

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 1089	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Regulatory Affairs Committee; Insurance & Banking Subcommittee; Raschein	117 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/SB 1274	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/CS/HB 1089 passed the House on April 25, 2014, and subsequently passed the Senate on April 28, 2014. The bill provides changes to 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. It is not a private insurance company. Current law provides an eligibility restriction for insurance in Citizens based on the location of the property. Major structures for which a building permit for new construction is applied for on or after July 1, 2014 or for which a building permit for a substantial improvement of the structure is applied for on or after July 1, 2014, and which is located seaward of the coastal construction control line or within the Coastal Barrier Resources System (CBRS) are ineligible for insurance in Citizens.

The bill delays implementation of the current law for Citizens' eligibility based on location of the property for one year. Thus, major structures for which a building permit for new construction is applied for on or after July 1, 2015, rather than July 1, 2014, or for which a building permit for a substantial improvement of the structure is applied for on or after July 1, 2015, rather than July 1, 2014, and which is located seaward of the coastal construction control line or within the CBRS will be ineligible for insurance in Citizens.

Starting July 1, 2014, the bill also prohibits residential condominium associations from obtaining commercial residential property insurance from Citizens that covers damage only from wind if 50 percent or more of the condominiums in the association are rented more than eight times a year for less than 30 days. These condominium associations are still able to obtain property insurance from Citizens that covers damage from multiple perils, including wind.

The bill has no fiscal impact on state or local governments. Owners of structures in certain coastal areas will be able to obtain or keep insurance in Citizens if they substantially improve their structure or build new construction before July 1, 2015.

The bill was approved by the Governor on June 13, 2014, ch. 2014-140, L.O.F., and will become effective on July 1, 2014.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Citizens Property Insurance Corporation**

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

As of February 12, 2014, Citizens is the largest property insurer in Florida with over one million policies extending approximately \$315 billion of property coverage to Floridians.<sup>1</sup> Citizens insures over 383,000 residential and commercial policies in Florida's coastal areas and over 600,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas.

Citizens was created by the Legislature in 2002 by the merger of two existing property insurance associations: The Florida Residential Property and Casualty Joint Underwriting Association (FRPCJUA) and the Florida Windstorm Underwriting Association (FWUA). The FRPCJUA provided full-coverage personal and commercial residential property policies in all counties of Florida while the FWUA provided personal and commercial residential property wind-only coverage in designated territories.

Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts:

1. Personal Lines Account (PLA) – Multiperil Policies<sup>2</sup>  
Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2. Commercial Lines Account (CLA) – Multiperil Policies  
Consists of condominium association, apartment building, homeowner's association policies, and commercial non-residential multiperil policies on property located outside the Coastal Account area; and
3. Coastal Account – Wind-only<sup>3</sup> and Multiperil Policies  
Consists of wind-only and multiperil policies for personal residential, commercial residential, and commercial non-residential issued in limited eligible coastal areas.

#### **Eligibility for Insurance in Citizens**

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amount, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules, which are approved by the Office of Insurance Regulation (OIR), give flexibility for Citizens to denote some risks as uninsurable based on factors not enumerated in statute, such as age of home, condition and age of roof, vacant property, certain seasonal occupancy, and type of electrical wiring.

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<sup>1</sup> <https://www.citizensfla.com/about/bookofbusiness/> (last viewed March 11, 2014).

<sup>2</sup> A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (<http://www2.iii.org/glossary/>) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

<sup>3</sup> A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

### *Eligibility Based on Premium Amount*

Under current law, a homeowner cannot buy insurance in Citizens if an insurer in the private market offers the homeowner insurance for a premium 15 percent or less than the Citizens' premium.<sup>4</sup> In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage. Thus, a homeowner can buy insurance from Citizens only if the private insurer's premium is more than 15 percent than the Citizens' premium.

Under current law, a homeowner cannot renew insurance in Citizens if an insurer in the private market offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.

### *Eligibility Based on Value of Property Insured*

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured. Structures with a dwelling replacement cost or a condominium unit that has a dwelling and contents replacement cost of:

- \$1 million or more cannot obtain or renew insurance in Citizens starting January 1, 2014, but property insured by Citizens for \$1 million or more on December 31, 2013 can remain insured in Citizens until the policy expires in 2014.
- \$900,000 or more cannot obtain or renew insurance in Citizens starting January 1, 2015, but property insured for \$900,000 or more on December 31, 2014 can remain insured in Citizens until the policy expires in 2015.
- \$800,000 or more cannot obtain or renew insurance in Citizens starting January 1, 2016, but property insured for \$800,000 or more on December 31, 2015 can remain insured in Citizens until the policy expires in 2016.
- \$700,000 or more cannot obtain or renew insurance in Citizens starting January 1, 2017, but property insured for \$700,000 or more on December 31, 2016 can remain insured in Citizens until the policy expires in 2017.

