

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1307 Citizens Property Insurance Corporation

**SPONSOR(S):** Commerce Committee, Insurance & Banking Subcommittee, Gregory and others

**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	17 Y, 0 N, As CS	Fortenberry	Luczynski
2) Commerce Committee	18 Y, 5 N, As CS	Fortenberry	Hamon

### SUMMARY ANALYSIS

The bill makes several changes to the operations of, and requirements for, Citizens Property Insurance Corporation (Citizens), the state-run property insurer:

- Establishes that the Office of Insurance Regulation (OIR) must approve the method that Citizens uses to value dwelling replacement cost.
- Prohibits a registered lobbyist from being a member of Citizens' Board of Governors (board).
- Establishes that, at the time of appointment, Citizens' executive director must have the experience, character, and qualifications sufficient to qualify as a chief executive officer of an insurer in accordance with the requirements for managers, officers, and directors of private insurers.
- Establishes that when Citizens' personal lines residential or commercial lines residential policyholders receive offers of coverage at renewal from authorized insurers, the risks are not eligible for coverage from Citizens unless the premiums from the authorized insurers are more than a set percentage greater than the renewal premiums for comparable coverage from Citizens. This percentage begins at 4 percent and increases incrementally to 20 percent by 2027.
- Establishes that for new applications for commercial lines residential risks, the risk is not eligible for coverage by Citizens unless the premium for coverage from an authorized insurer is more than 20 percent greater than the premium for Citizens. SB 76 (2021) made the change from 15 percent to 20 percent for personal lines residential risks, but the change was not made for commercial lines residential risks in that bill.
- Eliminates the ability of Citizens to include the cost of reinsurance in its rate calculations if it does not purchase reinsurance.
- Establishes that when Citizens' policyholders receive take-out offers from authorized insurers that include premiums that are not more than a set percentage greater than Citizens' premium for comparable coverage, they are no longer eligible for Citizens' coverage. This percentage begins at 4 percent and increases incrementally to 20 percent by 2027. The bill also requires that Citizens' notify policyholders of the fact that they have received such an offer and that the offer renders their risks ineligible for Citizens' coverage.

The bill has no effect on state or local government revenues or expenditures. It may have an indeterminate negative impact on the private sector.

The bill is effective on July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Citizens Property Insurance Corporation (Citizens)**

Citizens is a state-created, not-for-profit, tax-exempt government entity that is an integral part of the state, whose public purpose is to provide property insurance to those unable to find affordable coverage in the private market.<sup>1</sup> Citizens is overseen by a board and operated by an executive director. Citizens writes both personal and commercial property policies, including the following:

- Standard personal lines policies that are comprehensive multiperil policies providing full coverage of residential property equivalent to the coverage provided in the private insurance market;
- Basic personal lines policies that are similar to dwelling fire policies that provide coverage meeting the requirements of the secondary mortgage market, but are more limited in coverage than under a standard policy;
- Commercial lines residential and nonresidential policies that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the private market;
- Personal lines and commercial lines residential property insurance policies that cover the peril of wind only;
- Commercial lines nonresidential property insurance policies that cover the peril of wind only.<sup>2</sup>

#### **Dwelling Valuation**

##### *Background*

Dwelling coverage, sometimes called “dwelling insurance,” is the part of a homeowners policy that pays for the rebuilding or repair of the physical structure of the home if it is damaged by a covered peril.<sup>3</sup> Coverage may be provided on a replacement cost or actual cash-value basis. Replacement cost includes the cost of materials and labor necessary to rebuild or repair the home. Actual cash value is calculated by subtracting depreciation from replacement cost.

Since January 1, 2017, with certain exceptions, a structure that has a dwelling replacement cost of \$700,000 or more, or a single condominium that has a combined dwelling and contents replacement cost of \$700,000 or more, is not eligible for Citizens’ coverage.<sup>4</sup> However, in counties where the Office of Insurance Regulation (OIR) has determined there is not a reasonable degree of competition in the availability of property insurance, the limit for the dwelling replacement cost of a structure, or the dwelling and contents replacement cost of a single condominium eligible for coverage is \$1,000,000.<sup>5</sup>

Insurance companies typically use information on a customer’s application, proprietary formulas, and third-party data to calculate dwelling replacement costs, which differ from market value.<sup>6</sup> Current law does not specify the method by which Citizens must calculate dwelling replacement cost and does not involve OIR in the process of completing such calculations.

