, F.S.

¹⁶ Section 553.73(1), F.S.

¹⁷ Section 553.77, F.S.

Design Standards for Wind Resistance

The code adopts the national model building code engineering standard known as the American Society of Civil Engineers Standard 7, 2002 edition (ASCE 7-02) for protection against hurricane winds. The ASCE 7-02 standard considers both wind speeds that can be developed by hurricanes and factors such as terrain and shielding by other buildings that affect the strength of those winds when they impact buildings. This standard, however, is not applied consistently across the state.

Panhandle Exemption

The Florida panhandle, which consists of the eastern border of Franklin County to the Florida-Alabama line, is provided an exemption from the 120 mph windborne debris standard¹⁸. This often is referred to as the “panhandle exemption”.

In 2000, the legislature created the panhandle exemption to the code. Section 109 of chapter 2000-141, Laws of Florida, provided that from the eastern border of Franklin County to the Florida-Alabama line, only land within one mile of the coast was subject to the windborne debris standards adopted by the commission.

In 2006, the legislature authorized the commission to amend the wind design standards contained in the code. The change allowed the commission to eliminate or revise the panhandle exemption and to amend the wind design standards applicable to the panhandle region to incorporate the ASCE 7-02 standard. The law required the wind lines to address the results of the Florida Panhandle Windborne Debris Region study.¹⁹

As a result of that study, the commission amended the code to require application of the windborne debris standard to the panhandle at the 130 mph line. The rest of the state is required to comply with the windborne debris standard at the 120 mph line. As such, this change still results in a panhandle exemption because the panhandle is not required to meet the same windborne debris standards as the rest of the state. Further, those areas within 1500 feet of open water are subject to the 120 mph windborne debris standard.²⁰ The changes were to take effect March 8, 2007.²¹

Windborne Debris and Treed Terrain

The commission contracted with Applied Research Associates to conduct an engineering based risk assessment of hurricane windborne debris protection options for the panhandle. The study concluded that within the wind speed contours investigated (110 mph to 130 mph), terrain is more important than wind speed in determining the need for windborne debris protection.²² In addition, the study recommended changes to the panhandle exemption which were adopted by the commission and were to take effect March 8, 2007. It should be noted, however, that the study did not take into consideration the following:

- Increased development in the panhandle region. As more structures are built, more trees are cut down.
- Tree fall from the 2004 hurricane season.
- Maturation of the tree canopy in the panhandle.²³

Changes to the Florida Building Code Made By HB 1A

¹⁸ The 120 mph windborne debris standard specifically requires buildings to provide additional protection in areas that are expected to experience hurricane winds of 120 mph or greater.

¹⁹ Section 1, chapter 2006-65, L.O.F.

²⁰ These changes were recommended in a study performed by Applied Research Associates pursuant to a contract with the commission.

²¹ Testimony by James Richmond, attorney for the Florida Building Commission, Committee on State Affairs workshop of statewide building code practices, January 10, 2007.

²² “Summary of UF 2004 Hurricanes Building Performance Assessment and ARA Wind-Borne Debris Criteria for the Panhandle Study”, available at http://www.dca.state.fl.us/fbc/publications/1_publications.htm, under the heading “Summary Briefing”.

²³ These factors were raised as concerns by Leslie Chapman-Henderson during testimony provided to the Committee on State Affairs as part of its workshop on statewide building code practices on January 10, 2007. Leslie Chapman-Henderson provided testimony on behalf of the Property and Casualty Insurance Reform Committee for which she served as a member.

HB 1A made substantial changes to the Florida Building Code. The bill required the Florida Building Code be revised as follows, in order to repeal the so-called “Panhandle exemption” and other changes to strengthen the windstorm resistance requirements of the code:

- Required the Florida Building Commission to amend the Florida Building Code by July 1, 2007, to adopt the wind-borne-debris protection requirements of the International Building Code (2006) and the International Residential Code (2006) within the wind-borne-debris region (120 mph+) as defined by those codes. This does not apply to the High Velocity Hurricane Zone. This also has the effect of deleting the internal pressurization option for buildings in the wind-borne-debris region.
- Prohibited amendments or modifications that diminish provisions related to wind resistance or water intrusion. However, the commission may amend such provisions to enhance those requirements.
- Required local jurisdictions to immediately enforce these wind-borne debris protection requirements upon the effective date of the act (i.e. for building permits issued on or after that date) pending adoption by the Florida Building Commission.
- Required the Florida Building Commission to develop voluntary “Code-Plus” guidelines for increasing the hurricane resistance of buildings that may be modeled on the Miami-Dade building code.

Proposed Changes Relating to the Florida Building Code

The bill authorizes the Florida Building Commission to modify the Florida Building Code, but only if the modifications provided stronger building standards related to wind protection. It requires the commission to amend the Florida Building Code to require application of standard ASCE 7-02 throughout the state. All exceptions providing less stringent requirements must be eliminated. Finally, the bill directs counties and cities to enforce the windborne debris protections and structural guidelines provided in standard ASCE 7-02.

C. SECTION DIRECTORY:

Section 1: Creates “The Citizens Property Insurance Corporation Mission Review Task Force,” provides membership, provides duties, requires reporting, and provides expiration of the Task Force.

Section 2: Creates an unnumbered section of law requiring the Chief Financial Officer to report on the economic impact on the state of a 1-in-250 year hurricane.

Section 3: Amends s. 553.73 as amended by chapter 2007-1, Laws of Florida relating to the Florida Building Code.

Section 4: Amends section 10 of chapter 2007-1, Laws of Florida relating to the Florida Building Code.

Section 5: Provides for a nonrecurring appropriation of \$250,000 from the General Revenue Fund for implementation of the bill.

Section 6: Provides the bill is effective “upon becoming a law.”

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill provides an appropriation of \$250,000 in nonrecurring funds from the General Revenue Fund to implement the Task Force.

The Office of Insurance Regulation estimates that at least two existing full time positions will need to be devoted to assisting the task force. One of the positions would be senior management. The Office may also have to expend funds on information technology support to compile reports depending on what data is requested by the task force.

The Department of Financial Services estimates that it will incur some administrative costs in preparing the report on the economic impact on the state of a 1-in-250 year hurricane.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact of the bill on homebuilders and ultimately homebuyers is indeterminate. The bill may result in increased construction costs associated with stronger building standards related to wind protection. These costs, however, could be offset by benefits from reduced hurricane-related property damage and lower insurance rates.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the commission to amend the code in order to eliminate all exceptions that provide less stringent requirements, in essence, eliminating the panhandle exemption. It also authorizes the commission to amend the code in order to include stronger building standards related to wind protection.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section three of the bill applies the ASCE 7-02 (American Society of Civil Engineers 2002) standard for wind debris protections. By requiring a specific version of the standard to be used (the 2002 version), the bill will prevent the Florida Building Commission from changing the standard as the national standards change.

D. STATEMENT OF THE SPONSOR

Passage of HB 269 will begin the orderly process of reducing the financial peril facing the people of Florida. By returning Citizens Property Insurance Company to its original purpose of being the insurer of last resort, the potential of financial ruin will be greatly reduced. The Mission Review Task Force will bring experts from government and the insurance industry to craft a plan of depopulating the policies of Citizens. The present financial risk to all Floridians is enormous and Citizens is woefully undercapitalized. To continue to expose Floridians to this kind of financial risk is unwise and the sooner we begin to restore the free market insurance climate, the better off we will be.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.