However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of \$1 million or less in counties with no competition.

Citizens does not have any eligibility restrictions based on the value of the property insured for condominium association, homeowner association, or apartment building policies. Citizens has multiple eligibility and coverage restrictions for commercial businesses, depending on where the business is located and the type of policy the business purchases from Citizens. These restrictions are contained in the underwriting rules of Citizens, not in the statute.

### *Eligibility Based on Location of Property*

Current law also provides an eligibility restriction for insurance in Citizens based on the location of the property. Major structures for which a building permit for new construction is applied for on or after July 1, 2014 or for which a building permit for a substantial improvement of the structure is applied for on or after July 1, 2014, and which is located seaward of the coastal construction control line<sup>5</sup> or within the

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<sup>4</sup> s. 627.351(6)(c)5.a., F.S. Commercial non-residential property is not subject to this eligibility restriction.

<sup>5</sup> The coastal construction control line (CCCL) establishes an area of jurisdiction in which special siting and design criteria are applied for construction and related activities. These standards may be more stringent than those that apply in the rest of the coastal building zone because during a storm event greater forces are expected to occur in the more seaward zone of the beach. Chapter 62B-33, Florida Administrative Code, provides the design and siting requirements that must be met to obtain a CCCL permit. Approval or denial of a permit application is based upon a review of the potential impacts to the beach dune system, adjacent properties, native salt resistant vegetation, and marine turtles. The CCCL is not a setback line or line of prohibition for construction. Rather, new construction as well as additions, remodeling, and repairs to existing structures are allowed seaward of the control line; however, such structures and activities, unless exempt by rule or law, require a CCCL permit from the Florida Department of Environmental Protection. An interactive map showing the CCCL is available online.

CBRS<sup>6</sup> are ineligible for insurance in Citizens. The definition of “major structure” that is contained in s. 161.54, F.S., is the one that applies to Citizens’ eligibility and is very broad, encompassing all residential and commercial buildings. The definition specifies it covers houses, mobile homes, apartment buildings, condominiums, hotels, motels, and restaurants. The definition of “substantial improvement” that is also contained in s. 161.54, F.S., is the one that applies to Citizens’ eligibility. Generally, this definition makes any repair, reconstruction, rehabilitation, or improvement to a structure that costs 50 percent or more of the market value of the structure to be a “substantial improvement.” The statutory definition contains additional parameters and guidance and exclusions.

#### Statewide Impact of the Application of Citizens’ Eligibility Based on Location of Property

Citizens has identified approximately 100,000 parcels of land statewide completely within the CBRS or seaward of the coastal construction control line.<sup>7</sup> Under current law, these parcels are ineligible for insurance in Citizens if:

- the parcel is currently improved (i.e., developed) and the structure located on the parcel is substantially improved with a building permit applied for on or after July 1, 2014, or
- if the parcel is currently unimproved (i.e., vacant), but is later developed with a building permit applied for on or after July 1, 2014.

Of the 100,000 total parcels of land completely within the CBRS or seaward of the coastal construction control line, Citizens currently writes 25,000 policies statewide insuring structures on these parcels. Thus, any substantial improvement to these 25,000 properties where a building permit is applied for on or after July 1, 2014 would keep them from continuing to be insured by Citizens.

Citizens identified another 80,000-100,000 properties it currently insures that are so close to the CBRS or the coastal construction control line that any change in the boundaries of these areas<sup>8</sup> could move these properties into the CBRS or the control line, thus preventing the property from keeping insurance in Citizens if it is substantially improved with a building permit applied for on or after July 1, 2014.

#### **Effect of Proposed Changes Related to Citizens’ Eligibility**

The bill delays the implementation of current law for Citizens’ eligibility based on location of the property for one year. Thus, major structures for which a building permit for new construction is applied for on or after July 1, 2015, rather than July 1, 2014, or for which a building permit for a substantial improvement of the structure is applied for on or after July 1, 2015, rather than July 1, 2014, and which is located seaward of the coastal construction control line or within the CBRS will be ineligible for insurance in Citizens.