##### *Effect of the Bill*

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<sup>1</sup> S. 627.351(6)(a)1., F.S.

<sup>2</sup> S. 627.351(6)(c)1., F.S.

<sup>3</sup> Allstate, *What is Dwelling Insurance Coverage?*, <https://www.allstate.com/tr/home-insurance/dwelling-insurance.aspx> (last visited Jan. 29, 2022).

<sup>4</sup> S. 627.351(6)(a)3.d., F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Kin, *What is a Replacement Cost Estimate?*, <https://www.kin.com/faq/replacement-cost-estimate> (last visited Jan. 29, 2022).

The bill establishes that OIR must approve the method that Citizens uses to value dwelling replacement cost. It also removes obsolete language regarding dwelling and contents coverage provided by Citizens.

## **Qualifications of Citizens' Board Members**

### *Background*

Citizens is overseen by its board, which consists of nine individuals who must be residents of different geographical areas of Florida.<sup>7</sup> The Governor, Chief Financial Officer, President of the Senate, and Speaker of the House, each appoint two members of the board.<sup>8</sup> The Governor appoints one additional member who serves solely to advocate on behalf of consumers.<sup>9</sup> At least one of the two members appointed by each appointing officer must have demonstrated experience in insurance.<sup>10</sup> Current law does not address a registered lobbyist for the executive or legislative branches being a member of the board.

### *Effect of the Bill*

The bill prohibits a registered lobbyist for the executive or legislative branches from being a member of the board.

## **Qualifications of Citizens' Executive Director**

### *Background*

Citizens is run by an executive director that is engaged by the board and serves "at the pleasure of the board."<sup>11</sup> The executive director is subject to confirmation by the Senate.<sup>12</sup> He or she is responsible for employing other staff as Citizens requires, subject to review and agreement by the board.<sup>13</sup> However, current law does not specify the experience, character, or qualifications that an individual must have in order to be qualified to serve as Citizens' executive director.

Florida law provides guidance regarding the qualifications necessary for individuals to serve as officers and directors of private insurers within the state.<sup>14</sup> In general, OIR must not grant or continue to grant authority to transact insurance to any insurer, which has management, officers, or directors that it finds to be incompetent or untrustworthy, or "so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public."<sup>15</sup> Additionally, OIR must not grant or continue authority to transact insurance to any insurer if any person in control of the insurer "does not possess the financial standing and business experience for the successful operation of the insurer."<sup>16</sup>

### *Effect of the Bill*

The bill establishes that, at the time of appointment, Citizens' executive director must have the experience, character, and qualifications sufficient to qualify as a chief executive officer of an insurer in accordance with s. 624.404(3), F.S.

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<sup>7</sup> S. 627.351(6)(c)4., F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> See s. 624.404(3), F.S.

<sup>15</sup> S. 624.404(3)(a), F.S.

<sup>16</sup> S. 624.404(3)(b), F.S.

## **Competitiveness of Citizens' Rates and Eligibility for Coverage**

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for coverage from Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens also has additional eligibility requirements set out in their underwriting rules. These rules are approved by OIR and set out in Citizens' underwriting manuals.<sup>17</sup>

Citizens' rate cap, also known as the "glide path," is not closing the gap between Citizens rates and private market rates. Instead, because of the rate cap and the increasing rates of private property insurance, the gap is growing and making Citizens more like a competitor to private insurers than an insurer of last resort. Because Citizens' rates are often well below those of private carriers, Citizens may be more competitive than otherwise intended. Due to Citizens' structure, its rates do not contain certain elements that the rates of private insurers contain. Citizens does not pay taxes like private insurers and does not need to purchase as much reinsurance as private insurers because of Citizens' higher levels of capital and surplus.

### **Eligibility for Personal and Commercial Lines Residential Coverage at Renewal**

#### *Background*

Both personal lines residential and commercial lines residential policyholders cannot renew Citizens' insurance policies if an authorized insurer offers to insure their property at a premium equal to or less than Citizens' renewal premium.<sup>18</sup> Additionally, the insurance from the authorized insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.<sup>19</sup>

#### *Effect of the Bill*

The bill establishes that when Citizens' personal lines residential or commercial lines residential policyholders receive offers of coverage at renewal from authorized insurers, the risks are not eligible for coverage from Citizens unless the premiums from the authorized insurers are more than the following percent greater than the renewal premiums for comparable coverage from Citizens:

- 4 percent for policies that renew during 2023.
- 8 percent for policies that renew during 2024.
- 12 percent for policies that renew during 2025.
- 16 percent for policies that renew during 2026.
- 20 percent for policies that renew during 2027 and during all subsequent years.

The bill also establishes that policies removed from Citizens under an assumption agreement may remain on Citizen's policy forms through the end of the policy term.

### **Eligibility for New Commercial Lines Residential Coverage**

#### *Background*

New applicants are eligible for commercial lines residential coverage from Citizens if no authorized insurer will write them a policy for a premium that is less than 15 percent greater than what Citizens would offer them for comparable coverage.<sup>20</sup> However, new applicants are eligible for personal lines

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<sup>17</sup> See Citizens Property Insurance Corporation, *Revised Underwriting Manuals*, <https://www.citizensfla.com/-/20160329-revised-underwriting-manuals> (last visited Jan. 30, 2022).

<sup>18</sup> S. 627.351(6)(c)5., F.S.

<sup>19</sup> *Id.*

<sup>20</sup> S. 627.351(6)(c)5., F.S.

residential coverage if no authorized insurer will write them a policy for a premium that is less than 20 percent greater than what Citizens would offer them for comparable coverage.<sup>21</sup>

### *Effect of the Bill*

The bill establishes that for new applications for commercial lines residential risks, the risk is not eligible for coverage by Citizens unless the premium for coverage from an authorized insurer is more than 20 percent greater than the premium for Citizens.<sup>22</sup>

## **Purchase of Reinsurance**

### *Background*

Current law requires that Citizens make its best efforts to procure catastrophe reinsurance at reasonable rates to cover its projected 100-year probable maximum loss (PML).<sup>23</sup> Due to the high cost of reinsurance in recent years, some years Citizens has determined that reinsurance is not available at reasonable rates and has not purchased it. If catastrophe reinsurance is not available at reasonable rates, Citizens need not purchase it, but Citizens shall include the costs of reinsurance to cover its projected 100-year PML in its rate calculations even if it does not purchase it.<sup>24</sup>

### *Effect of the Bill*

The bill changes existing statutory language regarding Citizens' purchase of reinsurance so that Citizens shall no longer include the cost of reinsurance in its rate calculations if it does not purchase reinsurance.

## **Citizens' Take-out Program/Depopulation**

### Eligibility After a Take-out Offer

### *Background*

Florida law requires that Citizens create programs to help return its policyholders to the private property insurance market and to reduce the risk of additional assessments for all Floridians in the event that Citizens is unable to meet its obligations.<sup>25</sup> In 2016, the Legislature passed requirements that by January 1, 2017, Citizens amend its operations relating to take-out agreements, whereby private insurers remove policies from Citizens.<sup>26</sup> As part of these requirements, a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer requests to take out;<sup>27</sup>
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take out a policy; the list must include a description of the coverage offered and the estimated premium for each take-out request;
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out

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<sup>21</sup> *Id.*

<sup>22</sup> SB 76 (2021) made the change from 15 percent to 20 percent for personal lines residential risks, but the change was not made for commercial lines residential risks in that bill.

<sup>23</sup> S. 627.351(6)(c)9., F.S. Probable maximum loss refers to the value that may be reasonably expected to be lost in a single casualty. IRMI, <https://www.irmi.com/term/insurance-definitions/probable-maximum-loss> (last visited Feb. 3, 2022). If an insurer is buying reinsurance to cover its 100-year probable maximum loss, it is purchasing reinsurance to cover the maximum loss that has a chance of occurring once in 100 years.