#### **Effect of Proposed Changes Related to Citizens’ Eligibility for Commercial Residential Wind-Only Coverage**

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<sup>6</sup> The Coastal Barrier Resources Act (CBRA or Act)<sup>6</sup> was passed in 1982 and reauthorized in 1990, 2000 and 2005. Under CBRA, some undeveloped land located on coastal barriers is designated by the Secretary of the Interior as CBRA units in the Coastal Barrier Resource System (CBRS). The Act does not prohibit or regulate development of land in the CBRS, it simply precludes land owners from obtaining federal financial assistance for development of coastal barrier land. The Act encourages the conservation of hurricane prone, biologically rich coastal barriers by restricting federal expenditures that encourage development, such as federal flood insurance, road building, disaster relief, and wastewater systems. Areas within the CBRS can be developed if the private developer or other non-federal party bears the full cost of development. The U.S. Fish and Wildlife Service is the federal agency responsible for implementing CBRA. Florida has 128 units in the CBRS totaling 677,334 acres, and 454 shoreline miles. The CBRS boundaries are depicted on U.S. Geological Survey topographic quadrangle maps. With three exceptions, only Congress has the authority to change CBRA boundaries to include or exclude specific property. The exceptions allow the Secretary of the Interior to change the boundaries for (1) voluntary additions to the CBRS by property owners, (2) additions of excess federal property to the CBRS, and (3) the required CBRA 5-year review that solely considers changes to the CBRS by natural forces such as erosion or accretion.

<sup>7</sup> All information about parcel count in the CBRS or the coastal construction control line was obtained from Citizens and is on file with the Insurance & Banking Subcommittee.

<sup>8</sup> The Florida Department of Environmental Protection (DEP) establishes the coastal construction control line on a county basis. The line is subject to review at the discretion of DEP, upon request of officials of affected counties or municipalities, or upon request of a riparian upland owner who feels that the line is unduly restrictive or prevents a legitimate use of the owner’s property. (s. 161.053(2)(a), F.S.). Congress can change the boundaries of the CBRA which define the CBRS, with three exceptions that allow the Secretary of the Interior to change the boundaries. (see footnote 6).

According to Citizens, over the last few years, there has been a lack of clarity regarding the proper classification of transient occupancy risks, leading to inconsistencies in whether a risk was written by Citizens as commercial residential or commercial non-residential property. In July 2012, Citizens' underwriting manuals were updated to clarify the definition of transient occupancy.<sup>9</sup> Currently, the definition of transient occupancy is as follows:

**Transient** – Condominiums, cooperatives, or apartment risks with transient occupancy exposure, in which more than 25% of the total number of units are used for transient purposes. Transient means rented to guests more than three (3) times in a calendar year for periods of less than 30 days or one (1) calendar month, whichever is less or held out to the public as a place regularly rented out to guests for periods of less than 30 days.

In addition, by underwriting rule, Citizens makes risks with transient occupancy exceeding 25 percent ineligible for commercial residential wind-only coverage. However, these risks are still eligible for insurance from Citizens covering multiple perils and are usually written as commercial non-residential instead of commercial residential.<sup>10</sup>

The bill changes the transient occupancy definition and rule currently used by Citizens. Starting July 1, 2014, the bill prohibits residential condominium associations from obtaining commercial residential property insurance from Citizens that covers damage only from wind if 50 percent or more of the condominiums in the association, rather than 25 percent, are rented more than eight times a year, rather than three times a year, for less than 30 days. These condominium associations are still able to obtain property insurance from Citizens that covers damage from multiple perils, including wind.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### A. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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<sup>9</sup> Actuarial and Underwriting Committee Meeting of Citizens' Board of Governors dated November 18, 2013, meeting materials available at [https://www.citizensfla.com/about/mDetails\\_boardmtgs.cfm?show=PDF&link=/bnc\\_meet/docs/532/05C\\_Commercial\\_Transient\\_Occupancy\\_Update\\_20131118.pdf&event=532&when=Past](https://www.citizensfla.com/about/mDetails_boardmtgs.cfm?show=PDF&link=/bnc_meet/docs/532/05C_Commercial_Transient_Occupancy_Update_20131118.pdf&event=532&when=Past) (last viewed May 7, 2014).

<sup>10</sup> For wind-only coverage, Citizens only insures up to the first \$1 million in insured value for commercial non-residential risks. Any insurance that is needed about \$1 million must be obtained in the private or surplus lines markets. By contrast, Citizens has no limit on the insured value for commercial residential risks; thus, insures them up to full insured value.

**B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Owners of structures in certain coastal areas will be able to obtain or keep insurance in Citizens if they substantially improve their structure or build new construction before July 1, 2015.

**C. FISCAL COMMENTS:**

None.