<sup>24</sup> *Id.*

<sup>25</sup> S. 627.351(6)(q)3.a., F.S.

<sup>26</sup> Ch. 2016-229, Laws of Fla.

<sup>27</sup> These requests from insurers must include a description of the coverage offered and an estimated premium for it and must be submitted to Citizens in a form prescribed by Citizens.

offer or to reject all take-out offers and to remain with Citizens. The notice must be in a format prescribed by Citizens and include, for each take-out offer:

- The amount of the estimated premium;
- A description of coverage; and
- A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by Citizens.<sup>28</sup>

#### *Effect of the Bill*

The bill establishes that when Citizens' policyholders receive take-out offers from authorized insurers that include premiums that are not more than the following percent greater than Citizens' renewal premium for comparable coverage, they are no longer eligible for Citizens' coverage:

- 4 percent for policies effective on or after January 1, 2023.
- 8 percent for policies effective on or after January 1, 2024.
- 12 percent for policies effective on or after January 1, 2025.
- 16 percent for policies effective on or after January 1, 2026.
- 20 percent for policies effective on or after January 1, 2027, and in all subsequent years.

The bill requires that Citizens' notify policyholders that they have received such an offer and that the offer renders their risks ineligible for Citizens' coverage.

The bill also eliminates a 36-month exception where a policyholder whose policy has been taken-out of Citizens can still be considered a renewal if the authorized insurer that took the policy raises the policyholder's rates.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 627.022, F.S., relating to scope of this part.

**Section 2.** Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

**Section 3.** Amends s. 627.3517, F.S., relating to consumer choice.

**Section 4.** Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.

**Section 5.** Provides an effective date of July 1, 2022.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that less policyholders are eligible for Citizens' coverage, they may pay more in insurance premiums on the private market. Therefore, the bill may have an indeterminate negative impact on the private sector.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 23, 2022, the Insurance & Banking Subcommittee considered the bill, adopted three amendments, and reported the bill favorably as a committee substitute. The amendments made the following changes to the bill:

- Phased in the percentage, by which an authorized insurer's renewal offer for a Citizens' policyholder may exceed Citizens' premium and make a policyholder ineligible for Citizens' coverage, by 5 percent per year until it reaches 20 percent in 2026.
- Clarified that a policy removed from Citizens under an assumption agreement may remain on Citizens' policy forms for the remainder of the assumption period so that Citizens may continue to provide service to the policyholder for the claims that are payable by the assuming insurer.
- Changed existing statutory language regarding Citizens' purchase of reinsurance so that Citizens shall no longer include the cost of reinsurance in its rate calculations if it does not purchase reinsurance.
- Phased in the percentage, by which an authorized insurer's take-out offer may exceed Citizens' premium and make a policyholder ineligible for Citizens' coverage, by 5 percent per year until it reaches 20 percent in 2026.
- Eliminated language that creates a 36-month exception whereby a policyholder whose policy has been taken-out of Citizens can still be considered a renewal if the authorized insurer that took the policy raises the policyholder's rates.

On February 23, 2022, the Commerce Committee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Removed language from the bill that increased the surcharge on Citizens' policyholders based upon Citizens' overall policy count.
- Extended the implementation of the percentage by which an authorized insurer's renewal offer for a Citizens' policyholder or an authorized insurer's take-out offer for a Citizens' policyholder

may exceed Citizens' premium and make the policyholder ineligible for Citizens' coverage from 5 percent per year to 4 percent per year.

- Removed the definition, but not the requirement, of "demonstrated expertise in insurance" that is required of one of the two Citizens' board members appointed by the Governor, Chief Financial Officer, Senate President, and Speaker of the House.
- Removed language allowing surplus lines insurers to participate in Citizens' take-out program.
- Removed the definition of primary residence that was in the bill as filed, but not actually utilized in the bill.
- Added language that prohibits a registered lobbyist from being a member of Citizens' board.

The analysis is drafted to the committee substitute as passed by the Commerce Committee.